

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 180

4 FEBRUARY 2014

PAGES 21516 TO 21659



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1 [PROCEEDINGS ON 4 FEBRUARY 2014]
 2 [09:09] CHAIRPERSON: Please turn off your cell
 3 phones so they don't disturb us. Provincial Commissioner,
 4 you're still under oath.
 5 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
 6 CHAIRPERSON: Mr Budlender.
 7 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
 8 Thank you, Chair. Provincial Commissioner, good morning.
 9 GENERAL MBOMBO: Morning. Morning,
 10 Chairperson.
 11 MR BUDLENDER SC: When we adjourned on
 12 Friday we were discussing the transcript of your discussion
 13 with Lonmin officials on the 14th of August. You remember
 14 that?
 15 GENERAL MBOMBO: That is correct, Mr
 16 Chair.
 17 MR BUDLENDER SC: And I said there were
 18 six matters I wanted to raise about that. I've raised
 19 five; I'm going to come to the sixth shortly, but before we
 20 get there, there's a preliminary question I want to ask you
 21 about that. That recording was made without your
 22 knowledge, the recording of that meeting?
 23 GENERAL MBOMBO: That is correct, Mr
 24 Chair.
 25 MR BUDLENDER SC: You must have been

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1 shocked when you found out that what you said had been
 2 recorded without your knowledge?
 3 GENERAL MBOMBO: Definitely, Mr Chair.
 4 MR BUDLENDER SC: Who was the person who
 5 told you that it had in fact been recorded without your
 6 knowledge?
 7 GENERAL MBOMBO: I became aware when the
 8 Commission found out about it.
 9 MR BUDLENDER SC: Well, that's an
 10 interesting story about when the Commission found out about
 11 it, but who told you that this had emerged at the
 12 Commission?
 13 GENERAL MBOMBO: We were told in my
 14 office about this transcript that was found by the
 15 Commission, or of which the Commission became aware.
 16 CHAIRPERSON: When was that? When did
 17 this conversation in your office take place when you were
 18 told the Commission had become aware of this transcript?
 19 What month was it? Do you remember when did you hear about
 20 it?
 21 GENERAL MBOMBO: I do not remember
 22 clearly, Mr Chair.
 23 CHAIRPERSON: Was it this year or –
 24 sorry, was it last year or the year before? Was it 2013 or
 25 2012?

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1 GENERAL MBOMBO: If I'm not mistaken, Mr
 2 Chair, it's at the end of 2013.
 3 CHAIRPERSON: Towards the end of last
 4 year in other words?
 5 GENERAL MBOMBO: That is correct, Mr
 6 Chair.
 7 CHAIRPERSON: Did you know about the
 8 transcript before you heard that it had come to the
 9 attention of the Commission?
 10 GENERAL MBOMBO: I did not know about it,
 11 Mr Chair.
 12 CHAIRPERSON: Were you not told about it
 13 by anybody in the police service before that?
 14 GENERAL MBOMBO: No, Mr Chair, I only
 15 became aware of it after the Commission became aware of it.
 16 MR BUDLENDER SC: Lieutenant General, you
 17 are correct that we became aware of it in the last half of
 18 last year, towards the end of last year, so you're
 19 recollection of the date then is correct. And can you
 20 remember - you say it was at a meeting in your office – who
 21 told you about it?
 22 GENERAL MBOMBO: Mr Chair, it is
 23 Brigadier Pretorius who gathers information that concerns
 24 this Commission in my office.
 25 CHAIRPERSON: Are you moving away from

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1 this topic now?
 2 MR BUDLENDER SC: No, I've one or two
 3 more – I'm sure it was unpleasant to you to discover that
 4 you had been recorded without your knowledge, but I'm sure
 5 you'll also agree that what was said at that meeting is
 6 important?
 7 GENERAL MBOMBO: That is correct, Mr
 8 Chair, and I was shocked because it was not an organised
 9 meeting, or a formal meeting.
 10 MR BUDLENDER SC: No, I understand that,
 11 but once there was a recording it was obviously important
 12 that it should be disclosed to the Commission?
 13 GENERAL MBOMBO: I think so, Mr Chair.
 14 MR BUDLENDER SC: Can you think of any
 15 reason why it was not disclosed to the Commission by the
 16 SAPS?
 17 GENERAL MBOMBO: I did not know that we
 18 had this discussion in the police until it came out in the
 19 Commission.
 20 MR BUDLENDER SC: Yes, but if you had
 21 known that there was a recording you would have said that
 22 the recording must be disclosed to the Commission because
 23 it is significant?
 24 GENERAL MBOMBO: That is correct, Mr
 25 Chair.

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1 MR BUDLENDER SC: Chair, I'm moving off
 2 the subject.
 3 CHAIRPERSON: Did you know that the
 4 police had issued – is it section 205 or section –
 5 MR BUDLENDER SC: Section 205.
 6 CHAIRPERSON: Did you know that the
 7 police had caused a subpoena to be issued under section 205
 8 of the Criminal Procedure Act against Lonmin for all
 9 documents and so forth which Lonmin had which were relevant
 10 for the Commission? Do you know that they did that?
 11 GENERAL MBOMBO: I knew about that, Mr
 12 Chair.
 13 CHAIRPERSON: Do you know whether this
 14 transcript was one of the documents which Lonmin produced
 15 by way of complying with that subpoena?
 16 GENERAL MBOMBO: I am not sure about
 17 that, Mr Chair.
 18 MR BUDLENDER SC: Chair, I say it was
 19 205. I can't be certain, it may have been 204, but I'm not
 20 sure if anything turns on that.
 21 CHAIRPERSON: The number doesn't matter.
 22 Did you know at the time that the subpoena had been issued
 23 against Lonmin, roughly at the time it was issued?
 24 GENERAL MBOMBO: When it was issued, Mr
 25 Chair, I was not aware. In due course I was told.

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1 CHAIRPERSON: How long after the subpoena
 2 was issued were you told about it?
 3 GENERAL MBOMBO: I'm not sure, Mr Chair,
 4 how long after, but it was already done when I was told.
 5 CHAIRPERSON: No, but was it a month, two
 6 months, a couple of weeks? What was the sort of time lapse
 7 between the subpoena having been issued and you being told
 8 about it?
 9 GENERAL MBOMBO: It could have been about
 10 a month, Mr Chair.
 11 CHAIRPERSON: And did you know that the
 12 subpoena had been complied with by Lonmin?
 13 GENERAL MBOMBO: I was again told later
 14 that they did comply with it.
 15 CHAIRPERSON: How much later?
 16 GENERAL MBOMBO: I became aware when this
 17 transcript was found. It could have been towards the end
 18 of last year.
 19 CHAIRPERSON: Yes, sorry, when exactly
 20 was that though? When was it that you were told that this
 21 transcript had been included among the documents which
 22 Lonmin provided in compliance with the subpoena?
 23 GENERAL MBOMBO: Mr Chair, I was not even
 24 told that this transcript was part of the details that were
 25 needed from Lonmin, but I was told that Lonmin sent certain

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1 things that were needed, details that were needed by the
 2 police.
 3 MR SEMENYA SC: For the record, Chair,
 4 what was included in the 205 documents was an audio, not a
 5 transcript.
 6 CHAIRPERSON: Audio of what? Audio of
 7 the conversation?
 8 MR SEMENYA SC: Of the conversation,
 9 which was inaudible in the best part.
 10 CHAIRPERSON: I see. Were you told that
 11 an audio had been provided by Lonmin of a conversation
 12 between yourself and people from Lonmin?
 13 GENERAL MBOMBO: Mr Chair, when I was
 14 told I took it for granted they were talking about the
 15 details of a meeting I had with Lonmin people on the 13th.
 16 CHAIRPERSON: Thank you.
 17 COMMISSIONER HEMRAJ: Mr Budlender, do
 18 you perhaps know to whom all these items that were the
 19 subject of the subpoena were delivered to and in whose
 20 custody they were?
 21 MR BUDLENDER SC: Commissioner, we have
 22 asked for information in that regard and we are currently
 23 awaiting it. Right, now Lieutenant General, I want now to
 24 go back to the contents of that discussion that you had
 25 with the Lonmin management and deal with the sixth question

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1 which, the sixth issue which arises. I am sure you will
 2 agree that a police service must never become involved in
 3 politics?
 4 GENERAL MBOMBO: I did not hear the
 5 question, Mr Chair.
 6 MR BUDLENDER SC: I said I'm sure you
 7 will agree that a police service must never become involved
 8 in politics.
 9 GENERAL MBOMBO: That is correct, Mr
 10 Chair.
 11 MR BUDLENDER SC: A police service must
 12 perform its services independently without regard to
 13 political considerations.
 14 GENERAL MBOMBO: That is correct.
 15 MR BUDLENDER SC: Now I want to take you
 16 to the transcript of that meeting. Do you have it?
 17 GENERAL MBOMBO: I have it, Mr Chair.
 18 MR BUDLENDER SC: You're ahead of us.
 19 Now I've got it too. Could you go to page 9 and then to –
 20 CHAIRPERSON: I'm sorry, have you
 21 mentioned this is JJJ192?
 22 MR BUDLENDER SC: I'm sorry, JJJ192, yes.
 23 Page 9 at the foot of the page, shall we start from line 24
 24 and you say the following, "Because I think even when we
 25 were trying to talk about it last night she asked me a

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1 question that says, 'You know, well this one I'm not sure
 2 because the Lonmin shareholders, I do not know much about
 3 them.'" Now when you're referring to "she" there, that is
 4 the National Commissioner you're referring to; she said she
 5 didn't know much about the Lonmin shareholders. Is that
 6 correct?
 7 GENERAL MBOMBO: That is correct, Mr
 8 Chair.
 9 MR BUDLENDER SC: And then you go on two
 10 lines later, you say, "But when I was speaking to Minister
 11 Mthethu [should be Mthethwa] he mentioned a name to me that
 12 is also calling him, that is pressuring him. Unfortunately
 13 it is a political high." Mr Mokwena interrupts and says,
 14 "It is Cyril?" and you say, "Cyril Ramaphosa, yes. Now
 15 remember when I was talking to the National Commissioner
 16 last night she says to me, 'Look General, who are the
 17 shareholders here?' So I said I do not know the
 18 shareholders, but I know that when I spoke to the Minister
 19 he mentioned Cyril," and then she says, "No, I got it."
 20 We'll come to that. Now the Chairperson asked you why was
 21 it unfortunate that the person phoning the Minister was
 22 politically high profile. Would you like to explain that
 23 again? You say unfortunately it is a politically high.
 24 Why was it unfortunate?
 25 GENERAL MBOMBO: As I'd explained, Mr

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1 Chair, earlier on, what made me to say that is because I
 2 was not intending on divulging the name. That is not what
 3 I do, divulging people's names.
 4 MR BUDLENDER SC: What Mr Ramaphosa was
 5 doing was he was urging the Minister to deal with the
 6 violence. Is that correct?
 7 GENERAL MBOMBO: That could be the case,
 8 Mr Chair.
 9 MR BUDLENDER SC: Is there anything
 10 dishonourable or improper about that, urging a minister to
 11 put an end to the violence?
 12 GENERAL MBOMBO: I do not see anything
 13 wrong with that.
 14 MR BUDLENDER SC: So then why were you
 15 embarrassed to mention to the Lonmin people that this was
 16 Mr Ramaphosa who was urging this very proper response?
 17 GENERAL MBOMBO: It was not my intention
 18 to divulge the name of whoever might have spoken to the
 19 Minister.
 20 MR BUDLENDER SC: Then why did you raise
 21 the matter at all? What's the point of saying to the
 22 Lonmin people the Minister has been pressured to act on the
 23 violence if you're not going to disclose where the pressure
 24 is coming from, and if the pressure is irrelevant?
 25 GENERAL MBOMBO: I do not think in our

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1 line of work it is important to know where the pressure is
 2 coming from. What is important is how we deal with the
 3 problems that we face, not only the pressure, but also the
 4 problems. If people are raising their concerns, what is
 5 always important is that we deal with their concerns.
 6 MR BUDLENDER SC: And you didn't want to
 7 divulge that Mr Ramaphosa was the person who had phoned?
 8 GENERAL MBOMBO: According to me that was
 9 not important, Mr Chair.
 10 MR BUDLENDER SC: But then why did you
 11 divulge it? Why did you say yes, it is Cyril Ramaphosa?
 12 Why didn't you just say I'm not going to tell you who it
 13 is?
 14 GENERAL MBOMBO: Because his name was
 15 already mentioned.
 16 MR BUDLENDER SC: Yes, but you were now
 17 divulging that Mr Ramaphosa had phoned the Minister, which
 18 previously you said you didn't want to divulge. Why were
 19 you now divulging it?
 20 GENERAL MBOMBO: Because his name was
 21 already mentioned and if he or she already knew who it was,
 22 there was nothing wrong with that, even if I did not like
 23 the name to be divulged.
 24 MR BUDLENDER SC: Did the fact that the
 25 Minister told you that Mr Ramaphosa had called him

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1 influence your way as to what should be done?
 2 GENERAL MBOMBO: I do not understand, Mr
 3 Chair.
 4 MR BUDLENDER SC: Did the fact that the
 5 Minister told you that Mr Ramaphosa had called him have an
 6 influence on your view about what should be done?
 7 GENERAL MBOMBO: That is not entirely the
 8 case, Mr Chair.
 9 MR BUDLENDER SC: Is it partly the case?
 10 GENERAL MBOMBO: Because all the citizens
 11 of this country when they phone whoever they think might be
 12 able to attend to their problems concerning the police, it
 13 is my duty when that comes to my attention I should attend
 14 to it. It is not that it was Mr Ramaphosa coming up with
 15 the problem.
 16 MR SEMENYA SC: Chair, for the correction
 17 of the record, I think the witness was misinterpreted. Her
 18 answer was it is entirely not the case and I think the
 19 translation said it was partly not the case.
 20 MR GOIRANA: Mr Chair, if I may correct,
 21 Mr Budlender used the word "partly." The witness said it
 22 is not entirely the case.
 23 CHAIRPERSON: "Not entirely the case"
 24 means it's partly the – it's where the entirely sits.
 25 [09:28] What exactly did she say, the sentence in which

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1 the word "entirely" was used, would you translate that for
 2 us again please?
 3 MR GOIRANA: Chair, the witness used the
 4 words (African language) which means it is not entirely the
 5 case.
 6 MR BUDLENDER SC: So does this mean, did
 7 the witness say it is not entirely the case or did she say
 8 it is entirely not the case? Which is it?
 9 MR GOIRANA: She said it is not entirely
 10 the case. It is entirely not the case.
 11 GENERAL MBOMBO: Mr Chair, let me explain
 12 it again. I'm saying that is not how I work, or what Mr
 13 Chair said is not how I work.
 14 MR BUDLENDER SC: Well, let's proceed.
 15 If the Minister had received a phone call from a person
 16 you'd never heard of, an anonymous person living in
 17 Rustenburg, would you have said, by the way, the Minister
 18 has received a phone call from somebody I don't know who is
 19 pressuring him to deal with the situation.
 20 GENERAL MBOMBO: Firstly, the Minister
 21 did not say he was being pressurised about the situation
 22 and when the Minister phoned me about someone who had a
 23 problem, something concerning the police, especially if I'm
 24 already aware of that problem, there is no need for me to
 25 ask who was saying that. My duty is to tell him what I'm

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1 doing about that problem and, Mr Chair, there was no
 2 difference even in this discussion.
 3 MR BUDLENDER SC: Provincial
 4 Commissioner, let me put the question again. Let's assume
 5 the Minister phoned you and he said, you know, what's
 6 happening at Marikana, somebody I've never heard of before
 7 phoned me and told me there's a lot of violence going on
 8 there, what are we doing about it? Would you have then
 9 said to the Lonmin officials, somebody I've never, the
 10 Minister has never heard of, phoned him to ask what's
 11 happening?
 12 GENERAL MBOMBO: Maybe that would not be
 13 important because Lonmin would be knowing that they have a
 14 problem of violence.
 15 MR BUDLENDER SC: I'm afraid that's not
 16 an answer, Provincial Commissioner. You phoned, you said
 17 to the Lonmin officials, the Minister has received a phone
 18 call from Cyril Ramaphosa about this matter. Now I'm
 19 asking you if the Minister had received a phone call from
 20 some unknown person, unknown to him, unknown to you and
 21 unknown to Lonmin, would you have said to the Lonmin
 22 officials, the Minister has even received a phone call from
 23 somebody I've never heard of and someone you've never heard
 24 of. Would that have been a relevant matter you would've
 25 raised?

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1 GENERAL MBOMBO: If I would be in a
 2 position where I wanted to say the Minister received a call
 3 from an unknown person, I would have said so although I
 4 would not have been compelled to say so.
 5 MR BUDLENDER SC: I want to put it to
 6 you, Provincial Commissioner, that it's obvious that when a
 7 Minister receives a phone call from a high profile person
 8 such as Mr Ramaphosa, that is noteworthy and that is why
 9 you mentioned it.
 10 GENERAL MBOMBO: I do not agree, Mr
 11 Chair.
 12 MR BUDLENDER SC: So the fact that it was
 13 Mr Ramaphosa was entirely irrelevant to your conversation
 14 with Lonmin?
 15 GENERAL MBOMBO: That call or that it was
 16 from Mr Ramaphosa did not influence how I worked or the way
 17 I worked.
 18 MR BUDLENDER SC: Are you saying, are you
 19 saying that the fact that Mr Ramaphosa – let me ask again.
 20 Are you saying that the fact that it was Mr Ramaphosa who
 21 phoned was entirely irrelevant?
 22 GENERAL MBOMBO: According to me, yes, it
 23 was. What was important was the problem I was raising with
 24 our Minister.
 25 MR BUDLENDER SC: Why did you mention

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1 that it was a politically high profile person who had
 2 phoned?
 3 GENERAL MBOMBO: Mr Chair, as I've said
 4 before, there was nothing important in me saying, even if I
 5 said so, there was nothing compelling me but as we were
 6 continuing with the discussion with the Lonmin people I
 7 mentioned it although I was not forced to.
 8 MR BUDLENDER SC: Provincial
 9 Commissioner, that's not an answer. The question is, if Mr
 10 Ramaphosa's status was irrelevant why did you mention that
 11 it was a politically high profile person who had phoned the
 12 Minister?
 13 GENERAL MBOMBO: I'm not sure about his
 14 political status. I was not sure about it at that time
 15 when I was having this discussion. What was important to
 16 me was that there was a problem, there were people raising
 17 it with our Minister and one of those people is someone
 18 like Mr Ramaphosa.
 19 MR BUDLENDER SC: Yes, someone like Mr
 20 Ramaphosa who is a very politically high profile person,
 21 that's why you mentioned it.
 22 GENERAL MBOMBO: I did mention it, Mr
 23 Chair, I don't dispute that but I still maintain that there
 24 was nothing important about him. What was important is the
 25 reason for him making the call.

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1 GENERAL MBOMBO: Then why did you
 2 mention, I'm asking for the third time now, why did you
 3 mention that the person who phoned was a politically high
 4 profile person if that was irrelevant?
 5 GENERAL MBOMBO: Because we were
 6 continuing with the discussions, sir.
 7 MR BUDLENDER SC: That's not an answer,
 8 Provincial Commissioner.
 9 CHAIRPERSON: Mr Budlender, [Microphone
 10 off, inaudible]. You've given the witness four
 11 opportunities to answer the question. If she doesn't avail
 12 herself of the opportunity now, I suggest you move on. It
 13 can be a matter for argument later that – if in fact it is
 14 so – that the question is not being answered.
 15 MR BUDLENDER SC: Thank you, Chair, I'll
 16 move on.
 17 CHAIRPERSON: The question now, I mean
 18 she hasn't had an opportunity to answer it.
 19 MR BUDLENDER SC: Once more for the last
 20 time. If it was irrelevant that the person who phoned the
 21 Minister was a high – sorry, let me start again. If it was
 22 irrelevant that the person who phoned the Minister was a
 23 politically high profile person, why did you say to Lonmin
 24 there's a person who phoned who is a politically high
 25 profile person?

