

# 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 181

6 FEBRUARY 2014

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1 [PROCEEDINGS ON 6 FEBRUARY 2014]  
 2 [09:23] CHAIRPERSON: I'm sorry we're starting  
 3 later than usual this morning, but there were circumstances  
 4 over which we had no control. Provincial Commissioner,  
 5 you're still under oath.  
 6 MIRRIAM NOSAZISO ZUKISWA MBOMBO: Yes.  
 7 CHAIRPERSON: Mr Budlender.  
 8 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD):  
 9 Lieutenant-General, Good morning.  
 10 GENERAL MBOMBO: Good morning,  
 11 Commissioner.  
 12 MR BUDLENDER SC: I want to now discuss  
 13 with you how you made your decision to implement stage 3 on  
 14 the Thursday. Now you've agreed earlier in your evidence  
 15 that the situation at Marikana was risky and it created the  
 16 risk of harm to members of the public, to the strikers, and  
 17 to the SAPS. You remember that?  
 18 GENERAL MBOMBO: I remember that, Mr  
 19 Chair.  
 20 MR BUDLENDER SC: And I take it that you  
 21 realised when you were considering whether to implement  
 22 stage 3 that it would involve risks?  
 23 GENERAL MBOMBO: That is so, Mr Chair.  
 24 MR BUDLENDER SC: Yes, I want to show you  
 25 four reasons why that was so. Firstly if we can go to

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1 JJJ192, the transcript of your meeting with Lonmin, page 5,  
 2 you have page 5?  
 3 GENERAL MBOMBO: I've got it, Mr Chair.  
 4 MR BUDLENDER SC: Could we go to line 20  
 5 and then this is what you said from line 20, you said, "So  
 6 when I was on there I told these guys, I said look, these  
 7 people, they are less than a thousand. With the number of  
 8 police officers that we have, let us circle these people.  
 9 Let us not do anything. Let us circle them, let us talk to  
 10 them and say listen, bring your firearms and you will leave  
 11 here one by one and we give you time to do this. If they  
 12 do not do that, I said, and I'm listening to what you just  
 13 now said about tomorrow, I said to them if you do not do  
 14 that, if they do not surrender their arms," Mr Mokwena  
 15 says, "Their weapons, their weapons – their arms, their  
 16 weapons." You say, "Weapons, we leave them. Move your  
 17 vehicles, come back and park here because why, this evening  
 18 I'm getting 480 members. Tomorrow when we go there for the  
 19 second time now that we were there today and they did not  
 20 surrender, then it is blood." You see that?  
 21 GENERAL MBOMBO: I see it, Mr Chair.  
 22 MR BUDLENDER SC: So you knew that if the  
 23 strikers did not surrender there was a risk of blood,  
 24 correct?  
 25 GENERAL MBOMBO: I knew it like that, Mr

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1 Chair.  
 2 MR BUDLENDER SC: Yes, and of course  
 3 blood means injury or death.  
 4 GENERAL MBOMBO: That is correct, Mr  
 5 Chair.  
 6 MR BUDLENDER SC: And then the second  
 7 thing I want to show you is what the Crime Intelligence  
 8 division of the SAPS reported. Can we go to TT3, paragraph  
 9 2.1. Do you have TT3, Provincial Commissioner?  
 10 GENERAL MBOMBO: I see it, Mr Chair.  
 11 MR BUDLENDER SC: And you'll see what is  
 12 reported under 2.1, Crime Intelligence, this is – I'm  
 13 sorry, these are the briefing minutes of the JOCCOM at 6  
 14 o'clock on Wednesday morning. "Crime Intelligence,  
 15 Brigadier Engelbrecht indicated that the situation is still  
 16 tense. The mood at AMCU is still the same. Members of  
 17 AMCU indicated that they will not surrender their weapons  
 18 as they need to defend themselves against NUM," and then if  
 19 you go to TT5, would you get that, please? Go to paragraph  
 20 9. Do you have it?  
 21 GENERAL MBOMBO: I've found it, Mr Chair.  
 22 MR BUDLENDER SC: Thank you. Let me read  
 23 it, paragraph 9, it's "2012-08-15 at the PROVJOC meeting  
 24 [now that's the Wednesday] a discussion took place with  
 25 regard to the disarming and dispersion of the striking