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1 GENERAL MBOMBO: I repeat, Mr Chair, I
 2 say it was not important who phoned the Minister. What was
 3 important is the problem that the caller mentioned to the
 4 Minister. Now, to talk about Mr Ramaphosa was just
 5 continuing with the discussion.
 6 MR BUDLENDER SC: Alright, I'll move on.
 7 Of course it's not everybody who can just phone the
 8 Minister and get him on the telephone and discuss his
 9 problems with him, is it? You have to have some influence
 10 or contacts to be able to do that.
 11 GENERAL MBOMBO: There are many people
 12 who phone the Minister about problems concerning the
 13 police.
 14 MR BUDLENDER SC: Are you really
 15 seriously suggesting to the Commission that the way the
 16 Minister spends his days is, anyone who phones him to talk
 17 about problems, he receives the call and then he phones the
 18 relevant Provincial Commissioner and says by the way, I've
 19 just had a call from this person and maybe you should do
 20 something about this? Are you really suggesting that's how
 21 the Minister runs his work?
 22 GENERAL MBOMBO: That is not what I'm
 23 saying, Mr Chair.
 24 MR BUDLENDER SC: Are you saying that a
 25 person who is unconnected and has no influence can simply

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1 pick up the phone and speak to the Minister and explain his
 2 problems or her problems?
 3 GENERAL MBOMBO: If one is able to get
 4 hold of the Minister then they are allowed to do so.
 5 MR BUDLENDER SC: That's the point,
 6 Provincial Commissioner. An ordinary person can't, will
 7 not get hold of the Minister. An ordinary person who picks
 8 up the phone and phones the Minister's office and says, I'm
 9 Piet van der Merwe or I'm Piet Mofokeng, I'd like to speak
 10 to the Minister because I've got a problem, will be told
 11 speak to your local police, you can't bother the Minister
 12 with everything.
 13 GENERAL MBOMBO: Mr Chair, I'm not sure I
 14 understand what you mean. If I had time I would try and
 15 understand but the Minister is supposed to listen to people
 16 who have problems. If people phone, relevant offices
 17 regarding their problems, they are supposed to be listened
 18 to.
 19 MR BUDLENDER SC: And anyone can phone
 20 the Minister and get him on the line and explain their
 21 problems to him?
 22 GENERAL MBOMBO: Repeat the question, Mr
 23 Chair?
 24 MR BUDLENDER SC: Do you think anyone,
 25 any m e-mail of the public can just pick up the phone,

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1 phone the Minister, get him on the line and explain their
 2 problems to him, do you think that's how it works?
 3 GENERAL MBOMBO: That is not how it's
 4 supposed to work but the people who manage to get hold of
 5 him and they do call him, he is supposed to listen to them.
 6 MR BUDLENDER SC: Alright, I'm not going
 7 to pursue that further, Lieutenant-General. Now I want to
 8 move on to another, to a related aspect. You know of Mr
 9 Julius Malema.
 10 GENERAL MBOMBO: That's correct, Mr
 11 Chair.
 12 MR BUDLENDER SC: And by the time of
 13 these events, as I understand it, he had been expelled from
 14 the African National Congress, is that correct?
 15 GENERAL MBOMBO: That is correct.
 16 MR BUDLENDER SC: He was challenging the
 17 African National Congress.
 18 GENERAL MBOMBO: I'm not sure about that,
 19 Mr Chair.
 20 MR BUDLENDER SC: Well, he was opposing
 21 them, would that be fair? Had you heard that he was
 22 opposing them?
 23 GENERAL MBOMBO: I heard on the news, Mr
 24 Chair.
 25 MR BUDLENDER SC: I'd like you to read

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1 with me the transcript from page 10, line 6 you say –
 2 you're talking now, your discussion with the – line 5, your
 3 discussion with the Minister, with the National
 4 Commissioner. You say, "Last night she said to me, look
 5 General, who are the shareholders here? So I said I do not
 6 know the shareholders but I know that when I spoke to the
 7 Minister he mentioned Cyril and then she says, now I got
 8 it." Do you know why she says she got it? Do you remember
 9 Cyril was on the appeal committee of Malema, remember? Mr
 10 Mokwena: Yes. And he was very strong in terms of
 11 the decision that was made. Mr Mokwena Yes." Now what
 12 did the Minister get? What did the National Commissioner
 13 get when you mentioned Mr Ramaphosa? You say now you know
 14 why she says she got it. What did she get?
 15 GENERAL MBOMBO: Mr Chair, she said she
 16 knows that Cyril was in that committee, the appeals
 17 committee of Mr Malema.
 18 MR BUDLENDER SC: And what has that got
 19 to do with the violence at Lonmin?
 20 GENERAL MBOMBO: I'm not sure why she
 21 mentioned that.
 22 MR BUDLENDER SC: No, no, you mentioned
 23 it. Why did you mention it?
 24 GENERAL MBOMBO: I meant I'm not sure why
 25 she said, I got it.

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1 MR BUDLENDER SC: And why did you say
 2 that Mr Ramaphosa was in the appeal committee of Mr Malema?
 3 What was the relevance of that to the violence at Lonmin?
 4 GENERAL MBOMBO: We were just continuing
 5 the discussion. It was now a chat.
 6 CHAIRPERSON: What was the last word? It
 7 was now a what?
 8 MR GQIRANA: It was now a chat, we were
 9 chatting.
 10 CHAIRPERSON: A chat? Oh, it was a chat.
 11 MR GQIRANA: Yes, chatting.
 12 MR BUDLENDER SC: No, Lieutenant-General,
 13 that really won't go down. Read what you said. You're
 14 saying to Mr Mokwena that the Commissioner, the National
 15 Commissioner says "Now I got it" and then you say, "You
 16 know why she says she got it? Remember, Cyril was in the
 17 appeal committee of Malema, remember, and he was very
 18 strong in terms of the decision that was made." You're the
 19 one who raised it and you clearly think it was relevant
 20 because why, because you raised it in the context of the
 21 National Commissioner got it.
 22 GENERAL MBOMBO: That is so, Mr Chair.
 23 MR BUDLENDER SC: Well, why was it
 24 relevant?
 25 GENERAL MBOMBO: Because we were

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1 chatting.
 2 MR BUDLENDER SC: Why was it relevant to
 3 what you were chatting about?
 4 GENERAL MBOMBO: What we were talking
 5 about, Mr Chair, was how does Cyril Ramaphosa get involved
 6 in this discussion.
 7 MR BUDLENDER SC: Yes, and is he involved
 8 in this discussion because of Mr Malema or because he's a
 9 director of Lonmin?
 10 GENERAL MBOMBO: What I was trying to say
 11 was that whilst talking to the National, to the
 12 Commissioner, she said she now sees why Cyril Ramaphosa has
 13 an interest in this Lonmin issue.
 14 MR BUDLENDER SC: And is he interested
 15 because he is a director or is he interested because of Mr
 16 Malema?
 17 GENERAL MBOMBO: Because during the
 18 strike in Impala, that is in the paragraph below, Mr Malema
 19 came to Impala and spoke to the workers. That is why I'm
 20 saying during this discussion I had with the Commissioner,
 21 it was that we should not – Mr Ramaphosa, was meaning that
 22 we should not think that Mr Malema would not come to this
 23 place as well, to Lonmin as well.
 24 MR BUDLENDER SC: You were actually
 25 concerned that if Mr Malema came to Lonmin, as he had come

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1 to Impala, he might have exercised some influence on the
 2 situation and gained support as a result.
 3 GENERAL MBOMBO: That was not the problem
 4 I had, Mr Chair. The problem I had was that we, as the
 5 police, had to do our policing work in order to ensure the
 6 safety of the people there and the other thing I was trying
 7 to say is we should work together with Lonmin, help each
 8 other, look at this problem under the situation it was,
 9 concerning the workers and their wage issues. My main
 10 concern was that we should arrest the situation within its
 11 labour context.
 12 [09:48] MR BUDLENDER SC: National Commissioner –
 13 Provincial Commissioner, let's read what you say about Mr
 14 Malema. That same page 10, line 15, this is what you say.
 15 You say, "And remember that in Impala Malema came with our
 16 Premier and spoke to those people about that they should
 17 make the demands but in a way that – and after that we
 18 ourselves as the police we managed to, you know, manage the
 19 situation after Malema came. Now our discussion with the
 20 National Commissioner was around this thing that there is
 21 this thing now happening, such that again Malema come and
 22 defuse this thing so that it becomes as if Malema has taken
 23 charge of the mining." Do you read that?
 24 GENERAL MBOMBO: I can see it, Mr Chair.
 25 MR BUDLENDER SC: You were concerned that

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1 Mr Malema might arrive and gain influence by the way he
 2 handled the situation, or gain credibility as a result of
 3 the way he handled the situation. That's clearly what that
 4 means, isn't it?
 5 GENERAL MBOMBO: That is how you
 6 interpret it, Mr Chair. I had one goal in mind and that
 7 was us to do what we had to do according to the problem we
 8 had as the police officer and Lonmin.
 9 MR BUDLENDER SC: I would think,
 10 Provincial Commissioner, if that was your only concern you
 11 would be very grateful for anybody who could come along and
 12 help to defuse the situation. Wouldn't you be very please
 13 with anybody who could help you defuse the situation?
 14 GENERAL MBOMBO: That is correct, Mr
 15 Chair, but you look at the person who comes to help you, if
 16 the person was going to be able to help with the problem
 17 that you face.
 18 MR BUDLENDER SC: But if Mr Malema was
 19 going to defuse the situation, would that be a good thing
 20 or a bad thing?
 21 GENERAL MBOMBO: It would be a good
 22 thing.
 23 MR BUDLENDER SC: Well, then read what
 24 you say. "Remember that in Impala Malema came with our
 25 Premier and spoke to those people about that they should

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1 make the demands but in a way that – and after that we
 2 ourselves as the police we managed to, you know, manage the
 3 situation after Malema came. Now our discussion with the
 4 National Commissioner was around this thing that says is
 5 this thing now happening, such that again Malema come and
 6 defuse this thing so that it becomes as if Malema has taken
 7 charge of the mining, the mine." You were concerned. It's
 8 quite clear, you and the National Commissioner were
 9 concerned that Mr Malema should not get credit for defusing
 10 the situation.
 11 GENERAL MBOMBO: That is not correct, Mr
 12 Chair, what I was trying to make clear was that the
 13 employers of Lonmin should know that their workers are
 14 dependent on them and it also depends on them how they
 15 control or run the mine, so that they are able to solve
 16 problems facing the mine without help from people outside
 17 the mine.
 18 MR BUDLENDER SC: Now I want to put a
 19 simple question to you for a simple answer. Would you have
 20 welcomed it if Mr Malema had arrived and defused the
 21 situation?
 22 GENERAL MBOMBO: As we had done at Lonmin
 23 – I mean, sorry – as we had done at Impala, that would be
 24 the case also at Lonmin.
 25 MR BUDLENDER SC: So you say what this

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1 passage that I've read you means, it was a good thing that
 2 Mr Malema helped to defuse the situation at Impala and it
 3 would be a good thing if he helped to defuse the situation
 4 at Lonmin? Is that what this passage means?
 5 GENERAL MBOMBO: That's what the
 6 statement says, Chair, but it emphasises again and explains
 7 that the management of Lonmin have got a responsibility to
 8 run the mine, to appear to their workers that they are able
 9 to do that without help from outside.
 10 MR BUDLENDER SC: Provincial
 11 Commissioner, let me just summarise to you. I want to put
 12 it to you that your explanation simply is inconsistent with
 13 what you said and I want to put the following to you, that
 14 your judgment was influenced by political considerations
 15 and it was influenced by two political considerations.
 16 First, it was influenced by the fact that Mr Ramaphosa who
 17 is politically influential, had raised the matter with the
 18 Minister. Secondly, it was influenced by the political
 19 consideration that you didn't want Mr Malema to gain any
 20 credibility or support as a result of an intervention.
 21 What do you say to that?
 22 GENERAL MBOMBO: I do not agree with you,
 23 Mr Chair, because my job was not dependent on Mr Ramaphosa
 24 or Mr Malema. We normally do not have a problem with
 25 people who come with the solutions during our job, to our

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1 problem, but what must be clear is in our job from time to
 2 time we have to be careful of not involving anybody who we
 3 don't know whether they will be able to sort this problem
 4 that we're facing. What I'm trying to say, Mr Chair, in
 5 Xhosa there's a saying that many people spoil the broth.
 6 MR BUDLENDER SC: Yes, too many cooks
 7 spoil the broth but if you're having trouble with the broth
 8 and someone comes along to solve the problem of the broth
 9 you should welcome that, even if it's Mr Malema.
 10 GENERAL MBOMBO: If he came and we saw
 11 that he could help then there's no problem, as I said.
 12 MR BUDLENDER SC: Alright. Now, can we
 13 continue reading on this passage – I'm sorry, Commissioner
 14 Hemraj?
 15 COMMISSIONER HEMRAJ: Are you moving away
 16 from this point?
 17 MR BUDLENDER SC: I'm going to the
 18 further passage on the foot of that page. I don't know
 19 whether this, whether I should go ahead or –
 20 COMMISSIONER HEMRAJ: We'll wait.
 21 MR BUDLENDER SC: Right, thank you,
 22 Commissioner.
 23 CHAIRPERSON: Before you do that, did I
 24 understand you correctly to say that one of the things you
 25 were afraid of was that Mr Malema would come there and not

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1 solve the problem, in fact make it worse. Is that, did I
 2 understand you to say that or did I misunderstand you?
 3 GENERAL MBOMBO: Mr Chair, at times when
 4 we have such a problem, anyone – when someone comes we are
 5 never sure whether they will be able to help, to assist in
 6 that problem, especially if it's someone who does not have
 7 an interest in that problem that we face.
 8 CHAIRPERSON: So is the answer to my
 9 question that you were afraid that Mr Malema might come and
 10 might not solve the problem but in fact make it worse? Is
 11 that what you were afraid that it would do?
 12 GENERAL MBOMBO: That is correct, Mr
 13 Chair.
 14 CHAIRPERSON: I don't understand that
 15 answer because in line 21 what you're talking about is – or
 16 perhaps I should read from line 19. "Now our discussion
 17 with the National Commissioner was around this thing that
 18 say, is this thing now happening such that again Malema
 19 come and defuse this thing so that it becomes as if Malema
 20 has taken charge of the mining, the mine." And then you go
 21 on in line 30 to talk about "We must find a way of
 22 defusing" – so you say you must find a way of defusing but
 23 you previously discussed the possibility that Malema would
 24 come and defuse the thing. So you don't appear to have
 25 been concerned that Malema would make things worse, you

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1 appear to be concerned that he would come and defuse this
 2 thing. Can you explain that to me, please?
 3 GENERAL MBOMBO: Mr Chair, as I've said,
 4 if you are facing such a problem you would welcome anyone
 5 who comes to help you but it happens at times that when
 6 people come to help you they aggravate the situation
 7 instead of solving it. In this situation, problem, Mr
 8 Chair, I was not excluding that Mr Malema should come and
 9 try and assist us but as I knew that he was in politics, I
 10 feared that his presence there could make things worse
 11 because my concern was for us to contain this thing as it
 12 was a labour issue problem with the workers.
 13 MR BUDLENDER SC: Provincial
 14 Commissioner, one more matter on page 10, can you go to
 15 line 25 and you say, "Once again remember Malema's view
 16 that the mine should be –" and Mr Mokwena says,
 17 "Nationalised." And you say "Nationalised and all of that.
 18 So it has got a serious political connotation that we need
 19 to take into account but which we need to find a way of
 20 defusing." Now, why was Mr Malema's view on
 21 nationalisation of mines relevant to what you had to do?
 22 GENERAL MBOMBO: Mr Chair, it is
 23 important that in such problems you gather all the
 24 information that could help you solve the problem. As I'm
 25 saying, the issue of Malema coming to this problem or

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1 anyone coming from the political side, it could have gone
 2 one of two ways. That person is able to assist or we get
 3 the problem aggravated.
 4 MR BUDLENDER SC: Provincial
 5 Commissioner, I think my question was why was Mr Malema's
 6 opinion on the nationalisation of the mines relevant to the
 7 decision which you had to make or the action you had to
 8 take?
 9 GENERAL MBOMBO: The problem was not his
 10 opinion of nationalisation of mines or that it would be
 11 something influencing my decision, but it was about him
 12 personally or anybody for that matter.
 13 MR BUDLENDER SC: Was his opinion on the
 14 nationalisation of the mines something you needed to take
 15 into account?
 16 GENERAL MBOMBO: We had to look at it
 17 from all the angles of anyone who could have come there and
 18 been of assistance.
 19 MR BUDLENDER SC: Provincial
 20 Commissioner, was Mr Malema's view on the nationalisation
 21 of the mines something that you needed to take into
 22 account?
 23 GENERAL MBOMBO: Mr Chair, we had to look
 24 at anyone's view or assistance, including Mr Malema.
 25 MR BUDLENDER SC: Why did you have to

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1 take into account his view on the nationalisation of the
 2 mines? What did it have to do with the matter you were
 3 dealing with?
 4 GENERAL MBOMBO: That was something that
 5 was spoken about. I had to find out if Lonmin did not
 6 think that was also something that could cause the problem,
 7 further aggravate the problem that we were facing.
 8 MR BUDLENDER SC: No, Provincial
 9 Commissioner. Read what you said. "Once again remember
 10 Malema's view that the mine should be nationalised and all
 11 of that. So it has got a serious political connotation
 12 that we need to take into account but which we need to find
 13 a way of defusing." What was the political connotation you
 14 had to take into account?
 15 GENERAL MBOMBO: It is because the
 16 nationalisation issue was being mentioned in the political
 17 circles. If that could also have an effect on the problem
 18 that we are having, then we had to look at it, especially
 19 Lonmin people had to look at it.
 20 MR BUDLENDER SC: Provincial
 21 Commissioner, I don't want to go on with the same point
 22 again and again but I give you one more opportunity to
 23 explain. You say Mr Malema's view that the mine should be
 24 nationalised has got a serious political connotation that
 25 we need to take into account. Why did you have to take

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1 that into account in deciding what to do?
 2 GENERAL MBOMBO: I was not going to take
 3 that into account concerning my decisions of what had to be
 4 done but it was important that we are aware that there is
 5 such a thing and know that if there is such a thing, what
 6 effect does it have, if it has any. What was important, I
 7 was thinking that Lonmin people should explain to me if it
 8 has any effect, what effect it does have.
 9 MR BUDLENDER SC: Let me just finish the
 10 sentence, that paragraph. You say, "Mr Malema's view that
 11 the mine should be nationalised and all of that, so it has
 12 got a serious political connotation that we need to take
 13 into account but which we need to find a way of defusing.
 14 Hence I just told these guys that we need to act such that
 15 we kill this thing." So his views on nationalisation were
 16 relevant to the need for you to act to kill this thing.
 17 That's what you said.
 18 GENERAL MBOMBO: What I'm trying to say,
 19 Mr Chair, firstly is that we should be aware that the
 20 problem we're facing concerns the salaries of the workers
 21 and we should keep it there, contain it there. Even if
 22 there are these views of nationalisation, what was
 23 important for me and Lonmin as the police and Lonmin, is to
 24 maintain this thing, contain it where it is.
 25 CHAIRPERSON: Are you moving on to the

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1 next point, Mr Budlender? I think we should take a comfort
 2 break at this stage. I want to announce that we'll take a
 3 comfort break now and we'll then, when we come back we'll
 4 run to 11 o'clock and take tea. We have to sit through the
 5 lunch hour today till 2 o'clock. We'll take comfort breaks
 6 at appropriate stages so that it doesn't become unbearable,
 7 but the counsel needs the chamber this afternoon so we have
 8 to stop at 2 o'clock. So that's why we're going to go
 9 through the lunch hour. But we'll take a comfort break at
 10 this stage.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [10:17] CHAIRPERSON: The Commission resumes.
 13 Provincial Commissioner, you're still under oath.
 14 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
 15 CHAIRPERSON: Mr Budlender.
 16 MR BUDLENDER SC: Chair, we're waiting
 17 for the interpreter, but while we're waiting the –
 18 CHAIRPERSON: I'm sorry, I didn't realise
 19 the interpreter wasn't here. Is he coming soon or must we
 20 adjourn again, take another comfort break quickly?
 21 MR BUDLENDER SC: There is one matter I'd
 22 just like to raise while we're waiting, Chair, so it is
 23 convenient. I think I may have misstated the position in
 24 relation to the disclosure of the audio recording. Mr
 25 Mojapelo from our team has pointed out to me that that

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1 audio recording, or that recording of a meeting which we've
 2 been discussing is part of a larger audio recording which
 3 it appears was on the SAPS hard drive which was given to
 4 us. We're checking that to make sure that that is so. But
 5 it seems that it is, to use the word "embedded" is not
 6 quite accurate -
 7 CHAIRPERSON: Well, I would be – maybe
 8 it's part of it. It certainly would be an important
 9 factor –
 10 MR BUDLENDER SC: Yes.
 11 CHAIRPERSON: - operating in favour of
 12 the police if that were so.
 13 MR BUDLENDER SC: Absolutely, and I
 14 wanted to get it right now at the first opportunity, Chair.
 15 We'll check that, but I think I misstated the position.
 16 CHAIRPERSON: Yes, I understand that the
 17 audio recording appears to run from early in the day and
 18 covers a number of things. That's why it's possible to
 19 identify the time when this conversation took place, but
 20 anyway, that's a matter that can be gone into. It
 21 certainly would be satisfactory to hear that the police did
 22 disclose that and did not endeavour to conceal it, but
 23 anyway, that's something which – well, to be fair I suppose
 24 they might have, if it wasn't included there are other
 25 explanations that could be given, but certainly if it was

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1 disclosed initially that would be an important point in
 2 favour of the police.
 3 COMMISSIONER HEMRAJ: Can I just raise
 4 one thing with you, Mr Budlender? For the benefit of the
 5 witness, might it not assist to put to her exactly what it
 6 is that political influence is alleged to have prompted her
 7 to do, otherwise it might not be clear to her which
 8 action –
 9 MR BUDLENDER SC: Yes, and can I come to
 10 that at the end –
 11 COMMISSIONER HEMRAJ: Of course, yes.
 12 MR BUDLENDER SC: I will do that. Thank
 13 you, Commissioner.
 14 CHAIRPERSON: Yes, I think the answer to
 15 that might appear from the next page of the transcript.
 16 We'll get there in a moment. But Provincial Commissioner,
 17 you're still under oath. Mr Budlender, we've now got both
 18 interpreters in place, so we can proceed without further
 19 delay.
 20 MR GOIRANA: Sorry, we apologise,
 21 Chairperson.
 22 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
 23 Now on page 11, Provincial Commissioner, you mentioned Mr
 24 Themba Godi. Remember that?
 25 CHAIRPERSON: Before you move on to

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1 that –

2 GENERAL MBOMBO: That is correct.

3 CHAIRPERSON: - could I ask a question

4 from the foot of page 10, I thought you were going to deal

5 with it. You talked about "a serious political connotation

6 that we need take into account." Now the "we" I take it

7 means the police and Lonmin. Is that right?

8 GENERAL MBOMBO: That is correct, Mr

9 Chair.

10 CHAIRPERSON: And what was the serious

11 political connotation?

12 GENERAL MBOMBO: Mr Chair, in all matters

13 concerning protest action it is important to look at any

14 information that might help to find a solution. That is

15 why I say it was important as we are talking to Lonmin they

16 should be aware of all angles that could cause a problem in

17 the situation that they were facing. The reason why I used

18 the word "serious," there is nothing that made me use that

19 word but someone like me uses words such as "serious"

20 because I am Xhosa. We use this word loosely, especially

21 when we are speaking in English.

22 CHAIRPERSON: Alright, so "serious" was

23 meaningless in this context, but what was the political

24 connotation then?

25 GENERAL MBOMBO: As I was talking about

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1 nationalisation of mines, Mr Chair, I thought that Lonmin

2 was aware that such things are mentioned in political

3 circles, nationalisation. So I meant that we should look

4 at such things, find out where they fit in, in our solution

5 of the problem.

6 CHAIRPERSON: Yes, please proceed, Mr

7 Budlender.

8 MR BUDLENDER SC: Now Mr Themba Godi is a

9 member of parliament, isn't he?

10 GENERAL MBOMBO: That is correct, Mr

11 Chair.

12 MR BUDLENDER SC: And he's a member of an

13 opposition party.

14 GENERAL MBOMBO: That is so.

15 MR BUDLENDER SC: And you know that he

16 works amongst communities in the Platinum Belt?

17 GENERAL MBOMBO: That is so.

18 MR BUDLENDER SC: Have you ever had any

19 evidence that Mr Godi has behaved improperly or stirred up

20 violence or unrest in his work amongst those communities?

21 GENERAL MBOMBO: I have never, Mr Chair.

22 MR BUDLENDER SC: He's a member of

23 parliament, doing his job and trying to intervene in

24 situations and trying to build support for his party.

25 GENERAL MBOMBO: That is correct, Mr

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1 Chair.

2 MR BUDLENDER SC: And that's perfectly

3 proper; that's how democracy works.

4 GENERAL MBOMBO: That is correct.

5 MR BUDLENDER SC: Yes, now let me read

6 you what you said. We're on page 11, line 4, "When

7 tomorrow we have to move in, if today we do not find

8 cooperation with these people we need to move in such that

9 we kill it because we need to protect the situation where

10 any jick and jiff" – I think that probably means Jack and

11 Jill – "from a political arena" – Mr Mokwena interrupts,

12 "Let me interrupt you. Let me interrupt you, okay.

13 Amongst a thousand calls I got yesterday, I got a call from

14 Godi, Godi," and you say, "Themba Godi? He's operating in

15 this area, Moruleng and all that." Mr Mokwena, "Yes." You

16 say, "So I know, he was phoning me now." And then you go

17 on and then towards the foot of the page Mr Mokwena again

18 refers, this is now line 26, "I'm going to have the same

19 problem immediately he was thereafter at meetings in the

20 communities, rallies, post," this is Mr Godi he's talking

21 about still, and then on the next page, this is page 12,

22 line 18, Mr Mokwena says, "So I agree with you,

23 Commissioner, if we can arrest these people because the

24 longer it goes, it's giving all the other opportunists to

25 comment and seize the opportunity and then it gets out of

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1 control," and you say, "That is it." You see that?

2 GENERAL MBOMBO: I see it, Mr Chair.

3 MR BUDLENDER SC: Now what was your

4 objection to Mr Godi being involved in the situation at

5 Marikana?

6 GENERAL MBOMBO: As I've said earlier on,

7 Mr Chair, that the problem we had at Marikana concerned

8 workers and their wages, so it was a problem that I thought

9 Lonmin people still had control of.

10 MR BUDLENDER SC: Well, we know they

11 didn't have control of it and it wasn't just about wages,

12 it was also about violence. Isn't that correct?

13 GENERAL MBOMBO: It was a problem under

14 Lonmin management. We as the police were interested in the

15 safety and peace, in maintaining safety and peace. What

16 was important to me, Mr Chair, was that this problem should

17 be handled in this manner and it stayed where it was, so

18 that the people who had to solve this problem were given

19 the opportunity to do so.

20 MR BUDLENDER SC: Provincial

21 Commissioner, by the time of this discussion nine people

22 had already died at Marikana, correct?

23 GENERAL MBOMBO: That is correct.

24 MR BUDLENDER SC: That is why the police

25 were involved. The police weren't concerned with the

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1 labour dispute; the police were concerned with the
 2 violence. Correct?
 3 GENERAL MBOMBO: That is so.
 4 MR BUDLENDER SC: Now why were you
 5 concerned that Mr Godi was visiting the area and involving
 6 himself in the matter?
 7 GENERAL MBOMBO: I was not concerned
 8 about him visiting the area or involving him in this
 9 problem. My concern was that this issue should be
 10 addressed in the proper way. As I said earlier on, Mr
 11 Chair, we Xhosa people believe that too many cooks spoil
 12 the broth.
 13 MR BUDLENDER SC: And is that a reason
 14 for being concerned about a member of parliament doing his
 15 job as a member of parliament?
 16 GENERAL MBOMBO: If he wanted to come and
 17 talk I would not be sure whether his pitch would help us.
 18 MR BUDLENDER SC: But you'd never had any
 19 information that he had ever before stirred up trouble or
 20 stirred up violence.
 21 GENERAL MBOMBO: That is correct, Mr
 22 Chair.
 23 MR BUDLENDER SC: Provincial
 24 Commissioner, let's just go back to page 12, line 18, you
 25 say, "So I agree with you, Commissioner" – or Mr Mokwena

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1 says –
 2 GENERAL MBOMBO: What page, Mr Chair?
 3 MR BUDLENDER SC: I'm sorry, page 12,
 4 line 18.
 5 CHAIRPERSON: [Microphone off,
 6 inaudible].
 7 MR BUDLENDER SC: Yes, it's Mr Mokwena
 8 speaking. Mr Mokwena says, "So I agree with you,
 9 Commissioner, if we can arrest these people because the
 10 longer it goes, it's giving all the other opportunists to
 11 comment and seize the opportunity and then it gets out of
 12 control," and you say, "That is it." Now who were the
 13 opportunists to whom you, that you agree about here? Is Mr
 14 Godi an opportunist?
 15 GENERAL MBOMBO: I did not ask him, Mr
 16 Chair.
 17 MR BUDLENDER SC: Well, you agreed with
 18 him.
 19 GENERAL MBOMBO: I did agree with him, Mr
 20 Chair, because when there are such problems there would be
 21 people who are opportunists. But I did not ask him who he
 22 was referring to.
 23 MR BUDLENDER SC: Well, how can you agree
 24 with him without knowing who he's talking about?
 25 GENERAL MBOMBO: Mr Chair, I was agreeing

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1 with him in principle because sometimes this is true.
 2 MR BUDLENDER SC: He refers to – alright,
 3 so in your opinion was Mr Godi one of the opportunists who
 4 had to be kept out of the picture?
 5 GENERAL MBOMBO: I did not say so, Mr
 6 Chair.
 7 MR BUDLENDER SC: In your opinion was Mr
 8 Godi one of the opportunists who had to be kept out of the
 9 area?
 10 GENERAL MBOMBO: I do not think so, Mr
 11 Chair.
 12 MR BUDLENDER SC: In your opinion was Mr
 13 Malema one of the opportunists who had to be kept out of
 14 the area?
 15 GENERAL MBOMBO: I did not say so and I
 16 do not think so.
 17 MR BUDLENDER SC: So who were the
 18 opportunists who you thought had to be kept out of the
 19 area?
 20 GENERAL MBOMBO: It could have been
 21 anyone they suspected.
 22 MR BUDLENDER SC: No, but who were the
 23 ones you suspected? You agreed with this statement. Who
 24 did you think were the opportunists who had to be kept out
 25 of this matter?

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1 GENERAL MBOMBO: Mr Chair, a statement
 2 like this in such discussions is to be expected. I was
 3 agreeing with what he was saying. It is normal to find
 4 such statements.
 5 MR BUDLENDER SC: Were there opportunists
 6 who wanted to comment and seize the opportunity in this
 7 situation?
 8 GENERAL MBOMBO: I did not hear the
 9 question.
 10 MR BUDLENDER SC: Were there opportunists
 11 who wanted to comment and seize the opportunity of the
 12 situation?
 13 GENERAL MBOMBO: In any problem, Mr
 14 Chair, it's expected that there would be opportunists, but
 15 I'm not sure in this case if that was the case.
 16 MR BUDLENDER SC: So you're saying you
 17 don't know whether there were opportunists?
 18 GENERAL MBOMBO: I'm not sure, Mr Chair.
 19 MR BUDLENDER SC: But you agreed with Mr
 20 Mokwena's statement that you must move in and arrest people
 21 to stop the opportunists.
 22 GENERAL MBOMBO: That's how he saw it.
 23 MR BUDLENDER SC: No, no, you agreed with
 24 him.
 25 GENERAL MBOMBO: I agreed with him in the

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1 principle of stopping opportunists in case there are
 2 opportunists.
 3 MR BUDLENDER SC: So one of the reasons
 4 you must arrest these people is in case there are
 5 opportunists, although you don't know whether there are
 6 any. Is that what you're saying?
 7 GENERAL MBOMBO: I did not hear the
 8 question.
 9 MR BUDLENDER SC: One of the reasons you
 10 agreed that people, the strikers must be arrested is to
 11 stop the opportunists, in case there are any, although you
 12 don't know whether there are any?
 13 GENERAL MBOMBO: That is not the only
 14 reason why we acted like that.
 15 MR BUDLENDER SC: No, but I said one of
 16 the reasons. One of the reasons why you must arrest the
 17 strikers, according to your evidence that you've now given,
 18 is to stop the opportunists, is to stop any opportunists,
 19 although you don't know whether there are any.
 20 MR VAN AS: I'm sorry, Mr Chair, if I can
 21 just raise an objection. Read within its context Mr
 22 Mokwena isn't saying that the strikers must be arrested;
 23 he's saying that the perpetrators of violence must be
 24 arrested.
 25 MR BUDLENDER SC: Alright, I accept that.

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1 One of the reasons the perpetrators of violence must be
 2 arrested is to avoid giving the opportunists an
 3 opportunity, although you don't know whether there are any
 4 opportunists.
 5 GENERAL MBOMBO: That is not how we work,
 6 Mr Chair. We do not arrest people because they are
 7 opportunists.
 8 MR BUDLENDER SC: No, that's not what I'm
 9 saying. Let's read again what Mr Mokwena says. Mr Mokwena
 10 says, "So I agree with you, Commissioner, if we can arrest
 11 these people" – now that's the people responsible for the
 12 violence – "because the longer it goes it is giving all the
 13 other opportunists to comment and seize the opportunity and
 14 then it gets out of control," and you say, "That is it."
 15 So you're agreeing that if you can arrest the people that
 16 will prevent the opportunists commenting and seizing the
 17 opportunity. Isn't that correct?
 18 GENERAL MBOMBO: It is correct, Mr Chair,
 19 that I agreed with the principle, but that was not the
 20 reason why we had to arrest people.
 21 MR BUDLENDER SC: Well, I submit to you
 22 that it's, we're going to submit in our argument that it's
 23 clear from this that one of the reasons you wanted the
 24 people arrested was to avoid, was to keep out what you call
 25 the opportunists, or what Mr Mokwena calls the

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1 opportunists, although you don't know whether there were
 2 any opportunists.
 3 GENERAL MBOMBO: That is not how I know
 4 it, Mr Chair.
 5 MR BUDLENDER SC: Alright, let me try to
 6 sum up this section of the cross-examination. You made
 7 these statements at a meeting with Lonmin management at
 8 which you were discussing how to handle the situation at
 9 Marikana.
 10 GENERAL MBOMBO: I did not hear the
 11 question, Mr Chair.
 12 MR BUDLENDER SC: I'm sorry. You made
 13 these statements at a meeting with Lonmin management at
 14 which you were discussing how to handle the situation at
 15 Marikana.
 16 [10:37] GENERAL MBOMBO: You must remember, Mr
 17 Chair, I said earlier on in my testimony that this was not
 18 a formal meeting, but only a chat between us, and it
 19 concerned us finding a solution to this problem in our ways
 20 of doing our job.
 21 MR BUDLENDER SC: Yes, you were
 22 discussing what they should do and what you should do.
 23 GENERAL MBOMBO: That is correct.
 24 MR BUDLENDER SC: And you decided that
 25 the police must intervene soon to bring an end to the

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1 situation. That's what you said.
 2 GENERAL MBOMBO: That is correct, Mr
 3 Chair.
 4 MR BUDLENDER SC: And you expressed the
 5 view as to how Lonmin should handle the situation, the
 6 pamphlets and so on.
 7 GENERAL MBOMBO: That is how, the way I
 8 think they're employed to do their job.
 9 MR BUDLENDER SC: Yes, and I want to
 10 submit, to put to you for your comment that your statements
 11 which show that the reasons which influence your attitude
 12 included the following six matters, not in any order of
 13 importance, not in sequence of importance. One matter
 14 which influenced your attitude was that you did not want
 15 the mining companies to give the impression that they
 16 supported AMCU. Remember that?
 17 GENERAL MBOMBO: I remember, Mr Chair. I
 18 remember it, but it is not the truth as I thought.
 19 MR BUDLENDER SC: The second reason is
 20 that you did not want the mining companies to undermine the
 21 NUM.
 22 GENERAL MBOMBO: Mr Chair, there was
 23 nothing connecting me to the NUM and the mine, which
 24 organisation should be undermined or what.
 25 MR BUDLENDER SC: The third factor is

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1 that you did not want Mr Malema to be seen to exercise
 2 influence over the situation.
 3 GENERAL MBOMBO: I did not say so, Mr
 4 Chair.
 5 MR BUDLENDER SC: A fourth reason is that
 6 you were concerned that Mr Malema supported nationalisation
 7 of the mines.
 8 GENERAL MBOMBO: That was in a chat
 9 between me and Lonmin, Mr Chair.
 10 MR BUDLENDER SC: A fifth reason is that
 11 you were concerned to put an end to the situation where an
 12 opposition member of parliament was involving himself with
 13 that community.
 14 GENERAL MBOMBO: Those were not my
 15 thoughts, Mr Chair.
 16 MR BUDLENDER SC: And a sixth reason is
 17 you were concerned because one of the shareholders of
 18 Lonmin was Mr Ramaphosa, a politically influential person
 19 in the governing party, who was phoning the Minister.
 20 GENERAL MBOMBO: My concern, Mr Chair,
 21 was that yes, there was someone who phoned the Minister
 22 saying there is a problem.
 23 MR BUDLENDER SC: And I want to put it to
 24 you, Provincial Commissioner, we will submit at the end of
 25 this Commission that you allowed political considerations

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1 to influence your decisions about how the situation should
 2 be handled.
 3 GENERAL MBOMBO: That would not be the
 4 truth, Mr Chair.
 5 MR BUDLENDER SC: And I want to put it to
 6 you that it was improper and it was unprofessional.
 7 GENERAL MBOMBO: I will not stand in
 8 front of you, Mr Chair, but that is not the truth.
 9 MR BUDLENDER SC: Alright, I'm not going
 10 to go over all of the reasons again why I say that. We'll
 11 argue that in due course. Now I want to move on to a new
 12 topic, which was the decision you made on the 15th of August
 13 to go to stage 3 on the 16th if the strikers didn't lay down
 14 their arms. Now let's take it step by step. It is correct
 15 that on the 15th of August, the Wednesday, you decided that
 16 if the next day, if the strikers didn't lay down their arms
 17 the next day you would go to stage 3 the next day. Is that
 18 correct?
 19 GENERAL MBOMBO: That is correct, Mr
 20 Chair.
 21 MR BUDLENDER SC: When did you make that
 22 decision?
 23 GENERAL MBOMBO: As I've said earlier on
 24 in my statement, Mr Chair, this decision was not only taken
 25 on Wednesday; I already made this decision in the afternoon

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1 of Tuesday, and on this Wednesday that you are asking about
 2 it was at night when I was explaining to the National
 3 Commissioner of Police.
 4 MR BUDLENDER SC: I understand it was at
 5 night that you were discussing with the National
 6 Commissioner of Police. When did you decide this is what
 7 we're going to do tomorrow? In other words not when did
 8 you tell her; when did you decide this is what we're going
 9 to do tomorrow?
 10 GENERAL MBOMBO: It's when I was
 11 explaining to her, telling her what was happening according
 12 to the information that I was receiving from General
 13 Mpmembe.
 14 MR BUDLENDER SC: I'm not sure I
 15 understand you, Lieutenant General. You had a discussion
 16 with the Minister and you said to her –
 17 CHAIRPERSON: Not the Minister, with the
 18 National Commissioner –
 19 MR BUDLENDER SC: I beg your pardon, with
 20 the National Commissioner, and you said to her, "If they
 21 don't lay down their arms tomorrow we're going to move in
 22 tomorrow and disarm and disperse," and that took place in
 23 the evening. Is that correct?
 24 GENERAL MBOMBO: The Wednesday night, Mr
 25 Chair.

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1 MR BUDLENDER SC: Yes.
 2 GENERAL MBOMBO: As I've said, after
 3 explaining as to what was happening at that time according
 4 to the information that I was receiving from General
 5 Mpmembe, whereby I had hopes that according to the
 6 discussions that were being held there would be a solution.
 7 I then at that time said if there is no solution coming out
 8 of these discussions, we as the police would have to police
 9 so that there is peace in that area.
 10 MR BUDLENDER SC: So if I understand you
 11 correctly you're saying on the evening of, on the Wednesday
 12 evening you received information from General Mpmembe and
 13 you then had a discussion with the National Commissioner
 14 and you decided at that time if they don't lay down their
 15 arms tomorrow we will go in tomorrow, and you told the
 16 National Commissioner.
 17 GENERAL MBOMBO: That is so, Mr Chair,
 18 because that was expected to happen -
 19 MR BUDLENDER SC: Alright, no I
 20 understand that. Now –
 21 CHAIRPERSON: - because on Wednesday
 22 already I expected it to happen and it was halted or
 23 stopped because of the discussions that were taking place.
 24 MR BUDLENDER SC: Yes. I just want to be
 25 clear, the Tuesday and Wednesday discussions were the same

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1 in one respect, but they were different in one respect. On
 2 Tuesday you said you decided if they don't lay down their
 3 arms they will have to be disarmed and dispersed, but you
 4 didn't decide finally when that would happen.
 5 GENERAL MBOMBO: That is correct, Mr
 6 Chair.
 7 MR BUDLENDER SC: On Wednesday you
 8 persisted in that position, but you decided that the next
 9 day, Thursday would be the day. Is that correct?
 10 GENERAL MBOMBO: It's the same, Mr Chair,
 11 even on Tuesday I said on Wednesday, although I did not
 12 have the specific time, and that is the same case as well
 13 as on Wednesday.
 14 CHAIRPERSON: Yes, that's in fact what
 15 you say on page 11, lines 4 to 6, where you say when
 16 tomorrow – you've just agreed, I think, with the
 17 proposition that you have to act immediately. Mr Mokwena
 18 said you had to act immediately and you then said, "When
 19 tomorrow we have to move in," so tomorrow was Wednesday, so
 20 as of Tuesday as at the time you discussed the matter with
 21 Mr Mokwena and other people from Lonmin, at that stage your
 22 attitude was stage 3 had to take place tomorrow, i.e.
 23 Wednesday, if the people don't cooperate, i.e. which
 24 presumably means voluntarily lay down their arms. Is that
 25 a correct interpretation of what you say in the lines to

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1 which I've referred on page 11?
 2 GENERAL MBOMBO: Mr Chair, that is
 3 correct. Our presence at Lonmin was to end the violence
 4 that was taking place there. That is why I said so.
 5 CHAIRPERSON: No, no, that's not the
 6 point of the question. The point of the question is what
 7 you told Mr Mokwena and the others from Lonmin on Tuesday
 8 was "Tomorrow we're going to have to act, unless the
 9 strikers lay down their arms voluntarily." "Cooperate" was
 10 the word you used. That's correct, isn't it?
 11 GENERAL MBOMBO: That is correct, Mr
 12 Chair.
 13 CHAIRPERSON: Then there was a new
 14 development. General Mpembe and Mr Gwala from the SABC
 15 arranged, or facilitated a visit to Lonmin by the
 16 presidents of the two unions. Is that right?
 17 GENERAL MBOMBO: That is correct.
 18 CHAIRPERSON: They had to be given an
 19 opportunity to see if they couldn't solve the problem by
 20 using their influence as the presidents of the two unions
 21 involved, namely NUM and AMCU. Is that correct? So that
 22 caused a postponement; you couldn't proceed with stage 3 on
 23 Wednesday. Is that right?
 24 GENERAL MBOMBO: That is correct.
 25 CHAIRPERSON: But was it still your

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1 attitude that if the presidents can't bring about a
 2 peaceful solution, we'll have to act on Thursday?
 3 GENERAL MBOMBO: Especially, Mr Chair, on
 4 Tuesday afternoon when I learned that someone had been
 5 killed there it became clear to me that we really had to
 6 disarm these people.
 7 CHAIRPERSON: Now this was clear to you,
 8 you say. Did you communicate that to any of the commanders
 9 on the ground, as it were, the people who were the
 10 commanders at Lonmin? Did you tell any of them on the
 11 Tuesday already what you told Lonmin, namely that firstly
 12 we have to act tomorrow, i.e. Wednesday, if the people
 13 don't cooperate, and then later when the trade union
 14 presidents became involved did you then tell them if they
 15 don't bring about a peaceful solution we're going to have
 16 to act on Thursday? Did you communicate that to any of
 17 your commanders on the ground?
 18 GENERAL MBOMBO: Firstly, Mr Chair, I was
 19 getting a briefing from them and on the afternoon of the
 20 14th I sent that report to General Mpembe and Annandale.
 21 Maybe, Mr Chair, not a report, but I instructed them. As I
 22 was getting these reports from them and if this is true,
 23 what we were thinking, I'm thinking that tomorrow can't you
 24 try and if the opportunity allows, can't you try tomorrow
 25 and get these weapons from them.