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1 mineworkers. Brigadier Engelbrecht held a view in favour  
 2 of negotiations with the group who always gather at the  
 3 koppie and disperse in the evenings. This view was further  
 4 based on an analysis of the striking workers' behaviour  
 5 during the incident of 13th August 2012 where the police  
 6 officials were killed. They were all armed with different  
 7 kinds of dangerous weapons. They became agitated when  
 8 their comfort zone was threatened and made it clear that  
 9 they will never surrender their weapons as they needed the  
 10 weapons to protect themselves against NUM members."  
 11 Then paragraph 10, "On 2012-08-16 [that's the  
 12 Friday] during a PROVJOC meeting where the disarming" – I'm  
 13 sorry, that's the Thursday – "at a PROVJOC meeting where  
 14 the disarming and dispersing of the group at the koppie was  
 15 discussed, Colonel Isaacs, CI representative at the PROVJOC  
 16 for the day, advised that many strikers had dangerous  
 17 weapons with them and informers reported that they would  
 18 not hand their weapons to the police and that the situation  
 19 was tense."  
 20 Now when you made your decision did you know  
 21 about these Crime Intelligence reports?  
 22 GENERAL MBOMBO: I did not know about  
 23 them, Mr Chair.  
 24 MR BUDLENDER SC: No-one told you that  
 25 this is what Crime Intelligence were reporting?

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1 GENERAL MBOMBO: No-one told me about  
 2 them.  
 3 MR BUDLENDER SC: No-one gave you this  
 4 information that I've just read?  
 5 GENERAL MBOMBO: No-one gave me such  
 6 information. Maybe I can explain, Mr Chair. When I gave  
 7 my instruction I give the instruction to the generals that  
 8 were present, the generals that I think were receiving that  
 9 kind of information.  
 10 MR BUDLENDER SC: And when you gave your  
 11 instruction to the generals – which were the generals? Is  
 12 that General Mpmembe and General Annandale?  
 13 GENERAL MBOMBO: That is correct, Mr  
 14 Chair.  
 15 MR BUDLENDER SC: And they never said to  
 16 you look here, Provincial Commissioner, we must warn you  
 17 this is what Crime Intelligence have told us?  
 18 GENERAL MBOMBO: They did not do that, Mr  
 19 Chair. I would like to explain again, the explanation  
 20 about the intelligence when we got it, it is supposed to  
 21 assist us in our planning, ensure that the plan withstands  
 22 the situation. It is not an information there to say stop  
 23 the work, let us not work. The information also needs to  
 24 be evaluated by the planners as they receive the  
 25 information.

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1 MR BUDLENDER SC: So am I understanding  
 2 you correctly, Provincial Commissioner, that your position  
 3 is that you didn't need to have this information before you  
 4 made any of your decisions?  
 5 GENERAL MBOMBO: Mr Chair, before I  
 6 answer, let us please go to LLL1, which is my second  
 7 statement.  
 8 MR BUDLENDER SC: Fine, thank you.  
 9 GENERAL MBOMBO: In this statement can  
 10 you please go to paragraph 16? In this paragraph, Mr  
 11 Chair, I'm explaining that my decision – maybe I should  
 12 read it, Mr Chair. Paragraph 16, "Policing of events like  
 13 these of necessity entails a process that seeks to produce  
 14 a sound plan in the execution of this operation. I do not  
 15 profess to have any expertise in the design of a plan to  
 16 address a particular public order event, but would rely  
 17 heavily on the expertise and experience of my members who  
 18 have obtained training and on-the-field experience in  
 19 managing such events. The Marikana operation was no  
 20 different. The ultimate legal authority in the province  
 21 rested with me and the execution of the operation, once I  
 22 had instructed that the armed strikers must be disarmed,  
 23 would be done on plans drawn by experienced Public Order  
 24 Policing members, together with such assistance as would be  
 25 obtained from other provinces and the national structures."