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1 CHAIRPERSON: By "tomorrow" you're now
 2 talking about Wednesday. You're talking about what you
 3 said on Tuesday, speaking about Wednesday. Do I understand
 4 correctly?
 5 GENERAL MBOMBO: That is correct.
 6 MR BUDLENDER SC: Lieutenant General, on
 7 the Thursday morning you announced to the world through the
 8 media briefing and through a television interview that if
 9 the strikers did not lay down their arms that day they
 10 would be dispersed and disarmed on that day. Is that
 11 correct?
 12 GENERAL MBOMBO: That is correct, Mr
 13 Chair.
 14 MR BUDLENDER SC: Now your decision that
 15 Thursday was the final day was a very important decision.
 16 GENERAL MBOMBO: If we had the chance,
 17 that was the case, yes.
 18 MR BUDLENDER SC: And you told the
 19 National Commissioner of that decision the night before, on
 20 the Wednesday night.
 21 GENERAL MBOMBO: That is correct, Mr
 22 Chair.
 23 MR BUDLENDER SC: It was obviously
 24 important –
 25 CHAIRPERSON: I don't think your

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1 microphone is on, Mr Budlender. You've got to repeat the
 2 question with the microphone on.
 3 MR BUDLENDER SC: It was obviously
 4 important that the SAPS leaders who would have to implement
 5 your decision should know about it.
 6 GENERAL MBOMBO: That is correct.
 7 MR BUDLENDER SC: It was important that
 8 they should know about it as soon as possible so that they
 9 could make the necessary plans.
 10 GENERAL MBOMBO: That is correct, Mr
 11 Chair, but according to what they told me they had already
 12 looked at all the strategic positions of their plan.
 13 MR BUDLENDER SC: But they needed to know
 14 as soon as you made the decision this is the final day,
 15 this is now the final day, because they must get moving.
 16 GENERAL MBOMBO: That is correct, and
 17 that is what they knew.
 18 MR BUDLENDER SC: Yes, can I take you to
 19 paragraph 41 of your statement, of your supplementary
 20 statement LLL1. Do you have it? I'm sorry –
 21 GENERAL MBOMBO: I'm still struggling to
 22 find it, Mr Chair.
 23 MR BUDLENDER SC: That's fine. If you
 24 can't find it, Provincial Commissioner, it is also on the
 25 screen, so you can follow it there. It's not a long

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1 passage I want to read you.
 2 GENERAL MBOMBO: What page is it, Mr
 3 Chair?
 4 MR BUDLENDER SC: Page 13.
 5 CHAIRPERSON: Mr Budlender, which
 6 paragraph are you referring to?
 7 MR BUDLENDER SC: 41.
 8 CHAIRPERSON: 41.
 9 MR BUDLENDER SC: You have it?
 10 GENERAL MBOMBO: I found it, Mr Chair.
 11 MR BUDLENDER SC: Thank you, General.
 12 Now let's read that together. In paragraph 41 you say, "In
 13 the course of 15 August 2012," that's the Wednesday, "I
 14 spoke with each of Mpembe, Naidoo and Annandale by
 15 telephone at different times. I do not recall how many
 16 times I spoke to either one of them. In the telephone
 17 discussions I was informed that the police had secured the
 18 cooperation of the union leaders to try to resolve the
 19 unrest, that the union leaders had agreed to address the
 20 strikers," and so on and so on. Then paragraph 42, "I was
 21 encouraged by the development which offered an opportunity
 22 for the strikers to voluntarily lay their weapons down. I
 23 made it plain even at that stage, however, that in the
 24 event the strikers did not voluntarily surrender their
 25 weapons the following day, the police will have to

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1 disperse, disarm them, and make arrests where necessary."
 2 So what you say in your statement is consistent with what
 3 you've just said, that you needed to tell them and you did
 4 tell them.
 5 GENERAL MBOMBO: That is correct, Mr
 6 Chair.
 7 MR BUDLENDER SC: Now according to the
 8 minutes of the National Management Forum meeting – I'm
 9 sorry, and you told them on the Wednesday.
 10 GENERAL MBOMBO: On a Wednesday, yes.
 11 MR BUDLENDER SC: According to the
 12 minutes of the National Management Forum meeting the main
 13 meeting ended at 9:15PM and shortly after that there was
 14 the extraordinary session and you said that the
 15 extraordinary session lasted less than an hour. You
 16 remember that?
 17 GENERAL MBOMBO: That's how I remember
 18 it, Mr Chair. I don't think it was more than an hour.
 19 MR BUDLENDER SC: Yes, now I want you to
 20 – and then after that meeting you made, and until 11:30
 21 that night you made and received a lot of telephone calls
 22 and I want you to look at a phone call, some of the phone
 23 calls you made and received. It's on LLL3. Do you have
 24 LLL3?
 25 GENERAL MBOMBO: I think I've got it.

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1 [10:57] MR BUDLENDER SC: Unfortunately the pages
 2 are not numbered, but can you go to the fifth page of LLL3?
 3 GENERAL MBOMBO: I have it.
 4 MR BUDLENDER SC: And then we'll see
 5 about two-thirds of the way down there's a call at 21:55,
 6 21:55:10, between you and Major General Naidoo for 41
 7 seconds. Do you see that?
 8 GENERAL MBOMBO: 21?
 9 MR BUDLENDER SC: 21:55:10 there's a 41-
 10 second call with General Naidoo phoning you in fact, not
 11 you phoning him.
 12 GENERAL MBOMBO: I see it, Mr Chair.
 13 MR BUDLENDER SC: Right, and then shortly
 14 after that, if you can go down a little bit later at
 15 22:10:08 we see that you then phoned Major General Naidoo.
 16 So that was about 15 minutes later.
 17 GENERAL MBOMBO: That is correct, Mr
 18 Chair, I see that.
 19 MR BUDLENDER SC: And you had quite a
 20 long conversation with him, for 175 seconds. You see that?
 21 GENERAL MBOMBO: I see it.
 22 MR BUDLENDER SC: Now I take it that
 23 during those calls you told him, you discussed what was
 24 going to happen the next day and you told him if the
 25 strikers don't lay down their arms tomorrow we must go in.

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1 GENERAL MBOMBO: Especially, Mr Chair,
 2 during these calls they were reporting to me how the day
 3 went, how they worked, and I would also make a report to
 4 them and tell them that we will give them time, give them
 5 chance.
 6 MR BUDLENDER SC: Yes, and the next day
 7 was the last chance, otherwise you were going to go in.
 8 GENERAL MBOMBO: If the opportunity
 9 prevailed itself, yes.
 10 MR BUDLENDER SC: Well, you had made a
 11 decision that if the strikers did not lay down their arms
 12 you would disperse and disarm them. That's what you
 13 announced the next morning.
 14 GENERAL MBOMBO: That is correct, Mr
 15 Chair.
 16 MR BUDLENDER SC: And I assume you told
 17 that to General Naidoo when you spoke to him the night
 18 before, so that he could prepare himself?
 19 GENERAL MBOMBO: I told all of them, Mr
 20 Chair.
 21 MR BUDLENDER SC: Yes, and then at 22:27
 22 you'll see you telephoned, it's the last entry on that
 23 page, you telephoned Major General Mpembe and you spoke to
 24 him for 297 seconds, nearly five minutes. You see that?
 25 At the bottom of -

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1 GENERAL MBOMBO: I see it.
 2 MR BUDLENDER SC: And then on the next -
 3 GENERAL MBOMBO: We have different pages,
 4 but I see the information you're talking about.
 5 MR BUDLENDER SC: Thank you, and then
 6 shortly after that at 22:36 you telephoned him again for 52
 7 seconds. You see that?
 8 GENERAL MBOMBO: I see it, Mr Chair.
 9 MR BUDLENDER SC: And that's 22:23 - I'm
 10 sorry, I'm tripping myself up. At 23:23 you telephoned him
 11 again.
 12 GENERAL MBOMBO: 23:23?
 13 MR BUDLENDER SC: I think that - yes, I
 14 think I'm wrong in that. No, I'm wrong in that -
 15 GENERAL MBOMBO: Yes, I see it at the
 16 bottom.
 17 MR BUDLENDER SC: Ja, I'm wrong in that.
 18 So you spoke to him at 21:55 and you spoke to him again -
 19 I'm sorry, I'm reading the wrong paragraph. You spoke to
 20 him at 22:27 and you spoke to him again at 22:36. That's
 21 correct. Is that right?
 22 GENERAL MBOMBO: That is correct.
 23 MR BUDLENDER SC: And he was the
 24 operational commander.
 25 GENERAL MBOMBO: That is correct.

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1 MR BUDLENDER SC: And I'm sure that as
 2 you said you told him what was going to - what you decided
 3 must happen the next day.
 4 GENERAL MBOMBO: I told him that as well
 5 after he gave me a report.
 6 MR BUDLENDER SC: Right, and then at
 7 22:38 you'll see there is - I've got the wrong number, my
 8 apologies.
 9 CHAIRPERSON: Mr Budlender, is this point
 10 going to take some time? Because I was proposing to take
 11 the tea adjournment at 11 o'clock.
 12 MR BUDLENDER SC: Perhaps we can just
 13 finish the point -
 14 CHAIRPERSON: Well, it occurred to me if
 15 you need to find things in your papers it might be
 16 appropriate to take the adjournment now, but alternatively
 17 you can find them quickly and you want to round this point
 18 off before we take the adjournment -
 19 MR BUDLENDER SC: I have it now -
 20 CHAIRPERSON: I'm in your hands.
 21 MR BUDLENDER SC: I'd like to round off
 22 now if I may, Chair. I have it. At 22:38:12 there is a,
 23 you telephoned Major General Annandale. You see that?
 24 GENERAL MBOMBO: That is correct, Mr
 25 Chair.

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1 MR BUDLENDER SC: For about five minutes,
 2 313 seconds. You see that?
 3 GENERAL MBOMBO: I see it, Mr Chair.
 4 MR BUDLENDER SC: And I take it that you
 5 told him also about what you had decided what must happen
 6 the next day?
 7 GENERAL MBOMBO: That is correct.
 8 MR BUDLENDER SC: Thank you, Chair -
 9 CHAIRPERSON: We'll take the tea
 10 adjournment at this stage.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [11:27] CHAIRPERSON: The Commission resumes. I omitted
 13 to announce this morning that we will not be able to sit on
 14 Friday. One of the Commissioners has a matter of urgency
 15 that has to be attended to and can't be attended to on any
 16 other day so we'll not be sitting on Friday. We will,
 17 however, sit the full day on Thursday but I thought it
 18 appropriate to inform everybody who has to make travel
 19 arrangements that we'll not be sitting on Friday. It's
 20 unfortunate but it's one of these things that can't be
 21 avoided. Provincial Commissioner, you're still under oath.
 22 Mr Budlender?
 23 ZUKISWA MBOMBO: s.u.o.
 24 CROSS-EXAMINATION BY MR BUDLENDER (CONTD.):
 25 Thank you, Chair. Lieutenant-General, just before the tea

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1 adjournment we were looking at the phone calls you made to
 2 or received from General Naidoo and General Mpmembe and
 3 General Annandale after the extraordinary session and it
 4 seems to me, in any event, that those telephone records
 5 seem to support or tend to support what you say, that you
 6 told the three generals about your decision that if they
 7 didn't lay down, if the strikers didn't lay down their arms
 8 the operation must proceed the next day to phase 3 or to
 9 stage 3.

10 GENERAL MBOMBO: It is so, Chairperson.

11 MR BUDLENDER SC: And I want to refer you
 12 to the handwritten notes which were made at the JOCCOM
 13 meeting at 6 o'clock the next morning, which I think also
 14 support, seem also to support what you say that you told
 15 your generals what, about the new situation. Can we go to
 16 JJJ168? Right, now these are the notes which were made, I
 17 think, by Adv Moolman, then Captain Moolman, on the morning
 18 of the 16th August at 06H00. You see what it says on the
 19 first page, "Notes made 16 August 2012 06H00." Do you see
 20 that, General?

21 GENERAL MBOMBO: I see, Chairperson.

22 MR BUDLENDER SC: Then can you turn over
 23 to the second page and you'll see the fourth line says the
 24 following, it's
 25 "D-day." Now we know D-day is the term which Captain Adriaio

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1 later used to describe your decision, remember that?

2 GENERAL MBOMBO: I see that, Chairperson.

3 MR BUDLENDER SC: And it then says,
 4 "Terms and conditions not to continue. Constitutional
 5 rights but boundaries. 10 killed, 2 SAPS. Firearms
 6 missing. Given opportunity to lay down weapons, mine gave
 7 opportunity to work, unions failed" I think it is, "laid
 8 down" – "unions thought lay down and return, denounce
 9 violence, will reaffirm today, weapons to be left at
 10 koppie. Reality, in position to act in case weapons not
 11 left. Specific policing has to take place, not limited to
 12 both hostels. Phase 2 today, further deployment whilst
 13 unions talk at plus-minus 9H00. SAPS to phase 2. Biggest
 14 presence POP and TRT frontline. Cordon intensified out to
 15 bigger areas. Any person with weapon will be approached
 16 and arrested." Do you see all of that?

17 GENERAL MBOMBO: I see that, Chairperson.

18 MR BUDLENDER SC: That's consistent with
 19 what you say that the meeting knew, that this was the day,
 20 the final day. Then can you go, I want you to go a bit
 21 further to page – to the fifth page. Do you see that one?
 22 The top line is "Brigadier Scott's briefing." Do you have
 23 that?

24 GENERAL MBOMBO: I see, Chair.

25 MR BUDLENDER SC: And it says, "Brigadier

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1 Scott's briefing. NB. Important to follow to the letter.
 2 NB to start with force continuum. They must see it
 3 stopping here and now. SAPS not retreating. Agreement,
 4 everything will be done on command. Today things will be
 5 changed." Do you see that?

6 GENERAL MBOMBO: I see, Chair.

7 MR BUDLENDER SC: And it seems to me that
 8 that is consistent with what you have told the Commission,
 9 that you informed the generals that Thursday was D-day.
 10 You agree with that?

11 GENERAL MBOMBO: I told them,
 12 Chairperson, yes, that Chair, this agreement or the
 13 endeavours that are being made by the unions, if these are
 14 not successful we have to look at these and see where we
 15 are and make sure that we maintain law and order by
 16 policing in the manner in which they are trained to do.

17 MR BUDLENDER SC: But it goes further.
 18 As you announced, General, at the media briefing that
 19 morning, it goes further than just maintaining law and
 20 order in a general way. You had decided that that was the
 21 last day, that if they didn't hand down their arms, hand
 22 over their arms, the police would intervene to take the
 23 arms away from that. Is that correct?

24 GENERAL MBOMBO: It is so, Chairperson,
 25 because there was no – there was no other reason why it

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1 should be postponed to wait for another day, not knowing
 2 what would be happening to the lives of people and their
 3 property during that time.

4 MR BUDLENDER SC: Now what puzzles me is
 5 that – and perhaps you can help us with this – is that some
 6 of the evidence given to the Commission paints a different
 7 picture. Could we have the transcript at page 82, day 82
 8 and the passage I'm interested in is page 8662. Perhaps we
 9 can start on 8661 at line 18 where the Chairperson is
 10 speaking to General Annandale who is giving evidence there
 11 and he says, "No question would have to disperse the crowd
 12 if the situation escalates or if all things that are set
 13 out, all these things that are set out in the occurrence
 14 book the next day happened. Simple statement, if the above
 15 undertaking fails to materialise the police will have to
 16 disperse the crowd. That's what she told the National
 17 Commissioner on the evening of the 15th. Now you weren't
 18 there, I know, so you can't really comment but it does
 19 throw light on the point that's being made." And then
 20 Major-General Annandale says, "Voorsitter, ek hoor totaal
 21 wat u sê. Ek kan slegs getuig oor wat my ervaring was, my
 22 interaksie met General Mbombo, Voorsitter, en sy het dit
 23 nooit aan my oorgedra en vir my gesê, relevant wat vandag
 24 gebeur, ons gaan sodanig of sodanige optree nie."
 25 "Chairperson: Would it be a fair comment to say,

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1 in the light of what you told us, what I've read to you
 2 from the National Commissioner's statement as to what the
 3 Provincial Commissioner told her the night before, comes as
 4 a surprise to you?" "Major-General Annandale: Vra
 5 u of ek verras sal wees as u dit aan my voorhou?"
 6 "Chairperson: Well, it's been put to you. I've
 7 read to you what the National Commissioner said the
 8 Provincial Commissioner told her the night before, so
 9 obviously you didn't know about it, you've told us. So now
 10 that you've heard, it's been read to you, do you find it,
 11 are you surprised?" "Major-General Annandale:
 12 Voorsitter, ek is seker verras want dit was nooit so
 13 oorgedra nie." Do you see all of that?
 14 CHAIRPERSON: Do you understand all of
 15 that? Provincial Commissioner, sorry, do you understand
 16 the Afrikaans?
 17 GENERAL MBOMBO: I did, Mr Chairperson.
 18 CHAIRPERSON: I just want to see, do you
 19 understand Afrikaans?
 20 GENERAL MBOMBO: Not very well, Mr
 21 Chairperson.
 22 CHAIRPERSON: Aright, well perhaps we can
 23 go back to the beginning. You understood, you see what's
 24 said there, line 15 in English and then on page 8662 the
 25 answer is, Major-General Annandale says, Chairman, I hear

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1 totally what you say or entirely what you say. I can only
 2 testify about what my experience was, my interaction with
 3 General Mbombo, Chairman, and she never communicated or
 4 conveyed it to me and for me, said that it is irrelevant
 5 what is going to happen today, that we're going to act in
 6 such and such a manner. And I then asked the question when
 7 you now see at lines 8 to 12, ending in "Does this come as
 8 a surprise to you?" And Major-General Annandale says, are
 9 you asking whether I should be surprised if you disclose or
 10 communicate that to me? And I said, well, it's been put to
 11 you and I said I'd read what the National Commissioner said
 12 what you told her the night before. And then I added, "So
 13 now that you've heard it being read to you, do you find it,
 14 are you surprised?" Major-General Annandale says in line
 15 21, Chairman, I'm certainly surprised because it was never
 16 so communicated to me. And then he said General Mbombo had
 17 that morning said to me – and then what he said was
 18 inaudible. So I think I've translated all the relevant
 19 bits of Afrikaans to you.
 20 MR BUDLENDER SC: You'll see from this
 21 that what General Annandale appears to be saying is that
 22 you didn't tell him the night before that you were going to
 23 end the matter on the Thursday, the 16th. Do you see that?
 24 GENERAL MBOMBO: I see, Chairperson, but
 25 according to me it is not so.

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1 MR BUDLENDER SC: Yes. Then can we go to
 2 what General Mpembe said, that's day 149. It's page – the
 3 pages are numbered from 1 to 90-something. Could we go to
 4 page 94? Yes, page 94 please. I beg your pardon, this is
 5 page 149. Sorry – sorry, I was right the first time, page
 6 94. I'm confusing myself.
 7 CHAIRPERSON: As long as you don't
 8 confuse the witness.
 9 MR BUDLENDER SC: It's usually more
 10 effective to confuse the witness than confuse yourself,
 11 Chair.
 12 CHAIRPERSON: A good Chairman doesn't
 13 allow that.
 14 MR BUDLENDER SC: Right, you see page 94
 15 and then can we go down towards the foot of the page?
 16 Well, just back a little, right. Mr Chaskalson says to
 17 General Mbombo, So what then was the relevance of the call
 18 from the Provincial Commissioner on the Wednesday night?
 19 What did she tell you that you didn't know already?"
 20 Major-General Mpembe, "Chairperson, it was to say where
 21 will the people report because the other deputies need to
 22 somebody, a contact person when those resources are coming
 23 they need to know to whom are they reporting on the other
 24 side. That is the purpose which I am trying to explain.
 25 Mr Chaskalson: So the only purpose of her call was

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1 to tell you that you needed to announce yourselves to the
 2 other provincial deputies to say I'm the contact person,
 3 when people report they must report to me?" And Major-
 4 General Mpembe says, "Correct." Let me see what goes on
 5 next, "Correct, Chairperson." And Mr Chaskalson:
 6 "And she didn't mention to you that there had been a
 7 proposal adopted to disarm the protesting masses at that
 8 meeting?" And Major-General Mpembe says, "No,
 9 Chairperson." So it seems that Major-General Mpembe is
 10 also saying that when you phoned him you didn't tell him
 11 that the following day was going to be the day. All you
 12 told him about was about arrangements for getting extra
 13 resources, but you say that's not correct?
 14 GENERAL MBOMBO: It's not totally true,
 15 Mr Chairperson. What he is – possibly what he was trying
 16 to say is not true, is what the question was put to him by
 17 – about the adoption of the proposal. I spoke to General
 18 Mpembe, like all the others. I was saying exactly the same
 19 thing to all of them.
 20 MR BUDLENDER SC: And he says the only
 21 relevant thing you told him that night was about getting
 22 extra resources, do you see that?
 23 GENERAL MBOMBO: That was part of the
 24 things, some of the things that I said, I spoke to him
 25 about.