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1 I now want to answer your questions, Mr Chair, by  
 2 means of this paragraph, that when I was giving this  
 3 instruction I did not disrespect any information that would  
 4 come and assist the planners in order to execute this  
 5 operation, the job.  
 6 MR BUDLENDER SC: I understand that,  
 7 Lieutenant General. I'm asking you this; do you say you  
 8 did not need this information to which I've just referred  
 9 you before you made any of your decisions?  
 10 GENERAL MBOMBO: I've already answered,  
 11 Mr Chair, and said I did not disrespect any information  
 12 that came forward and the information would not have come  
 13 to me; it would have gone to the people who were planning.  
 14 CHAIRPERSON: I'm sorry to interrupt.  
 15 Someone has not got his or her earphones on, weren't even  
 16 listening to them, must have them on the desk. The volume  
 17 is quite loud, so we can hear in the background the  
 18 interpretation. If I speak you can hear me. Would those  
 19 who have their earphones not on, have them on the desk,  
 20 please turn the volume down, and possibly even those who  
 21 are listening, if the volume is very loud would they please  
 22 turn it down? Because it's disturbing to hear the  
 23 interpretation here.  
 24 MR BUDLENDER SC: Lieutenant General,  
 25 perhaps we're misunderstanding each other. You've

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1 explained to the Commission that you did not have this  
 2 information at the time when you made your decisions,  
 3 correct?  
 4 GENERAL MBOMBO: I personally did not  
 5 have it, Mr Chair.  
 6 MR BUDLENDER SC: Yes, and what I'm  
 7 asking to you is, is it your opinion that you did not need  
 8 this information before you made your decisions?  
 9 GENERAL MBOMBO: The information was  
 10 mostly needed by those who were going to do the planning.  
 11 MR BUDLENDER SC: Lieutenant General,  
 12 will you just answer the question? Do you say that you did  
 13 not need this information before you made these decisions?  
 14 GENERAL MBOMBO: It was not important to  
 15 me, Mr Chair, because I was not going to be part of the  
 16 planning. All that I knew was that the people on the  
 17 koppie had weapons, and dangerous weapons.  
 18 MR BUDLENDER SC: I don't want to repeat  
 19 the question. I just want to make sure I understand your  
 20 answer. So your evidence is that you did not need this  
 21 Crime Intelligence information at the time when you made  
 22 your decisions. Is that correct?  
 23 GENERAL MBOMBO: It was not important  
 24 because I knew people had weapons on the koppie and those  
 25 are the weapons we wanted.

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1 MR BUDLENDER SC: No, Lieutenant General,  
 2 did you need the information that they were going to refuse  
 3 to hand over the weapons before you made your decisions?  
 4 Just yes or no.  
 5 GENERAL MBOMBO: I needed the  
 6 information, although it was not important in order to  
 7 affect me making a decision, because I did not have the  
 8 information.  
 9 MR BUDLENDER SC: Well, I find that  
 10 unintelligible. You say you needed it, but it wasn't  
 11 important. Should it have been given to you?  
 12 GENERAL MBOMBO: I did not hear the  
 13 question.  
 14 MR BUDLENDER SC: Do you say that  
 15 information should have been given to you by the generals,  
 16 or should not have been given to you by the generals, or it  
 17 didn't matter whether they gave it to you?  
 18 GENERAL MBOMBO: If they had the  
 19 information they could have explained it to me.  
 20 CHAIRPERSON: That's not an answer to the  
 21 question. The question isn't what they could have done;  
 22 the question is what you say they should have done. You  
 23 understand the distinction between those two?  
 24 GENERAL MBOMBO: I did not hear, Mr  
 25 Chair.