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1 MR BUDLENDER SC: But you told him
 2 something even more important than that. You told him as
 3 the operational, as the overall commander that the
 4 following day, if the strikers don't lay down their weapons
 5 they must be taken away from them. You told him that.
 6 GENERAL MBOMBO: Because at that time
 7 during the same night he had told me, he had told me about
 8 the decision that they had come to, what Mr Mathunjwa had
 9 said to him.
 10 MR BUDLENDER SC: Yes, that would be the
 11 natural thing for you to say when he said Mr Mathunjwa says
 12 he believes they'll hand over the weapons, for you to say
 13 well, that's fine but if they don't, we're going to take
 14 them away.
 15 GENERAL MBOMBO: I said so, yes.
 16 CHAIRPERSON: And in fact implement stage
 17 3, is that right?
 18 GENERAL MBOMBO: At that time, Mr
 19 Chairperson, I wasn't talking of stage 3. I was saying
 20 that these people had to be disarmed.
 21 MR BUDLENDER SC: And the only way of
 22 disarming them was stage 3. That was the tactical phase.
 23 GENERAL MBOMBO: According to how it was
 24 planned, yes, that is correct.
 25 MR BUDLENDER SC: Yes, and then can we

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1 look at what Colonel Scott says. Now Colonel Scott was the
 2 chief planner of the operation. Can we have day 135 and we
 3 go to page 14379, line – just up a bit, 14379 there we are,
 4 line 9. Here Mr Chaskalson is putting questions to Colonel
 5 Scott and Mr Chaskalson says, "We had statements from the
 6 National Commissioner and the Provincial Commissioner which
 7 made clear that the night before the Provincial
 8 Commissioner had informed the National Commissioner that if
 9 SAPS could not persuade the strikers to lay down their
 10 weapons and leave the koppie by negotiation, she would
 11 issue an instruction for the strikers to be dispersed.
 12 None of that was conveyed to you?" And Colonel Scott says,
 13 "No." Do you see that?
 14 GENERAL MBOMBO: I see, Chairperson.
 15 MR BUDLENDER SC: So if it's correct that
 16 you told the generals, then the generals didn't tell
 17 Colonel Scott. That's what we must conclude from that.
 18 GENERAL MBOMBO: It wasn't for me to tell
 19 Colonel Scott, Mr Chairperson.
 20 MR BUDLENDER SC: Absolutely. It was the
 21 task of the generals and you told the generals, correct?
 22 GENERAL MBOMBO: Correct, yes.
 23 MR BUDLENDER SC: So the question is
 24 really, which is the truth? Did you tell those who needed
 25 to know on the 15th, if you did, or did you not?

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1 GENERAL MBOMBO: I told them, Mr
 2 Chairperson, just as I have said already.
 3 MR BUDLENDER SC: Well, if that's the
 4 truth then General Annandale didn't tell the truth and
 5 neither did General Mbombo. Isn't that so?
 6 GENERAL MBOMBO: I would not know that,
 7 Mr Chairperson.
 8 MR BUDLENDER SC: But you accept that
 9 what they say is inconsistent with what you say is the
 10 truth. You say you told them and they say you didn't.
 11 GENERAL MBOMBO: What I'm saying, Mr
 12 Chairperson, is what I told them.
 13 MR BUDLENDER SC: Right. Now it's
 14 obvious that one of the most important issues in
 15 understanding stage 3 on the 16th of August is who decided
 16 that it should be implemented and when that was decided, do
 17 you agree with that?
 18 GENERAL MBOMBO: I agree with that, yes,
 19 sir.
 20 MR BUDLENDER SC: Now you, in your first
 21 statement you did not mention your decision of the 15th of
 22 August. Your statement to the Commission, you didn't
 23 mention your decision of the 15th of August. Why not?
 24 GENERAL MBOMBO: Chairperson had earlier
 25 mentioned that that statement did not, was not totally

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1 completed, did not have all the facts. It did not only
 2 exclude the 15th, also the 14th.
 3 MR BUDLENDER SC: But you've just agreed
 4 that one of the most important issues in understanding what
 5 happened is who made the decision and when that decision
 6 was made, but you left it out of your first statement.
 7 [11:47] GENERAL MBOMBO: I can possibly say it
 8 was a mistake that happened but it was not deliberate.
 9 MR BUDLENDER SC: Alright. Now, you've
 10 looked at – we looked earlier at FFF9. I'm not going to
 11 take you there. It's the opening statement which the SAPS
 12 made to the Commission. They also didn't mention your
 13 decision in the opening statement, can you think why not?
 14 GENERAL MBOMBO: Not sure, Mr
 15 Chairperson.
 16 MR BUDLENDER SC: Was that also a
 17 mistake?
 18 GENERAL MBOMBO: I am unable to say so, I
 19 don't know.
 20 MR BUDLENDER SC: Well, do you not think
 21 it should have been mentioned, seeing it was one of the
 22 most important issues?
 23 GENERAL MBOMBO: I think it should have
 24 been there, I think so.
 25 MR BUDLENDER SC: Yes. And then the SAPS

<p style="text-align: right;">Page 21592</p> <p>1 also didn't mention that decision in its presentation to 2 the Commission, exhibit L. Can you explain why that wasn't 3 done? 4 GENERAL MBOMBO: Chairperson, I think I 5 need to explain here that according, to my knowledge, in my 6 statement I did mention that I am the person who gave the 7 instruction, yes, after receiving a short briefing from 8 General Mpembe. I think where the mistake cropped in, in 9 my statement, what was forgotten, is where I did not 10 mention that I had already made the decision already on the 11 13th and the 14th – no, no, 14 and 15, on the 14th and the 12 15th, sorry Mr Chairperson. I want to explain this to make 13 it clear, Mr Chairperson, that when making this decision I 14 was making this decision in order that the people who were 15 there at the place where they were working had to know what 16 it is that they were to do in terms of the SOP and the law. 17 What was expected of them and me was that there should be 18 peace there and that could only happen, Mr Chairperson, if 19 we did get the weapons, remove them or take them away from 20 them. This is why I did not, from time to time, keep on 21 telling them this is what you do and they knew what was to 22 be done. My decision was a strategic decision depending on 23 the decisions they would make there, Mr Chairperson, 24 depending on how they saw the circumstances. 25 MR BUDLENDER SC: Lieutenant-General, on</p>	<p style="text-align: right;">Page 21594</p> <p>1 MR BUDLENDER SC: Chair, the witness – 2 CHAIRPERSON: She's not sure. The cross- 3 examiner is entitled to follow up, proceed asking further 4 questions on that point but I think there's substance in 5 what Mr Semenya says, the point has been dealt with quite 6 extensively but I'll allow you to ask one more question 7 along the lines that you've indicated, to endeavour to 8 clarify the uncertainty the witness has stated existed. 9 MR BUDLENDER SC: But Chair, I don't 10 think there is any longer any uncertainty. The witness had 11 previously answered in relation to the first matters, the 12 omission from her statement and the omission from the 13 opening statement. She has not yet explained the omission 14 from exhibit L and that's why I put that to her again. It 15 is now answered and I don't need to take it further. 16 CHAIRPERSON: Mr Semenya, I think that's 17 correct actually. I'll allow Mr Budlender to proceed. 18 MR BUDLENDER SC: Now, Lieutenant- 19 General, I want to put to you that it's not only a matter 20 that the decision was not disclosed. I'm going to put to 21 you that in fact the SAPS presented a case to this 22 Commission which is inconsistent with your having made the 23 decision on the night of the 15th August. I don't expect 24 you to comment on that. I'm going to show you why I say 25 that, but you understand the point I'm seeking to make.</p>
<p style="text-align: right;">Page 21593</p> <p>1 the night of the 15th of August you decided that if the 2 strikers did not hand over their weapons the next day, the 3 police must take those weapons away from them the next day. 4 You told the National Commissioner that you'd decided that 5 and you'd told the national, the extraordinary session of 6 the NMF that you'd made that decision. Is that correct? 7 GENERAL MBOMBO: It is so, Chairperson. 8 MR BUDLENDER SC: It was a very important 9 decision. 10 GENERAL MBOMBO: It is so. 11 MR BUDLENDER SC: It's not mentioned in 12 your statement to this Commission, your first statement, 13 it's not mentioned in the SAPS opening statement to the 14 Commission and it's not mentioned in exhibit L, which is 15 the SAPS presentation to the Commission. Do you agree with 16 that? 17 GENERAL MBOMBO: I hear what you say, 18 sir. 19 MR BUDLENDER SC: Well, can you explain 20 why that is so? 21 GENERAL MBOMBO: I am not sure. 22 MR BUDLENDER SC: Was it just a mistake 23 each time? Each time somebody forgot it? 24 MR SEMENYA SC: Chair, these questions 25 have been asked and answered.</p>	<p style="text-align: right;">Page 21595</p> <p>1 MR SEMENYA SC: No Chair, I don't – I 2 object. It's not inconsistent. It may not – it may have 3 been omitted. 4 MR BUDLENDER SC: I'm going to show. 5 CHAIRPERSON: [Microphone off, inaudible] 6 You can't say it's not, it's simply inconsistent, if it's 7 not contrary. I must give Mr Budlender an opportunity to 8 endeavour to make the point he's making. If the points he 9 puts do not constitute what he indicated at the beginning 10 he was going to prove, then you could raise the point 11 again. 12 MR BUDLENDER SC: Could you look at 13 exhibit TT4, please? Do you have those? Those are the 14 minutes of the JOC meeting, the JOCCOM meeting or briefing 15 minutes, at 06H00 on Thursday the 16th August. Do you have 16 that? 17 GENERAL MBOMBO: I see that, Chair. 18 MR BUDLENDER SC: Now I want you to go 19 towards the foot of the page. There is a paragraph which 20 starts "Deployment," do you see that? It's about – 21 GENERAL MBOMBO: You say on the foot, I 22 say according to mine it's on the third paragraph. 23 MR BUDLENDER SC: It's eight lines from 24 the bottom of the page, the paragraph starting "Deployment 25 will be done."</p>

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1 CHAIRPERSON: No, no, according to the
 2 copy which is in your cross-examination bundle, it's six
 3 lines from the foot of the page. The last line on the
 4 slide as we have it exhibited is in fact on the next page.
 5 The document we have concludes with the words "when that
 6 decision is taken" at the foot of the first page.
 7 MR BUDLENDER SC: Do you see the
 8 paragraph – thank you, Chair – do you see the paragraph
 9 starting, "Deployment will be done?"
 10 GENERAL MBOMBO: I see the paragraph that
 11 says "Deployment for the day," it's a 2.2 paragraph.
 12 MR BUDLENDER SC: No, no, go further
 13 down. No, you've got the wrong document, I'm afraid.
 14 Let's look at it on the screen. Can you look at it on the
 15 screen.
 16 CHAIRPERSON: The document to which you
 17 have been referred is the –
 18 GENERAL MBOMBO: I've got –
 19 CHAIRPERSON: - final version of the
 20 minutes of the meeting, the JOC meeting at 6AM on the
 21 morning of the 16th. It's not the – we've already seen the
 22 manuscript copy but this is a final version which was
 23 produced at some stage during the Roots meeting and this is
 24 exhibit TT4, is it, Mr Budlender?
 25 MR BUDLENDER SC: Yes, TT4, Chairperson.

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1 CHAIRPERSON: Have you now got that
 2 document? It's headed "Briefing minutes, Thursday 16
 3 August 201," it should be 2012, "at 06H00 Marikana JOC."
 4 Do you see that document?
 5 GENERAL MBOMBO: I see, Chairperson.
 6 CHAIRPERSON: Now at the foot of the page
 7 you'll see two paragraphs, one beginning – one, a two-lined
 8 paragraph "Deployment will be done" and then two lines
 9 below that there's a final paragraph on that page,
 10 beginning "Full deployment." Do you see that?
 11 GENERAL MBOMBO: I see, Chair.
 12 CHAIRPERSON: That's what Mr Budlender is
 13 asking you about.
 14 MR BUDLENDER SC: Right, so let's read
 15 that – thank you, Chair – let's read that together. It
 16 says, "Deployment will be done in line with stage 2 of the
 17 operational strategy, show of force, prepositioning. Full
 18 deployment will be done in accordance with the strategy
 19 plan but without the razor wire deployed, only the Nyalas
 20 and wire trailers pre-positioned." Now, "If the situation
 21 escalates, stage 3 will be implemented but proper
 22 communication will be done with all commanders when that
 23 decision is taken." Now that is, those are the minutes
 24 which the SAPS presented to this Commission and I want to
 25 suggest to you that that is inconsistent with what, with

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1 your evidence of what happened because it says on this
 2 version, the stage 3 will be implemented if escalation, if
 3 the situation escalates but you had already decided that it
 4 was going to be implemented regardless of escalation if
 5 they didn't hand over their weapons. Is that not correct?
 6 GENERAL MBOMBO: That's why, Mr
 7 Chairperson, I say my decision was a decision at a
 8 strategic level depending on that operational or tactical
 9 level when it would be executed, how and for what reason.
 10 MR BUDLENDER SC: No, Lieutenant-General,
 11 that's not going to help. You announced to the public at
 12 9:30 that morning that "We are ending this situation
 13 today," correct?
 14 GENERAL MBOMBO: It is correct.
 15 MR BUDLENDER SC: You told, said the same
 16 thing to the television interviewer, correct?
 17 GENERAL MBOMBO: It is so.
 18 MR BUDLENDER SC: I accept that what
 19 still had to be decided was the time when it would happen
 20 but what you had decided was already decided, is it would
 21 be that day, on the Thursday, correct?
 22 GENERAL MBOMBO: And then the time would
 23 have depended on the people who were to execute the –
 24 depending on whether they saw it to be correct at the time,
 25 depending on circumstances and according to information

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1 they had received.
 2 CHAIRPERSON: You didn't say that at the
 3 press conference at 9:30 and Captain Adriaao when he
 4 summarised what you'd said later to the press, he used the
 5 expression "Today is D-day" and that is in fact the
 6 expression used at the JOCCOM meeting at 6 o'clock in the
 7 morning, which was put to you by counsel. So what you had
 8 conveyed, clearly understood by everybody to mean today is
 9 going to be D-day, which means if they don't lay down their
 10 arms we will proceed with stage 3 and it'll be the end of
 11 the matter. Isn't that what you – that's what you said,
 12 isn't it?
 13 GENERAL MBOMBO: The manner, the way in
 14 which they interpreted it, Mr Chairperson, but what I was
 15 saying was that yes, we are going to work this way to end
 16 the violence if the time allowed us.
 17 MR BUDLENDER SC: Lieutenant-General, the
 18 minute says that stage 3 will be implemented if the
 19 situation escalates. That is not correct because you say,
 20 you decided and you announced that stage 3 would be
 21 implemented if the strikers did not hand over their
 22 weapons, is that not correct?
 23 GENERAL MBOMBO: Chairperson, it was not
 24 only to make the decision that what was going to happen at
 25 this time – my decision was that because of the presence of

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1 the violence which resulted as a result of the carrying of
 2 these weapons by the protesters, that it was necessary for
 3 us to get those weapons.
 4 MR BUDLENDER SC: I'm afraid I don't
 5 understand that answer, Lieutenant-General. Perhaps I'm
 6 being obtuse. You decided on the Wednesday night that if
 7 the strikers did not hand over their weapons the next day,
 8 those weapons would be taken away from them the next day,
 9 correct? You told the National Commissioner so.
 10 GENERAL MBOMBO: It is so, Chairperson.
 11 It is so, Mr Chairperson, that we wanted to get these
 12 weapons from them in one or the other way but if the other
 13 manner did not work, then we as the police had to apply
 14 police means of getting them.
 15 MR BUDLENDER SC: Yes. In other words,
 16 if they didn't hand over their weapons you would use police
 17 methods to take the weapons away from them, correct?
 18 GENERAL MBOMBO: Because it was necessary
 19 for us to do so, Mr Chairperson, because these weapons
 20 resulted in everyone who was there to be fearful because
 21 there were people that had died already.
 22 MR BUDLENDER SC: And therefore in your
 23 opinion it was necessary to take away the weapons on the
 24 Thursday the 16th if the strikers did not surrender,
 25 correct?

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1 GENERAL MBOMBO: It was important that if
 2 Mr Mathunjwa's decision was not successful, Mr Mathunjwa's
 3 endeavour was not successful, we had to look at how the
 4 circumstances would – if we saw it necessary because of
 5 existing circumstances, we had to work in order to have
 6 those weapons taken away.
 7 CHAIRPERSON: Is that what you said not
 8 only at the media briefing, but in your interview with ETV?
 9 Can you remember what you said in your interview with ETV?
 10 GENERAL MBOMBO: I still remember,
 11 Chairperson, saying that, that we wanted to end the
 12 violence existing there.
 13 MR BUDLENDER SC: Do you agree,
 14 Lieutenant-General, that you told the National
 15 Commissioner, you told the National Management Forum
 16 extraordinary session, you told the media briefing and you
 17 told the television interviewer the same thing, namely, if
 18 they did not hand over their weapons on the Thursday, the
 19 weapons would be taken away from them by policing methods,
 20 is that correct?
 21 GENERAL MBOMBO: It is so, Chairperson.
 22 MR BUDLENDER SC: Right.
 23 GENERAL MBOMBO: The police know what to
 24 do if I had given those instructions.
 25 MR BUDLENDER SC: Now I'm putting to you

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1 that that is – and I accept that you did those things but
 2 what is in the minutes which are given to the Commission
 3 are inconsistent with that because the minutes say that
 4 stage 3 will be implemented if the situation escalates.
 5 Can you not see that the two are different?
 6 GENERAL MBOMBO: I see, Chairperson.
 7 Like a person who was not present in that meeting, I'm not
 8 sure of exactly what was discussed there.
 9 MR BUDLENDER SC: No, I understand that.
 10 All I'm saying to you is that what is in the minutes is
 11 inconsistent with what you told the National Commissioner,
 12 what you told the extraordinary session of the NMF, what
 13 you told the media briefing and what you told the
 14 television interviewer, correct?
 15 GENERAL MBOMBO: I understand you, sir,
 16 but even in these minutes where it says so, there was an
 17 explanation which mentioned that depending on
 18 circumstances, we had to work in accordance with accepted
 19 manners of work.
 20 MR BUDLENDER SC: I want to put it to
 21 you, Lieutenant-General Mpembe, Lieutenant-General Mbombo,
 22 that the minutes, in the light of the evidence you've
 23 given, that minute must be a misrepresentation of what
 24 happened because it reflects a position which is different
 25 from what you had decided and announced.

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1 [12:07] GENERAL MBOMBO: Chairperson, as I've
 2 already said, when I say to the police go and do work,
 3 saying I want these people arrested. It then becomes
 4 incumbent upon them to design, to see a way how they would
 5 arrest these people. There is no difference between what I
 6 said in this paragraph. My discussion was that the main
 7 reason we are there is that the violence does not, there's
 8 no perpetration of this violence.
 9 MR BUDLENDER SC: Lieutenant General, can
 10 I understand correctly; are you saying that that paragraph
 11 is consistent with the decision which you made and
 12 announced? Are you saying they say the same thing? Is
 13 that what you're asking the Commission to accept?
 14 GENERAL MBOMBO: In the way in which I am
 15 putting it, Mr Chairperson, I think it is so, yes.
 16 MR BUDLENDER SC: General Mbombo, would
 17 you like the Commission to treat the rest of your evidence
 18 with the same seriousness as it must treat that?
 19 GENERAL MBOMBO: I think so.
 20 MR BUDLENDER SC: That's very helpful,
 21 thank you. I want to put it to you also – I want you to go
 22 to exhibit L133, slide 133. Do you have that?
 23 GENERAL MBOMBO: I have it, Chair.
 24 MR BUDLENDER SC: This is a reflection of
 25 what happened at the JOCCOM briefing at 6 o'clock on the

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1 morning of the 16th of August, right? Trust me, that's what
 2 it's talking about. Now I want to read you what it says.
 3 "The police's deployment would be in line with stage 4 of
 4 the operation strategy, a show of force, repositioning. A
 5 full deployment would be done in accordance with the
 6 strategy, meaning that the barbed wire trailers with their
 7 Nyalas would be repositioned but not deployed. If the
 8 situation were to escalate, stage 3 would be implemented."
 9 You see that?
 10 GENERAL MBOMBO: I see that, yes, Sir.
 11 MR BUDLENDER SC: You saw that in the
 12 police presentation before it was made?
 13 GENERAL MBOMBO: I see it.
 14 MR BUDLENDER SC: Is it correct?
 15 GENERAL MBOMBO: It is so.
 16 MR BUDLENDER SC: So stage 3 was only
 17 going to be implemented if the situation escalated?
 18 GENERAL MBOMBO: As I've already said,
 19 Sir, if they saw that the situation allowed.
 20 MR BUDLENDER SC: No, no, if the
 21 situation escalated, not if it allowed it. It says "if the
 22 situation were to escalate," so stage 3, we must understand
 23 this means stage 3 would be implemented only if the
 24 situation escalated.
 25 GENERAL MBOMBO: As far as I know it

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1 would have been whether it was correct to be implemented,
 2 including the escalation.
 3 MR BUDLENDER SC: General, what would
 4 happen if the strikers refused to hand over their arms and
 5 there was no escalation? Then what would happen on the
 6 16th? What was your decision?
 7 GENERAL MBOMBO: If the endeavours by Mr
 8 Mathunjwa were not there, which made us believe to have the
 9 hope that there would be laying down of these arms
 10 peacefully, that would have given us the hope that this
 11 matter would be brought to an end peacefully. I am sure
 12 that if this did not take place, the police would have then
 13 looked at the situation and decide on an appropriate manner
 14 of action, as they did in these –
 15 CHAIRPERSON: Did you communicate that to
 16 the National Commissioner and the remaining members of the
 17 National Management Forum the night before, that what you
 18 told them would be done would only be done if there was
 19 escalation on the part of the strikers?
 20 GENERAL MBOMBO: I told them, Mr
 21 Chairperson, that the discussions had taken place by the
 22 two unions could help us in coming, in finding a solution.
 23 But if there is no such a solution we would then have to
 24 police in the manner in which we were trained, Mr
 25 Chairperson, in order to get those weapons.

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1 CHAIRPERSON: And is that what you said
 2 also in the interview you had with eTV on the Thursday?
 3 Was there any mention of escalation? We're not interested
 4 in the manner you were going to do it. I'm not interested
 5 in what people's training was. It's a simple question.
 6 Was stage 3 going to be implemented, in other words was an
 7 operation to be launched to take the weapons away from
 8 unwilling strikers who wanted to hang on to them and didn't
 9 want to hand them over, was that stage going to be launched
 10 only if there was an escalation? That's the question.
 11 What's the answer?
 12 GENERAL MBOMBO: It is so, Mr
 13 Chairperson.
 14 CHAIRPERSON: That was never mentioned to
 15 anybody, it wasn't mentioned to the National Commissioner,
 16 was it? The National Commissioner would have believed that
 17 your instruction was, and your intention was if the weapons
 18 aren't handed over, even if there is no escalation, stage 3
 19 will be implemented because we have to get the weapons away
 20 from the people by the end of the day. Isn't that what you
 21 were conveying to the National Commissioner? Or am I
 22 misunderstanding?
 23 GENERAL MBOMBO: Chairperson, my
 24 intention mostly was that we get the weapons. That is what
 25 I mentioned to the National Commissioner, Chairperson, that

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1 we had to get these weapons. But there was still hope that
 2 we would get them, that we would get them peacefully.
 3 CHAIRPERSON: That's not an answer to the
 4 question. The question was, was stage 3 only going to be
 5 implemented if the situation escalated? That's a different
 6 question, which you haven't answered yet.
 7 GENERAL MBOMBO: That was a decision, Mr
 8 Chairperson, of the people who were in charge of the
 9 operation. According to me, what was to me very important,
 10 Mr Chairperson, was that these weapons had to be taken from
 11 the people before causing further injuries to other people.
 12 COMMISSIONER HEMRAJ: Can I just seek
 13 clarity from you exactly what is it that was to be the
 14 decision of the officers on the ground?
 15 GENERAL MBOMBO: Just clarify the
 16 question, Mr Chairperson, Commissioner, I'm not clear.
 17 COMMISSIONER HEMRAJ: You said that
 18 something was left to the decision of the officers who were
 19 at the scene. I'd just like to know exactly what you're
 20 referring to.
 21 GENERAL MBOMBO: The decisions that they
 22 would have taken, Commissioner, Mr Chairperson, depending
 23 on what circumstances prevailed at the time as to how they
 24 could go in.
 25 CHAIRPERSON: Are you saying that

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1 Thursday wasn't going to be D-day if the, despite what had
 2 been told at the media conference, if the operational
 3 commanders or the commanders on the ground, all the people
 4 in the JOC, thought it wouldn't be safe, it would be too
 5 risky to implement stage 3 on that day? Is that what
 6 you're saying?
 7 GENERAL MBOMBO: Chairperson, the
 8 decision that I had made wasn't that - it was going to
 9 depend on what they saw the situation as being on the
 10 ground.
 11 CHAIRPERSON: So does that mean that
 12 Thursday might not have been D-day, despite what you'd
 13 said?
 14 GENERAL MBOMBO: It was my wish, Mr
 15 Chairperson, it was my wish that on that day we take the
 16 weapons, but that decision, Mr Chairperson, depended on how
 17 the commanders under me saw the situation.
 18 CHAIRPERSON: I'd asked the question I
 19 wanted to ask.
 20 MR BUDLENDER SC: Could we play AAA13?
 21 Let's see what you actually said.
 22 [VIDEO SHOWN]
 23 That's what you said.
 24 GENERAL MBOMBO: I saw, yes.
 25 MR BUDLENDER SC: You didn't say we will

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1 end this maybe if it's convenient at the time or if it
 2 escalates. You said, "Today we are ending this matter."
 3 Correct?
 4 GENERAL MBOMBO: Because I believed, Mr
 5 Chairperson, that we were going to be successful based on
 6 the promise made by Mr Mathunjwa.
 7 MR BUDLENDER SC: No, no, Lieutenant
 8 General, that won't help you. You're saying what will
 9 happen if the promise is not successful. You're saying if
 10 it's not successful, "Today we will end this matter."
 11 Correct? Is that what you said?
 12 GENERAL MBOMBO: It is so, yes.
 13 MR BUDLENDER SC: You didn't say today we
 14 will end this matter if it escalates; you said, "Today we
 15 will end this matter if the promise does not materialise."
 16 Correct?
 17 GENERAL MBOMBO: What I was actually
 18 stressing on was that if the promise that had been given to
 19 us was not successful we will look at the circumstances,
 20 depending thereon, as I have said.
 21 MR BUDLENDER SC: Could we play it again,
 22 please? Let's play it again and you tell me whether that's
 23 what you said. Or rather, don't tell me; tell the
 24 Commissioners.
 25 [VIDEO SHOWN]

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1 Do you say that what you told the world at large
 2 through the media briefing was that you were going to end
 3 the matter on the 16th if there was escalation? Did you say
 4 that?
 5 GENERAL MBOMBO: Unfortunately,
 6 Chairperson, I did not explain what it is that we are going
 7 to do if they did not give us the weapons, because I did
 8 not want to explain the nitty-gritty of that, the police
 9 plan. This is what does not appear there which you wish
 10 should have been on the -
 11 MR BUDLENDER SC: No, I don't want to
 12 appear there how the police will execute it, which I'll
 13 accept you were not announcing. What you were announcing
 14 is that that day you were going to end the matter, and you
 15 said that without any qualification and you said that to
 16 the world at large at a media briefing which was specially
 17 arranged for the purpose. Is that correct?
 18 GENERAL MBOMBO: It is so, Chairperson.
 19 But as I said, as I've already said, it depended on the
 20 people who were going to put the operation into action.
 21 They would have decided, depending on whether the situation
 22 permitted.
 23 MR BUDLENDER SC: Could we look at JJJ88?
 24 Let's see what else you said. It's not, apparently it's
 25 not enough. It's not going to help. I don't want to go

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1 around this in circles. I want to put it to you, I want to
 2 remind you that you're giving evidence under oath, firstly.
 3 CHAIRPERSON: I don't think that's
 4 necessary -
 5 GENERAL MBOMBO: If you would just
 6 repeat -
 7 CHAIRPERSON: There's an insinuation
 8 there which I don't think is necessary. I'm sure she
 9 remembers very well that she's under oath. I reminded her
 10 after the tea adjournment. She swore at the beginning that
 11 she'd tell the truth, the whole truth, and nothing but the
 12 truth, and I'm sure she's conscious of that.
 13 MR BUDLENDER SC: Alright, General, let
 14 me just sum up.
 15 GENERAL MBOMBO: Agreed, Chairperson.
 16 MR BUDLENDER SC: You told the National
 17 Commissioner, you told the meeting, the extraordinary
 18 session after the NMF, you told the world at large at your
 19 special media briefing, and you told the television
 20 interviewer shortly after that that on the 16th if the
 21 strikers did not hand over their weapons, you would end the
 22 matter. Correct?
 23 GENERAL MBOMBO: It is correct,
 24 Chairperson, depending if the circumstances allowed us.
 25 MR BUDLENDER SC: But you never on any

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1 one of those four occasions said depending if the
 2 circumstances allow. Correct?
 3 GENERAL MBOMBO: It is so. Unfortunately
 4 what I knew, Mr Chairperson, was that the people serving
 5 under me who were going to execute the operation knew that
 6 they had to look at all these angles.
 7 MR BUDLENDER SC: Can I just ask one last
 8 question on this? I think we've spent enough time on it.
 9 Was it your decision that the disarming would take place
 10 only if there was escalation?
 11 GENERAL MBOMBO: That was my intention,
 12 but it would have, the operation would have depended on the
 13 people that were actually charged with executing the
 14 operation.
 15 MR SEMENYA SC: Chair, it seems to me
 16 that the witness may better understand the question if it
 17 is explained what is meant by escalation, otherwise I see
 18 this rotating, if that would help.
 19 CHAIRPERSON: I was proposing to take the
 20 penultimate adjournment before we proceed till 2 o'clock -
 21 MR BUDLENDER SC: Can I ask one question,
 22 Chair?
 23 CHAIRPERSON: Yes, certainly. This last
 24 one, we'll then take the adjournment and when we resume
 25 we'll go straight through till 2 o'clock.

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1 MR BUDLENDER SC: Thank you, Chair.
 2 Lieutenant General Mbombo, you made the decision, you gave
 3 the instruction at 13:30 on the 16th that stage 3 must be
 4 implemented. Correct?
 5 GENERAL MBOMBO: It is correct,
 6 Chairperson.
 7 MR BUDLENDER SC: At that time had there
 8 been escalation?
 9 GENERAL MBOMBO: That was the report made
 10 to me, yes.
 11 MR BUDLENDER SC: That there had been
 12 escalation?
 13 [12:27] GENERAL MBOMBO: That those people, that
 14 the negotiations had deadlocked, that Mr Mathunjwa's
 15 intervention was not successful, and that there was
 16 information received that the mood of the protesters had
 17 changed.
 18 MR BUDLENDER SC: So are you now telling
 19 the Commission that you gave that instruction at 13:30
 20 because the situation had escalated?
 21 GENERAL MBOMBO: According to me and in
 22 the manner that was, how it was reported to me, yes.
 23 MR BUDLENDER SC: And you never mentioned
 24 that in any of your previous statements or your previous
 25 evidence?

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1 CHAIRPERSON: What do you say about that?
 2 GENERAL MBOMBO: It is correct.
 3 CHAIRPERSON: Let me ask the last
 4 question before we take the adjournment. Mr Mathunjwa
 5 hadn't come back yet. The meeting started at 1:30. Mr
 6 Mathunjwa, as we know, was late in going to the koppie
 7 after you'd told him he had, was obliged to go and convince
 8 the people to lay down their arms. He went; he was still
 9 busy, he hadn't come back yet, or he may have – I'm not
 10 sure if he was still busy but he hadn't come back yet
 11 before 1:30. The meeting started at 1:30 and practically
 12 the first thing that's minuted is, "The Provincial
 13 Commissioner instructed Major General Annandale to proceed
 14 with the implementation of stage 3 of the operational
 15 plan." That appears from exhibit EE. You hadn't yet got
 16 feedback from Mr Mathunjwa that he'd been unsuccessful in
 17 convincing the people, as you'd told him he was obliged to
 18 do, or obliged to endeavour to do. Mr Mathunjwa hadn't
 19 come back yet and reported to you that he was unable to
 20 convince the people. That's correct, isn't it?
 21 GENERAL MBOMBO: Chairperson, there was
 22 no agreement made that Mr Mathunjwa would revert back to
 23 me, and secondly, Chairperson, whilst he was up there
 24 talking to the protesters, Brigadier Calitz was present
 25 there. As a result of a report received by me from General

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1 Mpembe it was said that Brigadier Calitz had reported to
 2 him that Mr Mathunjwa had been there and he did not agree
 3 with the people and that he had left, and then they
 4 observed what was going on then there.
 5 CHAIRPERSON: On this note we'll take the
 6 adjournment. I'd like us to be back by about quarter to 1
 7 so that we can go straight through until 2 o'clock. We'll
 8 now take the adjournment.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [12:52] CHAIRPERSON: The Commission resumes. Provincial
 11 Commissioner, you're still under oath. Mr Budlender, I
 12 think Mr Semanya raised the question before we adjourned
 13 that it might be fair to the witness, I think he said it
 14 would be fair to the witness, to explain to her what
 15 exactly the word "escalation" means.
 16 ZUKISWA MBOMBO: s.u.o.
 17 CROSS-EXAMINATION BY MR BUDLENDER (CONTD.):
 18 Well, I think she has now since answered tactical. I don't
 19 know whether – I'm happy to ask the question. Lieutenant-
 20 General, what do you think, what do you understand by the
 21 word "escalation?"
 22 GENERAL MBOMBO: According to my
 23 understanding, that the whole thing is going up.
 24 MR BUDLENDER SC: In other words, getting
 25 worse.

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1 GENERAL MBOMBO: Correct, Chairperson.
 2 MR BUDLENDER SC: Alright. Now I really
 3 would like to move on to another –
 4 GENERAL MBOMBO: But let me explain this,
 5 Mr Chairperson. According to me when I made the decision,
 6 the decision was not made based on the escalation of the
 7 situation. My decision was based on mainly that we bring
 8 the violence to an end by removing the weapons from the
 9 people. That is what confuses me about this escalation.
 10 MR BUDLENDER SC: Thank you.
 11 MR MAHLANGU: Sorry, I just –
 12 MR BUDLENDER SC: I'm sorry.
 13 GENERAL MBOMBO: Because the escalation
 14 did not come from me, the word "escalation," it came from
 15 the people who were involved in the operation.
 16 COMMISSIONER HEMRAJ: General, can I just
 17 ask you, at the time that you conveyed your decision to the
 18 officers commanding on the 15th, did you use the term D-day?
 19 GENERAL MBOMBO: It's not so,
 20 Chairperson, I never used that word.
 21 MR BUDLENDER SC: General, I'd like to
 22 show you two passages in the record of this Commission.
 23 Could we go to day 156, the transcript on day 156, to page
 24 17685. There you'll see Brigadier Calitz is giving
 25 evidence and there's a discussion, I'm asking questions,

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1 there's a discussion about the briefing which took place
 2 after the JOCCOM meeting and then at line 8 – briefing of
 3 the POPS commanders, then at line 8 the passage goes as
 4 follows. "Budlender: Now by the time that
 5 briefing took place at 14:30 the JOCCOM had
 6 already decided what was going to be done, correct?"
 7 Brigadier Calitz answers, "Mnr die Voorsitter, hulle het so
 8 aan my meegedeel om 14:30, dit is korrek." Mr Chairman,
 9 they so informed me at 14:30, that is correct. Then the
 10 question is asked, "And they had decided when it was going
 11 to be done, they said it would be at 3:30, subject to
 12 variation by the operational commander." And Brigadier
 13 Calitz says, "Die tyd aan my gegee was 15:30, korrek." The
 14 time given to me was 15:30, correct. Then he is asked,
 15 "And those decisions had been made without the POP
 16 commanders being present?" And Brigadier Calitz says, "Ek
 17 verstaan so, korrek
 18 so, mnr die Voorsitter." I understand so,
 19 correct, Mr Chairman. And then I'm about to ask another
 20 question, then Mr Semenya you'll see at the foot of the
 21 page interjects and then can we go to the top of page
 22 17686. "Mr Semenya wants to say something, yes, Mr
 23 Semenya?" And then Mr Semenya says, "Chair, the correct
 24 complexion of the evidence is, there was no decision taken
 25 at 13:30, it was the implementation of a decision taken by

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1 the Provincial Commissioner who already announced that
 2 extraordinary session the night before." Do you see that?
 3 GENERAL MBOMBO: Yes, I see, Chairperson.
 4 MR BUDLENDER SC: Is that correct?
 5 GENERAL MBOMBO: It is so, yes.
 6 MR BUDLENDER SC: Alright, and then can I
 7 show you another passage. I'm not going to ask you
 8 questions about it because we just go around in circles if
 9 I do but I want to take you to day 1, the transcript of day
 10 136, page 14482. Now at 14482 Mr Chaskalson is questioning
 11 Brigadier Calitz – I beg your pardon, questioning Colonel
 12 Scott about the question of threats that were allegedly
 13 made. You'll see at the top of page 14482 there's this
 14 discussion about what Captain Adriaio said and the fear for
 15 safety because of the crowds changing and so on. Do you
 16 see that? And then can you now go to – that's the context
 17 and then at the foot of the page line 24 Mr Semenya
 18 intervenes and he says the following. "Chair, I am aware
 19 that the evidence of General Mzembe, amongst others, is
 20 that there was an escalation in tension leading up to the
 21 phase, or stage 3, but as far as SAPS' case is concerned,
 22 there was going to be a stage 3 if the arms were not
 23 voluntarily surrendered by 9 o'clock as promised. That's
 24 our case." Do you see that?
 25 GENERAL MBOMBO: I see that, Chairperson.

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1 MR BUDLENDER SC: Is that correct?
 2 GENERAL MBOMBO: It is so, Chairperson.
 3 MR BUDLENDER SC: So stage 3 was going to
 4 be implemented if the arms were not surrendered, not if
 5 there was escalation.
 6 GENERAL MBOMBO: This is what I have been
 7 saying to you, Mr Chairperson, that what was important to
 8 me and what made me make this decision was that my idea, my
 9 main idea was that we take, we get the weapons, but whether
 10 their position was becoming worse, whether there was
 11 escalation or not, if we had not got the weapons, it was to
 12 me still a problem pertaining to the peace that I wanted to
 13 be there.
 14 MR BUDLENDER SC: Thank you. Alright,
 15 now I want to just follow up on the question that the
 16 Chairperson asked you before the tea, before we took the
 17 break, namely about what you knew at the time of the 13:30
 18 JOCCOM meeting, right, and I want you to look at FFF25
 19 which is the occurrence register. Could you go to an entry
 20 into page 24, entry number 1004?
 21 GENERAL MBOMBO: Page 24?
 22 MR BUDLENDER SC: Page 24, entry number
 23 1004.
 24 GENERAL MBOMBO: I see, Chairperson.
 25 MR BUDLENDER SC: That's a situation

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1 report at 11:55. It says, "Brigadier Tsiloane reported
 2 that the President of AMCU just left the base on his own to
 3 visit the group at the koppie and he left the rest of the
 4 group of AMCU behind and the Lonmin branded Combi with
 5 other members of AMCU drove to the koppie and Captain
 6 Seleke of mobile operations escorted them. Then the next
 7 one I want you to look at is 1006, 12:12 and the next
 8 situation report. P1, now P1 is papa1, is it? Is that
 9 Brigadier Calitz?

10 GENERAL MBOMBO: Yes.
 11 MR BUDLENDER SC: "P1 reported that the
 12 AMCU member arrived and they addressed the media. They
 13 then went to the group together with the media. The group
 14 of women are also at the gathering." Then the next one,
 15 1008 that's at 12:35, situation report. "Papa1 reported
 16 that 24 Media group busy with AMCU leaders." Next one
 17 1009, 13:05 situation report, "Papa1 reported that
 18 everything still under control, AMCU still addressing the
 19 people." "1010, 13:25 situation report. Papa1 reported
 20 that the AMCU people addressed the group and the group are
 21 unhappy and AMCU promised that they will be back after half
 22 an hour with the mine management because the group are not
 23 satisfied. They said they want R12 500. The group of
 24 women were still at the gathering." Now is that the report
 25 which you heard from Brigadier Calitz which you referred to

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1 when you were giving evidence before the break?

2 GENERAL MBOMBO: I am not sure of what
 3 report General Mpembe was referring to but the report I
 4 received had mentioned that the negotiations had failed,
 5 both on our side as police and on the side of AMCU and that
 6 the mood of the people out there had changed. I was told
 7 that it was a report that came from papa 1. I did not make
 8 further enquiries as to who and who had given this report.

9 MR BUDLENDER SC: And the report was that
 10 so far the attempt had been unsuccessful but Mr Mathunjwa
 11 was going to make another attempt, he was going to go and
 12 try to get the management to come back with him. Do you
 13 see that?

14 GENERAL MBOMBO: I see that, Chairperson.
 15 MR BUDLENDER SC: Were you told that?
 16 GENERAL MBOMBO: No, I was not told about
 17 that.
 18 MR BUDLENDER SC: So your officers told
 19 you that the negotiations had broken down when in fact Mr
 20 Mathunjwa was still making his attempts, is that what
 21 you're saying?
 22 GENERAL MBOMBO: That's what I was told,
 23 Chairperson.
 24 MR BUDLENDER SC: Who gave you that
 25 misleading report?

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1 GENERAL MBOMBO: I wouldn't say it was
 2 misleading, Chairperson.
 3 MR BUDLENDER SC: You don't think it was
 4 misleading to say negotiations have come to an end when in
 5 fact the party on the other side says I'm coming back in
 6 half an hour, I'm still trying. You don't think that's
 7 misleading?
 8 GENERAL MBOMBO: Because I did not know
 9 of that at the time.
 10 CHAIRPERSON: You now know because the
 11 occurrence book has been put to you. The question now is,
 12 in the light of what you now know, will you accept that the
 13 report that was made to you was misleading?
 14 GENERAL MBOMBO: Not totally, Chairperson
 15 -
 16 CHAIRPERSON: And if it was partially
 17 misleading, the question is who made this partially
 18 misleading report to you?
 19 GENERAL MBOMBO: The report was made to
 20 me by General Mpembe. Why I'm saying not totally, even
 21 here in the OB entry, sir, is the report from papa1 which
 22 says that the people are not happy. That is a report
 23 possibly that is saying the mood of the people had changed.
 24 MR BUDLENDER SC: - go there, Lieutenant-
 25 General, because that will take us on another deviation.

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1 The people were unhappy, the group were unhappy but you say
 2 General Mpembe never told you that Mr Mathunjwa was still
 3 in the midst of his attempts and he was going to, he said
 4 he'd be back in half an hour. You were never told that.
 5 GENERAL MBOMBO: No, I wasn't told that,
 6 Chairperson.
 7 MR BUDLENDER SC: Don't you think that's
 8 a very serious matter? You thought the negotiations had
 9 failed. In fact they were still being attempted.
 10 GENERAL MBOMBO: As I see in this
 11 explanation in the OB entry.
 12 MR BUDLENDER SC: That's a very, very
 13 serious dereliction of duty by General Mpembe, isn't it, to
 14 tell you that negotiations have failed when in fact they're
 15 still being attempted.
 16 GENERAL MBOMBO: He was - if that
 17 explanation had been given to him, that report, I take it,
 18 it was given to him by somebody.
 19 MR BUDLENDER SC: Yes, well, that's what
 20 the occurrence book says, that was the situation report
 21 from papa1, correct?
 22 GENERAL MBOMBO: It is so, yes.
 23 MR BUDLENDER SC: That's General Mpembe's
 24 fault again.
 25 GENERAL MBOMBO: I did not say so, sir.