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1 CHAIRPERSON: The question was not about  
 2 what the generals could have done; it's about whether they  
 3 should have done it, whether in your opinion they should  
 4 have given you that information. You understand the  
 5 distinction being drawn between could and should?  
 6 GENERAL MBOMBO: I hear, Mr Chair.  
 7 CHAIRPERSON: Well, will you answer the  
 8 question you were asked? The question you were asked was  
 9 should the generals have given the information to you?  
 10 GENERAL MBOMBO: They were supposed to  
 11 give me the information.  
 12 MR BUDLENDER SC: And the result was that  
 13 you made your decisions without that knowledge, correct?  
 14 GENERAL MBOMBO: That is so, Mr Chair.  
 15 MR BUDLENDER SC: Now let me take you to  
 16 exhibit FFF1. By the way, before we get there, Lieutenant  
 17 General, have you ever said to General Mpembe or General  
 18 Annandale, why didn't you tell me what Crime Intelligence  
 19 were reporting? Have you ever asked them why they didn't  
 20 give you this information?  
 21 GENERAL MBOMBO: Mr Chair, every time I  
 22 met them they would give me full explanation, detailed  
 23 information.  
 24 MR BUDLENDER SC: Lieutenant General,  
 25 have you ever asked them why they didn't give you this

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1 information that the strikers would refuse to surrender  
 2 their arms and would become aggressive?  
 3 GENERAL MBOMBO: I did not pertinently  
 4 ask them about that, Mr Chair.  
 5 CHAIRPERSON: May I ask you a question?  
 6 If they had given you that information, would you still  
 7 have given the instruction?  
 8 GENERAL MBOMBO: Mr Chair, that is  
 9 correct.  
 10 CHAIRPERSON: What is correct? You would  
 11 still have given the instruction?  
 12 GENERAL MBOMBO: I would have given the  
 13 instruction even if I had the information.  
 14 MR BUDLENDER SC: I'll come back to that  
 15 a bit later. Let's just stay with FFF1. FFF1 is the  
 16 policy document, SAPS policy document on crowd management.  
 17 Would you go to page 5, paragraph 3.3?  
 18 GENERAL MBOMBO: I see that, Mr Chair.  
 19 MR BUDLENDER SC: That deals with  
 20 situational appropriateness. Now I take it that you also  
 21 apply the principle of situational appropriateness in your  
 22 decisions?  
 23 GENERAL MBOMBO: That is correct, Mr  
 24 Chair.  
 25 MR BUDLENDER SC: Can we have a look at

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1 3.3.6, "Situational appropriateness also means taking  
 2 advantage of intelligence concerning all aspects of the  
 3 gathering and all people involved." You needed that  
 4 information in order to apply situational appropriateness,  
 5 not so?  
 6 GENERAL MBOMBO: That is so, Mr Chair.  
 7 MR BUDLENDER SC: And now you say both  
 8 generals didn't give it to you.  
 9 GENERAL MBOMBO: I did not hear.  
 10 MR BUDLENDER SC: And both generals  
 11 didn't give it to you.  
 12 GENERAL MBOMBO: Mr Chair, every time I  
 13 get an explanation from these generals when we meet it was  
 14 an explanation entailing everything about what was  
 15 happening there. Even if they were not to be specific  
 16 about the source of the information, but they gave me  
 17 reports about what they heard, how their meetings went.  
 18 MR BUDLENDER SC: Alright, and Lieutenant  
 19 General, the third matter I want to raise in this  
 20 connection, were you told that some of the strikers had  
 21 undergone rituals to give them confidence and make them  
 22 brave in any confrontation with the police?  
 23 [09:43] GENERAL MBOMBO: I was told about that,  
 24 Mr Chair.  
 25 MR BUDLENDER SC: What did you think the

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1 effect of the rituals would be?

2 GENERAL MBOMBO: Mr Chair, I have no

3 expertise or knowledge about rituals. That is why I did

4 not think what effect it might have on this.

5 MR BUDLENDER SC: So you didn't take the

6 rituals into account in making your decisions because you

7 didn't know what their effect would be.