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1 MR BUDLENDER SC: Well, whose fault is it
 2 if it's not General Mpmembe's fault?
 3 GENERAL MBOMBO: I wouldn't be sure
 4 because even that which appears on the OB has been written
 5 by a human being.
 6 MR BUDLENDER SC: I don't understand
 7 that. Who was at fault for not giving you the full report?
 8 GENERAL MBOMBO: The person who was
 9 supposed to give me a report was General Mpmembe and indeed
 10 he is the person who did.
 11 MR BUDLENDER SC: You now say he gave you
 12 a misleading report, so he is the person who is to blame.
 13 GENERAL MBOMBO: If it was a misleading
 14 report, yes, Chairperson.
 15 MR BUDLENDER SC: You just agreed with
 16 the Chairperson that it was misleading because it didn't
 17 mention that the negotiations were still being attempted.
 18 GENERAL MBOMBO: It was, as I said, not
 19 totally misleading. I said so, Chairperson.
 20 MR BUDLENDER SC: It was partially
 21 misleading, do you accept that?
 22 GENERAL MBOMBO: I agree with that, if I
 23 read what appears in the OB.
 24 MR BUDLENDER SC: And General Mpmembe is
 25 to be blamed for misleading you.

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1 GENERAL MBOMBO: As I say, it is not
 2 totally misleading. The report that he gave me is not
 3 totally misleading.
 4 MR BUDLENDER SC: Did you think the
 5 negotiations had failed and come to an end?
 6 GENERAL MBOMBO: According to the report
 7 that I received, yes, I thought so.
 8 MR BUDLENDER SC: But we now know that
 9 was not the truth. The negotiations were still being
 10 attempted.
 11 GENERAL MBOMBO: According to the entry
 12 in the report, yes, it appears so.
 13 MR BUDLENDER SC: Therefore you were
 14 misled.
 15 GENERAL MBOMBO: Not totally, again.
 16 CHAIRPERSON: You weren't totally misled,
 17 you were partially misled. Would you please tell us in
 18 what respects you were misled?
 19 GENERAL MBOMBO: I wasn't told, sir, that
 20 Mr Mathunjwa would return back to the koppie.
 21 MR BUDLENDER SC: Chair, I'm going to
 22 move on to another subject now, unless members of the
 23 Commission have questions. I'd like to now deal, to
 24 discuss with you, General, the National Management Forum
 25 meeting and the extraordinary session on the 15th of August

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1 and I'm hoping we can make quicker progress here, in your
 2 interests and in mine – and the Commission's. Now, we know
 3 that Captain Letloko and Brigadier Mahlalela are
 4 responsible for the minutes of the NMF, do you know that?
 5 GENERAL MBOMBO: That's correct, sir.
 6 MR BUDLENDER SC: And they were both
 7 present at the extraordinary session at which you discussed
 8 Marikana.
 9 GENERAL MBOMBO: I remember Brigadier
 10 Mahlalela. I am not sure of the captain. He could have
 11 been there, I don't remember.
 12 MR BUDLENDER SC: Well, and it's
 13 reasonable to assume that Brigadier Mahlalela heard what
 14 was said at that meeting and if Captain Letloko was there,
 15 that she also heard it, correct?
 16 GENERAL MBOMBO: It should be so, yes.
 17 MR BUDLENDER SC: Let's read what was
 18 said at – what they recorded as having been said at that
 19 meeting. Could you go to exhibit JJJ177?
 20 GENERAL MBOMBO: I get it, sir.
 21 MR BUDLENDER SC: Now it says, "The
 22 National Commissioner opened the meeting" – well, firstly
 23 let's see who was there. The National Commissioner, all
 24 Provincial Commissioners, that's nine people, Divisional
 25 Commissioner, Operational Response Service, that makes 11,

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1 Deputy National Commissioner Operational Services makes 12
 2 and the Acting Divisional Commissioner CI makes 13. So
 3 there were 13 present, is that right?
 4 GENERAL MBOMBO: It can be so.
 5 MR BUDLENDER SC: Yes. Now let's read
 6 what was recorded as having happened at the meeting. "The
 7 National Commissioner opened the meeting and requested the
 8 Provincial Commissioner North-West, Lieutenant-General
 9 Mbombo, to brief the attendees on issues of the labour
 10 unrest in Lonmin Mine in Marikana, North-West." Is that
 11 correct?
 12 GENERAL MBOMBO: That is correct, sir.
 13 MR BUDLENDER SC: "After deliberations" –
 14 were there deliberations? Is that correct?
 15 GENERAL MBOMBO: It is so.
 16 CHAIRPERSON: Before we get there, did
 17 you brief them? You were asked to brief them on the issues
 18 of the labour unrest. Did you so brief them?
 19 GENERAL MBOMBO: I did so, Chairperson.
 20 CHAIRPERSON: How did your briefing take?
 21 GENERAL MBOMBO: Not very certain, Mr
 22 Chairperson, it wasn't more than 10 minutes or so.
 23 [13:12] MR BUDLENDER SC: Now, let's read what it
 24 says. It says, "After deliberations the meeting endorsed
 25 the proposal to disarm the protesting masses and further

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1 indicated that additional resources must be made available
 2 upon need identification by the Provincial Commissioner,
 3 North-West." Right, now let's take it step by step. Did
 4 you make a proposal that the SAPS must disarm the strikers?
 5 GENERAL MBOMBO: As I have already
 6 mentioned that, that I had explained to them that, during
 7 the discussions that were taking place, that I had hoped
 8 that there would be a solution but if this is not
 9 successful, my intention was that we take the weapons which
 10 are the result of the violence existing.
 11 MR BUDLENDER SC: Right and did the
 12 meeting endorse what you said?
 13 GENERAL MBOMBO: Maybe I am not sure of
 14 the meaning of the word "endorse" –
 15 MR BUDLENDER SC: Well, let's take it
 16 step by step. You say there were deliberations. Did the
 17 meeting say that they agreed with what you had said you
 18 were going to do?
 19 GENERAL MBOMBO: They agreed with me, Mr
 20 Chairperson. Those who were to assist me with the weapons
 21 that were to be taken, agreed that –
 22 MR SEMENYA SC: No – no. Can the
 23 interpretation be repeated? I'm sorry, Chair.
 24 GENERAL MBOMBO: They agreed with the
 25 decision and the proposal that I was putting, Chairperson.

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1 The others who were to assist with the necessary resources
 2 for this operation agreed that they would do so.
 3 MR BUDLENDER SC: So as I understand it,
 4 your only disagreement with the minute is that the minute
 5 says that you made a proposal and you say you told them
 6 what you had already decided. Is that the only point of
 7 disagreement?
 8 GENERAL MBOMBO: You were asking about
 9 endorsement, sir, where I said under the circumstances here
 10 I do not understand the meaning of the word because what I
 11 know is that it is I who gave the explanation and the
 12 reason and the decision that I had taken.
 13 MR BUDLENDER SC: Yes, and they said they
 14 agree with your decision, that's what you say.
 15 GENERAL MBOMBO: That's what they said,
 16 yes.
 17 MR BUDLENDER SC: So your only
 18 disagreement with the minute is that the minute says that
 19 the meeting endorsed your proposal when in fact you say
 20 what the meeting did was it endorsed the decision which had
 21 already been made and which you told them about, is that
 22 right?
 23 GENERAL MBOMBO: I take it that they
 24 supported me in the decision that I had already taken.
 25 MR BUDLENDER SC: Now on the –

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1 MR MPOFU: Chairperson - Chairperson, I
 2 don't if it's a matter of interpretation but the witness
 3 said that, she used the words interchangeably, that the
 4 meeting had agreed with her proposal and decision. She
 5 didn't distinguish between the two things.
 6 CHAIRPERSON: Mr Interpreter, is that
 7 correct?
 8 MR MAHLANGU: Chairperson, if the
 9 question would be repeated I –
 10 CHAIRPERSON: No, what Mr Mpofu says is
 11 the witness used the expressions proposal and decision
 12 interchangeably and said that the meeting had endorsed the
 13 – agreed with the proposal and the decision. Am I
 14 repeating it correctly, Mr Mpofu?
 15 MR MPOFU: That's correct, Chairperson.
 16 CHAIRPERSON: Now the question is
 17 whether, inasmuch as that's a point raised in relation to
 18 the accuracy of your interpretation, what do you say about
 19 it?
 20 MR MAHLANGU: The witness spoke of a
 21 decision. I am not sure if the word "proposal" was used by
 22 the witness but she could –
 23 MR MPOFU: Well, Chairperson, the record
 24 will speak for itself otherwise we can just rewind. It was
 25 literally two questions ago, she said proposal and

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1 decision, with her own mouth and so did the interpreter, by
 2 the way. It's not your fault, she said –
 3 CHAIRPERSON: Mr Mpofu, the witness
 4 wishes to say something. Yes?
 5 GENERAL MBOMBO: I am asking permission
 6 to explain this, Mr Chairperson.
 7 CHAIRPERSON: Permission granted.
 8 GENERAL MBOMBO: The reason why I also
 9 included proposal, Mr Chairperson, is because I was
 10 following the manner in which it appears in the minutes but
 11 the truth of the matter is that I told them of my decision.
 12 MR BUDLENDER SC: Alright. Now on the
 13 20th of September 2012, that's about five weeks after the
 14 meeting, at 8:27 Brigadier Mahlalela distributed these
 15 draft minutes to those who had been present at the meeting
 16 and she wrote as follows, I'm going to quote what she said.
 17 I don't have the document to put in because it's
 18 classified. She said, "Appended herewith please receive
 19 the minutes for your perusal and it will be appreciated if
 20 possible amendments can be communicated with the officer of
 21 the writer hereof by way of e-mail to
 22 Ntombenif@saps.gov.za." That's the classified document.
 23 Did you receive that e-mail? It was addressed to the whole
 24 of the National Management Forum.
 25 GENERAL MBOMBO: I wasn't present at the

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1 meeting. I'm not sure if I did receive that minute, it
 2 could have been received by my office.
 3 CHAIRPERSON: I don't – sorry, I don't
 4 understand. You were present at the meeting on the 15th of
 5 August. You are a member of the National Management Forum
 6 in your capacity as Provincial Commissioner, is that
 7 correct?
 8 GENERAL MBOMBO: That's correct, sir.
 9 CHAIRPERSON: And you attended the
 10 meeting, you spoke at the meeting, you weren't one of those
 11 who sent in an apology like Lieutenant-General Moonoo and
 12 Lieutenant-General Mazibuko, you were there, right, at that
 13 meeting. Correct?
 14 GENERAL MBOMBO: If I could explain, Mr
 15 Chairperson, if you're referring to the meeting of the 15th
 16 or the 20th of September.
 17 CHAIRPERSON: No, I think you
 18 misunderstand me and if I am misunderstanding Mr Budlender
 19 will correct me. The position as I understand it is this,
 20 you had a meeting that you attended on the 15th of August
 21 2012.
 22 GENERAL MBOMBO: That is correct.
 23 CHAIRPERSON: Minutes were thereafter
 24 compiled, draft minutes were compiled. In fact they've got
 25 a stamp "Draft" on each page. The draft minutes were then

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1 sent to all the members of the Management Forum who had
 2 been at the meeting.
 3 GENERAL MBOMBO: Mm.
 4 CHAIRPERSON: And they were sent under
 5 cover of a note by the person who had drafted the minutes
 6 and what she said in that note was what Mr Budlender read
 7 to you. So there wasn't a meeting on that day, what
 8 happened on that day was the draft minutes were sent to the
 9 people who had been at the meeting on the 15th of August,
 10 under cover of that note. So now that you understand what
 11 it's all about, please listen while Mr Budlender reads the
 12 covering note to you again.
 13 MR BUDLENDER SC: Here's what the
 14 covering note says, "Appended herewith please receive the
 15 minutes for your perusal and it will be appreciated if
 16 possible amendments can be communicated with the office of
 17 the writer hereof by way of e-mail to
 18 Ntombenif@saps.gov.za." Now that was sent to all members
 19 of the National Management Forum. Did you receive it?
 20 GENERAL MBOMBO: I said, Chairperson,
 21 that meeting, the meeting of the 20th or before the 20th I
 22 was not at work, to an extent that I was not in the
 23 meeting, I was not present in the meeting of the 20th. I'm
 24 not denying that those minutes did come to my office
 25 because I do receive such minutes.

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1 MR BUDLENDER SC: I take it when you're
 2 away from the office, when you come back you check the e-
 3 mails which have arrived in your absence.
 4 GENERAL MBOMBO: It is correct, yes.
 5 MR BUDLENDER SC: So these minutes must
 6 have come, these draft minutes must have come to your
 7 attention because they were, it was addressed to you.
 8 GENERAL MBOMBO: It is so, yes.
 9 MR BUDLENDER SC: Now Brigadier Mahlalela
 10 sent the e-mail to all the members of the NMF and she
 11 informs us that not one of them suggested that the draft
 12 minutes were incorrect. Do you accept that?
 13 GENERAL MBOMBO: If I was not present,
 14 that which was to be a question by me would not have been
 15 questioned by the other people. Secondly, Mr Chairperson –
 16 CHAIRPERSON: Carry on interpreting – I
 17 want to ask you a question about the first half of your
 18 answer. Carry on with the second half.
 19 GENERAL MBOMBO: Secondly, Chairperson,
 20 we are in a position to correct minutes if we are in a
 21 meeting that follows thereafter.
 22 CHAIRPERSON: Am I correct in saying
 23 there wasn't a meeting on the 20th of September. This is
 24 simply an e-mail that was sent out to the people who had
 25 been at the meeting on the 15th of August.

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1 MR BUDLENDER SC: That is so, Chair.
 2 CHAIRPERSON: And read it again please,
 3 there's a point I want to make sure of. I can't see the
 4 document because it's classified.
 5 MR BUDLENDER SC: "Appended herewith
 6 please receive the minutes for your perusal and it will be
 7 appreciated if possible amendments can be communicated with
 8 the officer of the writer hereof by way of e-mail to
 9 Ntombenif@saps.gov.za."
 10 CHAIRPERSON: So it's clear from that,
 11 that you didn't have to be present at the subsequent
 12 meeting to raise objections to the accuracy of the draft
 13 minutes. In fact you were invited in that classified
 14 document to send your corrections by e-mail to the address
 15 set out in the note that's been read, isn't that correct?
 16 GENERAL MBOMBO: It's correct, Chair, but
 17 I have said sir, that during that time in the vicinity of
 18 that meeting I was not in the office.
 19 CHAIRPERSON: What do you mean, in the
 20 vicinity in that office? When was the next meeting held?
 21 I think we've got –
 22 MR BUDLENDER SC: 9 and 10 October.
 23 CHAIRPERSON: The next meeting was 9 and
 24 10 October. Are you saying under oath that in the period
 25 between the sending of that e-mail which has been, which is

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1 classified and has been read to us, and the 9th of October,
 2 you never looked at any of the e-mails that you received at
 3 all during that period? Is that what you're telling us
 4 under oath?
 5 GENERAL MBOMBO: I did look at those when
 6 I came back to the office, Mr Chairperson.
 7 CHAIRPERSON: When did you come back to
 8 the office – sorry, sorry, I didn't mean to interrupt you,
 9 forgive me. Please carry on with your answer.
 10 GENERAL MBOMBO: I took it that I would
 11 be able to make any corrections that I would need to if we
 12 are in a meeting.
 13 CHAIRPERSON: When did you know that you
 14 wouldn't be attending the meeting on the 9th and 10th of
 15 October?
 16 GENERAL MBOMBO: I don't remember so
 17 clearly, Mr Chairperson.
 18 CHAIRPERSON: Would you have had the
 19 opportunity before the meeting – if you didn't go to the
 20 meeting did you send your apologies?
 21 GENERAL MBOMBO: I did send an apology,
 22 sir, and also a person to represent me.
 23 CHAIRPERSON: Sorry, and also?
 24 GENERAL MBOMBO: And also a person to
 25 represent me in the meeting.

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1 CHAIRPERSON: Yes, you sent somebody to
 2 represent you. Now, so there were two things you could
 3 have done if you were unhappy with the minutes. You could
 4 either have sent, together with your apologies, a note
 5 saying I can't attend the meeting but please note that the
 6 recordal of what happened during the extraordinary session
 7 is incorrect and must be amended as follows, that's one
 8 thing you could have done. Alternatively, you could have
 9 told the person who went in your place to convey that
 10 information to the secretary of the forum, is that right?
 11 GENERAL MBOMBO: That's correct,
 12 Chairperson.
 13 CHAIRPERSON: You apparently did neither,
 14 is that also correct?
 15 GENERAL MBOMBO: I'm not very clear what
 16 you're saying, Chairperson.
 17 CHAIRPERSON: There were two things,
 18 there were two things you could have done. You could
 19 either have sent a note together with your apologies, with
 20 the corrections, or you could have asked the person who
 21 went in your place, your deputy I take it who went in your
 22 place, to have gone to the meeting and said, I am informed
 23 by my Provincial Commissioner that this recordal is
 24 incorrect and this is the true position. So you could
 25 either have done one or the other of those two things,

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1 that's right?
 2 GENERAL MBOMBO: It was supposed to be
 3 so, Mr Chairperson, but it was a mistake on my part that I
 4 did not do so.
 5 MR BUDLENDER SC: There were 12 other
 6 people, senior police officer officers present at that
 7 meeting, not one of them sent in a message, a reply or at
 8 the meeting said by the way, these minutes are not correct
 9 in what they say took place, not one of them.
 10 GENERAL MBOMBO: I see as the e-mail
 11 states, yes, I see it in the e-mail.
 12 MR BUDLENDER SC: And then on the 8th of
 13 October Brigadier Mahlalela again sent an e-mail to the
 14 members of the NMF, which is again classified, and she
 15 again attached the minutes of the meeting, draft minutes of
 16 the meeting of the 15th of August. Did you receive that e-
 17 mail?
 18 GENERAL MBOMBO: I must have received it,
 19 Chairperson.
 20 MR BUDLENDER SC: Now having been given
 21 the draft minutes for a second time, did you say oh, hang
 22 on, these draft minutes are not correct?
 23 GENERAL MBOMBO: I, dependent on, I will
 24 – I said to myself I will find a chance in the meeting.
 25 One other thing, Chairperson, this is because I did not

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1 think that this extraordinary meeting was part of that
 2 meeting.
 3 MR BUDLENDER SC: Let me just understand
 4 you. Do you say, from your answer you've just given, you
 5 said if you'd had the chance you would have raised the
 6 matter. Does that mean that you actually read the minutes
 7 and saw that they were incorrect and you intended to raise
 8 the matter but you didn't get the opportunity?
 9 GENERAL MBOMBO: Because I could not be
 10 present in that meeting.
 11 MR BUDLENDER SC: So you knew all along
 12 that the minutes, the draft minutes were incorrect?
 13 GENERAL MBOMBO: Only in the matter of
 14 the extraordinary meeting, yes.
 15 MR BUDLENDER SC: And you did nothing to
 16 have them put right, right until the time of this
 17 Commission and this evidence.
 18 GENERAL MBOMBO: I thought this would
 19 have to be done in accordance with the meeting procedures
 20 to correct this at the time that I was given a chance to do
 21 so.
 22 MR BUDLENDER SC: Has the NMF met since
 23 October 2012?
 24 GENERAL MBOMBO: I think there was a
 25 meeting, though I'm not sure when.

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1 MR BUDLENDER SC: Only one since from
 2 October 2012 until now, February 2014, there's been only
 3 one meeting of the NMF?
 4 GENERAL MBOMBO: What is clear, Mr
 5 Chairperson, is that if the extraordinary session wasn't
 6 that of the NMF –
 7 MR BUDLENDER SC: That is not the
 8 question, General. The question is, since October 2012
 9 until now, February 2014, has there been more than one
 10 meeting of the NMF?
 11 GENERAL MBOMBO: It is so.
 12 MR BUDLENDER SC: How many meetings, it
 13 meets every one or two months, doesn't it?
 14 GENERAL MBOMBO: Yes, it is so.
 15 MR BUDLENDER SC: At any of those
 16 meetings did you say now I have the opportunity, I want to
 17 correct those minutes which I've noticed were wrong?
 18 GENERAL MBOMBO: If the extraordinary
 19 session had again sat, I would have had the chance.
 20 MR BUDLENDER SC: Why didn't you say it
 21 at one of the main meetings, saying look out, these minutes
 22 are wrong, we must get the extraordinary session together
 23 again so that they can be corrected?
 24 GENERAL MBOMBO: I did not see that as my
 25 problem because I was thinking that if there existed and it

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1 was a necessity for it, for that extraordinary meeting to
 2 sit again I would have corrected.
 3 MR BUDLENDER SC: Now we know the minutes
 4 reflect what Captain Letloko and/or Brigadier Mahlalela who
 5 were present and whose job was to take the minutes, said
 6 had been discussed at the meeting, they said this is what
 7 was discussed, correct?
 8 GENERAL MBOMBO: That's what they said,
 9 Mr Chairperson, yes.
 10 MR BUDLENDER SC: And 13 senior members
 11 of the SAPS who were present at the meeting were given two
 12 opportunities, two opportunities, in fact three
 13 opportunities to dispute the correctness of what was said,
 14 the correctness of the draft minutes, correct?
 15 GENERAL MBOMBO: There was no such a
 16 chance, Mr Chairperson, where they could speak of that
 17 session again.
 18 MR BUDLENDER SC: They were given two
 19 opportunities, General, at least, because first they were
 20 specifically invited to say whether the minutes were
 21 correct and then they were sent a second copy of the
 22 minutes, of the draft minutes. So on two occasions they
 23 had the opportunity to say this is not right.
 24 CHAIRPERSON: The problem is you use the
 25 word "say." They were given the opportunity to send in e-

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1 mails in which they set out the corrections and they didn't
 2 avail themselves of those opportunities. That's correct,
 3 isn't it?
 4 GENERAL MBOMBO: It is so, Chairperson.
 5 [13:31] MR BUDLENDER SC: Now I'm going to move
 6 off that aspect of it, but I have to say to you that it's
 7 extraordinary that no-one until very recently has said in
 8 an email or on the record of a meeting, these minutes are
 9 not correct. Can you explain that? When there were 13
 10 senior people present at the meeting.
 11 MR SEMENYA SC: It happened in October –
 12 CHAIRPERSON: I don't know that she can
 13 be expected to explain why other people didn't act in a
 14 particular way. I don't think that's a question that I can
 15 allow. Mr Semenya?
 16 MR SEMENYA SC: And we have it on record
 17 that that actually happened in the subsequent meeting of 9
 18 October.
 19 CHAIRPERSON: No, no, all that happened
 20 there was that it was said that this meeting shouldn't
 21 adopt those minutes, they should be adopted by a subsequent
 22 meeting of an extraordinary session. But no-one at that
 23 point said oh, by the way, these minutes aren't right
 24 anyway, but I think that's a point that we can ignore for
 25 the present purposes.

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1 MR BUDLENDER SC: Chair, yes, the
 2 extraordinary session was a special meeting of 13 members
 3 of the top management of the SAPS. We've seen who was
 4 there. Correct?
 5 GENERAL MBOMBO: It is so, yes.
 6 MR BUDLENDER SC: The sole purpose of
 7 that extraordinary session was to discuss the situation at
 8 Marikana. Correct?
 9 GENERAL MBOMBO: It was for me to give an
 10 explanation to the National Commissioner of Police so as to
 11 be able to help me, to assist me with the necessary things
 12 from other, resources from other provinces.
 13 MR MPOFU: Ja, I think the word that was
 14 used was "izixhobo," which means weapons.
 15 MR MAHLANGU: No, no, Mr Chairperson, Mr
 16 Mpofo is practically wrong here. Xhosa is a very broad
 17 language. The word "izixhobo" has more than one meaning.
 18 It means weapons, it also means utilities that you can use,
 19 it means tools.
 20 MR MPOFU: Yes, ja I agree with Mr
 21 Mahlangu. As long as one of the meanings is weapons.
 22 CHAIRPERSON: We now have unanimity on
 23 the point, on the ambiguity if the word, so you can carry
 24 on.
 25 MR BUDLENDER SC: I also agree with Mr

<p style="text-align: right;">Page 21644</p> <p>1 Mpfu, Mr Mahlangu, Chair. 2 MR MPOFU: We all agree. 3 MR MAHLANGU: I want to say, Mr 4 Chairperson, I used the word because it had been used in 5 the context and I interpreted in the context. 6 MR BUDLENDER SC: Now this meeting, the 7 only matter discussed at this meeting was Marikana. 8 Correct? 9 GENERAL MBOMBO: That's all, yes. 10 MR BUDLENDER SC: A meeting of 13 very 11 senior SAPS officers under the leadership of a National 12 Commissioner? 13 GENERAL MBOMBO: It is so, Sir. 14 MR BUDLENDER SC: Why did you not mention 15 the meeting in your statement to the Commission? 16 GENERAL MBOMBO: I had mentioned this in 17 my statement, Mr Chairperson. 18 MR BUDLENDER SC: Not in your first 19 statement. You only mentioned it in your second statement 20 when we asked you questions about it. 21 GENERAL MBOMBO: Chairperson, I mentioned 22 it even in my first statement. I think I have mentioned it 23 in my first statement. 24 MR BUDLENDER SC: Well, I think you're 25 wrong, but let's check. If you're right and I'm wrong I</p>	<p style="text-align: right;">Page 21646</p> <p>1 other 12 people present, on what was going on. We 2 discussed it. An offer was made to – the members agreed 3 with what I, I told them that I wanted to disperse and 4 disarm the protesters if they didn't hand over their 5 weapons. The meeting agreed with me and I was offered 6 additional resources if I want it.' You say that's what 7 that means? 8 GENERAL MBOMBO: As I had said earlier, 9 Mr Chairperson, that the truth of the matter is that my 10 statement was not fully detailed. I agree that if you look 11 at this paragraph you do not find what you are saying in 12 the manner in which you say it. 13 CHAIRPERSON: It's not correct that you 14 only apprised the National Commissioner of the situation at 15 Marikana, you also apprised 11 other senior members of the 16 police service, all of them members of the Management 17 Forum. Is that right? Why did you only talk about the 18 National Commissioner and not mention the presence of the 19 other persons to whom, who also received the briefing that 20 you gave? 21 GENERAL MBOMBO: Chairperson, in this 22 paragraph I only mentioned my discussion with the National 23 Commissioner after I was telephoned by General Mpembe that 24 there was this discussion about the events of the following 25 day at 9 o'clock. It's a decision that I had not taken yet</p>
<p style="text-align: right;">Page 21645</p> <p>1 will apologise, but let's see if we can find it. I think 2 you may be referring to paragraph 18 of your first 3 statement, GGG5. 4 CHAIRPERSON: I'm sorry, what paragraph 5 are you – 6 MR BUDLENDER SC: Paragraph 18, page 7, 7 GGG5. Is that what you're referring to, Lieutenant 8 General? 9 GENERAL MBOMBO: Yes, it is so, 10 Chairperson. 11 MR BUDLENDER SC: Well, let's read what 12 it says. It says, "On Wednesday the 15th of August 2012 13 while I was attending the National SAPS Management Forum 14 meeting in Midrand, Johannesburg, I received a telephonic 15 feedback from Major General Mpembe to the extent that there 16 has been an agreement between AMCU and SAPS that the 17 following day at 09h00 the protesters shall lay down 18 weapons and disperse peacefully. I took the opportunity to 19 apprise the National Commissioner of the situation in 20 Marikana and that if negotiation efforts fail I shall 21 instruct members to disperse, disarm and possibly arrest 22 the protesters." Now you say that means the same as a 23 meeting, 'An extraordinary meeting of 13 senior members of 24 the National Management Forum was held under the leadership 25 of the National Commissioner. I briefed the 13 people, the</p>	<p style="text-align: right;">Page 21647</p> <p>1 when I spoke to the National Commissioner and the other 2 members who were there. That is why I agree, Mr 3 Chairperson, that this statement does not explain the parts 4 that I had in that meeting. 5 MR BUDLENDER SC: It goes beyond that, 6 Lieutenant General. It doesn't explain that a meeting was 7 held at all. 8 GENERAL MBOMBO: I agree with you, Sir. 9 MR BUDLENDER SC: Why not? 10 GENERAL MBOMBO: I think it was a mistake 11 there. That's some of the things a person kept on 12 remembering whilst I was writing this statement. 13 MR BUDLENDER SC: Alright, the meeting is 14 also not mentioned in the SAPS opening statement to the 15 Commission. Can you explain why that is the case? 16 GENERAL MBOMBO: As I say, Chairperson, 17 that a person went about, keep on remembering these things 18 as the statement was written. 19 MR BUDLENDER SC: Did you forget the 20 meeting? 21 GENERAL MBOMBO: At the time that I was 22 writing this statement, I think I possibly could have 23 forgotten. 24 MR BUDLENDER SC: And you also forgot 25 when you reviewed the SAPS opening statement?</p>

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1 GENERAL MBOMBO: It could be possibly so.
 2 I have no other reason why I did not explain it.
 3 MR BUDLENDER SC: And you also forgot
 4 when you reviewed the SAPS presentation to the Commission,
 5 exhibit L. You forgot then again.
 6 GENERAL MBOMBO: Possibly so.
 7 CHAIRPERSON: Did you mention it at Roots
 8 at the – you attended the conference from time to time at
 9 Potchefstroom Roots. Did you tell the people there about
 10 the fact that there had been this meeting on the 15th and
 11 that it had been discussed, you'd made the decision
 12 already? Did you tell them that? Did the participants at
 13 Roots know about the fact that this had happened?
 14 GENERAL MBOMBO: I don't remember
 15 explaining that to them, Mr Chairperson, because at Roots I
 16 was not part of the discussions that were taking place
 17 there. And another thing; what I told them was that I took
 18 the decision to police the area in order to maintain law
 19 and order.
 20 CHAIRPERSON: What was the purpose of the
 21 Roots conference? Was it not to ascertain the relevant
 22 facts and to incorporate them in a presentation which was
 23 to be put before the Commission?
 24 GENERAL MBOMBO: It was so.
 25 CHAIRPERSON: As part of the undertaking

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1 the Commission received that it will receive full
 2 cooperation from the police. Is that correct?
 3 GENERAL MBOMBO: That is correct, Sir.
 4 CHAIRPERSON: Wasn't the fact that you'd
 5 made that decision an important fact which should have been
 6 communicated to the Commission, firstly, but also should
 7 have been communicated to those who participated in the
 8 conference at Roots so that it could be incorporated in the
 9 presentation?
 10 GENERAL MBOMBO: You are right, Mr
 11 Chairperson. It was supposed to have been so. That is why
 12 I agree that at that time I could have forgotten.
 13 CHAIRPERSON: You say you forgot at Roots
 14 in September 2012 that you'd been at a meeting on the 15th
 15 of August, the previous, that's to say the previous month,
 16 when this decision was taken, communicated to your fellow
 17 provincial commissioners and the other senior members of
 18 the forum who were present, and the National Commissioner,
 19 and had you forgotten that at Roots, or did I
 20 misunderstand?
 21 GENERAL MBOMBO: I'm saying, Chairperson,
 22 it could have been that I was forgetful that there was a
 23 meeting that had to, talking about Marikana, or otherwise
 24 that there was nothing that actually made me to remember
 25 about that meeting.

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1 MR BUDLENDER SC: Let's make a list –
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 ask this question. If you had remembered it, would you
 4 have mentioned it at Roots?
 5 GENERAL MBOMBO: Certainly, yes, Mr
 6 Chairperson. I would have done so.
 7 CHAIRPERSON: And would you have seen to
 8 it that it was incorporated in exhibit L if you'd
 9 remembered it?
 10 GENERAL MBOMBO: It is so, Chairperson.
 11 MR BUDLENDER SC: I'd like to go through
 12 with you a list of all the people who were apparently
 13 forgetful, as you were, and did not disclose either your
 14 decision of the 15th of August or the meeting of the 15th of
 15 August. Right, now the first one I've got is the person
 16 who prepared the SAPS opening statement. That person did
 17 not disclose either the meeting of the 15th of August, or
 18 your decision of the 15th of August. Correct?
 19 GENERAL MBOMBO: It is so –
 20 CHAIRPERSON: I'm sorry, Mr Budlender, I
 21 don't mean to interrupt you, but we don't know who prepared
 22 the statement. We don't know who drafted it, and the
 23 person who drafted it may well have been in ignorance of it
 24 because it hadn't been communicated at Roots and wasn't in
 25 exhibit L. So I'm not sure – it may be that certain people

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1 approved the statement after it was prepared, but I don't
 2 think you could base a question on the failure by the
 3 person who prepared it to incorporate that fact.
 4 MR BUDLENDER SC: Thank you, Chair. My
 5 next question –
 6 MR SEMENYA SC: Chair –
 7 MR BUDLENDER SC: My next person on the
 8 list is the various people who approved the SAPS opening
 9 statement. They, none of them said but hang on, there was
 10 an important meeting on the evening of the 15th of August,
 11 and none of them said hang on, the Provincial Commissioner
 12 decided on the 15th of August what would happen the next
 13 day. Is that correct?
 14 MR SEMENYA SC: Chair, I place it on
 15 record that opening statements as far as I'm concerned are
 16 not there to tabulate all facts of the evidence intended to
 17 be presented. I've never known that to be the case. We
 18 may argue the materiality of this allegation, but you can't
 19 say to a witness is there anything – as it was put by Mr
 20 Budlender.
 21 CHAIRPERSON: No, no, no, I think there's
 22 substance in that. Of course one would expect important
 23 factors, facts to be incorporated. But that, as you say,
 24 is a matter for argument.
 25 MR BUDLENDER SC: With respect, Chair –

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1 CHAIRPERSON: Perhaps you can reformulate
 2 the question, retain the thrust but avoid the objection.
 3 MR BUDLENDER SC: We always say where a
 4 material matter is omitted from an opening statement, we
 5 say to a witness can you explain why this wasn't mentioned.
 6 It's a routine matter for cross-examination, and I'm asking
 7 the witness can she think of any reason why the various
 8 people who approved the SAPS opening statement did not say
 9 that her decision of the 15th and the meeting of the 15th
 10 should be included.
 11 GENERAL MBOMBO: I can't remember if
 12 anything was mentioned in that meeting and what the reasons
 13 why the other people you mentioned did not mention this.
 14 CHAIRPERSON: Mr Budlender, this is a
 15 point we had before in another context. It's difficult for
 16 a witness like this to say why other people failed to do
 17 things. She obviously has to explain why she failed to do
 18 things, but I'm not sure that one can expect her to say why
 19 other people made the same failure.
 20 MR BUDLENDER SC: Perhaps I can put the
 21 question differently, Chair. Lieutenant General, I want
 22 you to listen to my list of people who knew, must have
 23 known about your decision of the 15th and who didn't mention
 24 it, and who were aware of the meeting of the extraordinary
 25 session on the 15th and didn't raise it. Now listen to what

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1 I say –
 2 CHAIRPERSON: I'm sorry, sorry, sorry, Mr
 3 Budlender, the point doesn't relate so much to that. It
 4 relates to where it was raised and whether it's appropriate
 5 for it to have been raised by particular people and whether
 6 she can answer as to why people didn't raise it. But there
 7 are a number of questions. One relates to the statement,
 8 the opening statement. The other one of course is exhibit
 9 L itself. A number of people were present at Roots,
 10 apparently were aware of it, but yet it's significant by
 11 its absence in that –
 12 MR BUDLENDER SC: Yes.
 13 CHAIRPERSON: But I'm not sure that
 14 there's any point in following the point about the opening
 15 address. That's not, has been dealt with already.
 16 MR BUDLENDER SC: Leaving aside the
 17 opening address, apparently no objection was raised –
 18 apparently the people who did not disclose those, your
 19 decision and the meeting of the 15th of August, include
 20 people who approved the SAPS presentation, exhibit L. Is
 21 that correct?
 22 GENERAL MBOMBO: It is so.
 23 MR BUDLENDER SC: It includes the
 24 persons, the includes the National Commissioner who didn't
 25 mention it in her statement. Correct?

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1 GENERAL MBOMBO: I hear you.
 2 MR BUDLENDER SC: It includes the persons
 3 on behalf of the SAPS who submitted documents to this
 4 Commission, who didn't include the minutes of that
 5 extraordinary session. Correct?
 6 GENERAL MBOMBO: It is so.
 7 MR BUDLENDER SC: And as far as the SAPS
 8 opening statement is concerned, it includes the persons who
 9 approved the SAPS opening statement. Correct?
 10 GENERAL MBOMBO: It can be so.
 11 MR BUDLENDER SC: And it also includes
 12 you because you didn't mention it in your initial
 13 statement.
 14 GENERAL MBOMBO: It is so.
 15 MR BUDLENDER SC: Now I want to put it to
 16 you that it's very difficult to believe that it's a
 17 complete coincidence that all of these people on all of
 18 these occasions by accident failed to mention your decision
 19 and this important meeting, extraordinary session. I want
 20 to put it to you it's very difficult to believe that it's a
 21 coincidence that all of them by accident failed to mention
 22 this. Would you like to comment on that?
 23 GENERAL MBOMBO: According to me, how I
 24 see it, I had no reason to not mention it. I accept that
 25 I'd forgotten.

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1 MR BUDLENDER SC: And they all forgot?
 2 That's the only conclusion we can reach. A mass failure of
 3 memory.
 4 GENERAL MBOMBO: I wouldn't be sure of
 5 that.
 6 MR BUDLENDER SC: Well, I want to put it
 7 to you that when two important things happen and a large
 8 number of people in the same organisation all don't mention
 9 them, that leads to, that makes it very difficult to
 10 believe that this was by accident or by coincidence. Would
 11 you like to comment on that?
 12 GENERAL MBOMBO: You can say so, Sir,
 13 yes.
 14 MR BUDLENDER SC: I certainly will say
 15 so, thank you. I want to submit to you, I want to put to
 16 you, because we're going to have to submit to the
 17 Commission at the end that this number of people all
 18 failing to mention these two important things suggests that
 19 there was deliberate action, and concerted action, to keep
 20 this information away from this Commission.
 21 GENERAL MBOMBO: I think you're talking
 22 about me and the National Commissioner of Police. You're
 23 not mentioning all the other people during that meeting –
 24 CHAIRPERSON: Maybe Mr Budlender –
 25 GENERAL MBOMBO: - because they were the

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1 people in that meeting who came and made statements for the
 2 Commission.
 3 CHAIRPERSON: Mr Budlender, I'm sorry to
 4 interrupt you. When you say "failed to mention it," what
 5 do you mean? Failed to mention it where? Failed to
 6 mention it in their statement or failed to mentioned it –
 7 MR BUDLENDER SC: Chair, in their
 8 statements, in the presentation exhibit L, in the opening
 9 statement, and in – ja, those three.
 10 CHAIRPERSON: Well, I would like to add
 11 another one.
 12 [13:51] CHAIRPERSON: You say you didn't mention
 13 it at Roots, you say because you forgot. Now, I take it we
 14 must assume that nobody else mentioned it at Roots, is that
 15 right? I presume if it had been mentioned I take it, it
 16 would have been in exhibit L. Am I correct no one, you
 17 didn't mention it because you forgot and nobody else
 18 mentioned it either, at Roots, is that right?
 19 GENERAL MBOMBO: I think nobody spoke
 20 about that thing at Roots, Mr Chairperson.
 21 CHAIRPERSON: No, you have made a number
 22 of telephone calls from the meeting, or just after the
 23 meeting on the Wednesday night. We had the list of people
 24 you telephoned, they were all at Roots, weren't they?
 25 GENERAL MBOMBO: That is correct,

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1 chairperson. General Mpembe, General Annandale and General
 2 Naidoo.
 3 CHAIRPERSON: And they all knew that you
 4 had communicated to them that night from the place where
 5 the NMF meeting had been held what you had decided. And
 6 did you tell them also what your colleagues from the other
 7 provinces had done, indicated their preparedness to make
 8 additional resources available if you should require them?
 9 GENERAL MBOMBO: General Mpembe I told
 10 him, Sir. That we will receive the necessary resources,
 11 that we would need in this operation that the provincial
 12 commissioner have made this promise.
 13 CHAIRPERSON: They all sat silent at
 14 Roots and didn't mention that, sorry Mpembe sat silent and
 15 didn't mention it to Roots. Annandale and Naidoo also? I
 16 take it we can – of course you don't know why the didn't
 17 mention it but your explanation is you yourself forgot?
 18 GENERAL MBOMBO: To them, Mr Chairperson,
 19 it is possibly that they did not say so because of not
 20 knowing. When I spoke to them about my decision I did not
 21 mention to them that there was this meeting. I only told
 22 them that I had notified the national commissioner about
 23 what was happening and the decision that I had taken.
 24 CHAIRPERSON: So, they all knew you had
 25 made the decision on the Wednesday night?

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1 GENERAL MBOMBO: It is so, yes,
 2 Chairperson.
 3 CHAIRPERSON: And that's not in L? Was
 4 that mentioned at the Roots' conference?
 5 GENERAL MBOMBO: I am not clear about the
 6 question, Sir?
 7 CHAIRPERSON: The three gentlemen you
 8 have referred to, General Naidoo, General Mpembe and
 9 General Annandale, all three of them knew that you had made
 10 this decision on the Wednesday night, because you
 11 communicated to them on the Wednesday night?
 12 MR SEMENYA SC: Tuesday night,
 13 Chairperson.
 14 CHAIRPERSON: Sorry, no the Wednesday
 15 night. It's the Wednesday night. I know you made another
 16 decision on the Tuesday but we are not busy that at the
 17 moment. We are talking about the Wednesday one. And that
 18 was not mentioned at Roots either, was it? Or was it?
 19 GENERAL MBOMBO: I don't remember it
 20 being mentioned whilst, during my presence, Mr Chairperson.
 21 CHAIRPERSON: I see, thank you.
 22 MR BUDLENDER SC: Chair, I am about to
 23 start a new topic, this might be a convenient time to take
 24 the adjournment. Unless the commissioners have further
 25 questions on this topic but I don't wish to explore it any

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1 further.
 2 CHAIRPERSON: Alright, well we will
 3 sacrifice the five minutes. We will adjourn now until
 4 Thursday morning 9 o'clock. I have indicated that we are
 5 not sitting on Friday, we will sit the full day on Thursday
 6 until 4 o'clock.
 7 [COMMISSION ADJOURNED]
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<p style="text-align: center;">8</p> <hr/> <p>8 21585:7 21617:2,3 8th 21638:12 8:27 21631:14 82 21583:7,7 8661 21583:9 8662 21583:8 21584:24</p>				