8 GENERAL MBOMBO: According to the report

9 I got from the generals, me, as a person who had no

10 knowledge or expertise in these rituals, we realised that

11 during their planning they should also consider these

12 things.

13 MR BUDLENDER SC: I understand that,

14 General. I'm asking you a different question. Did you

15 take the rituals into account in making the decisions which

16 you made?

17 GENERAL MBOMBO: That is what I did, Mr

18 Chair.

19 MR BUDLENDER SC: How did you take them

20 into account? What weight did you give them?

21 GENERAL MBOMBO: I did not hear the

22 question again?

23 MR BUDLENDER SC: In what manner did you

24 take the rituals into account if you say you didn't know

25 what their effect would be?

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1 GENERAL MBOMBO: I told the generals that

2 even if there are such things as rituals, even if I do not

3 understand what the meaning thereof is, the fact remains

4 that we should devise a plan to retrieve the weapons

5 without putting people's lives in danger.

6 MR BUDLENDER SC: General, we're going to

7 be here a very long time if we don't understand each other

8 and I don't get direct answers. You said, I asked – you

9 said that you did not know what the rituals meant or what

10 their effect would be, correct?

11 GENERAL MBOMBO: That is correct, Mr

12 Chair.

13 MR BUDLENDER SC: I said did you take the

14 rituals into account in the decisions which you made, you

15 said yes, correct?

16 GENERAL MBOMBO: That is correct.

17 MR BUDLENDER SC: So now I want to know

18 how did the rituals affect the decisions which you made,

19 not the decisions which the generals made, the decisions

20 which you made.

21 CHAIRPERSON: In other words, how did you

22 take them into account? What value, if any, did you attach

23 to them in making your decisions?

24 GENERAL MBOMBO: I told them that the

25 plans that they were going to use should include all those

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1 things, so when the police are working they should have

2 knowledge of all those matters, using also the standing

3 orders in our way of dealing with these things, doing our

4 work.

5 MR BUDLENDER SC: General, that's still

6 not an answer about whether it affected your decision or

7 how it affected your decision, not how, what you told to

8 them. In what manner did the knowledge of the rituals

9 affect your decision?

10 GENERAL MBOMBO: Mr Chair, when I told my

11 generals to devise a plan in order to retrieve the weapons

12 without putting people's lives in danger, I meant that they

13 should consider everything, take into account whatever

14 information they received.

15 MR BUDLENDER SC: Alright, I'm not going

16 to waste more time on this, Lieutenant-General. Let me put

17 a fourth thing to you. The overall commander was Major-

18 General Mpmembe who is a very experienced public order

19 policeman, correct?

20 GENERAL MBOMBO: I know him as an

21 experienced operational officer with experience, having

22 been trained in riots in the olden days.

23 MR BUDLENDER SC: Alright, I'm not sure

24 what the difference is but I'll accept that. Could you go

25 to GGG4?

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1 GENERAL MBOMBO: I've found it, Mr Chair.

2 MR BUDLENDER SC: Now this contains a

3 transcript of General Mpmembe's meeting with representatives

4 of the NUM initially and then with AMCU and it contains his

5 assessment of the situation on the Wednesday night. This

6 was a meeting on the Wednesday night, are you aware of that

7 meeting? Well, you are aware of that meeting, I know that.

8 GENERAL MBOMBO: I heard about it.

9 MR BUDLENDER SC: This is what he said.

10 Can you go to page 5, right at the end of the page line 29,

11 line 28. "Now I need to do my job and you all also call me

12 to remove firearms. I cannot go there and disarm people,

13 it would be bloodshed and then I needed to go to a specific

14 house, disarm them, that is the only way." Do you see

15 that?

16 GENERAL MBOMBO: The very last paragraph?

17 MR BUDLENDER SC: The last three lines on

18 page 5.

19 GENERAL MBOMBO: Okay. I see that, Mr

20 Chair.

21 MR BUDLENDER SC: I'm sorry, I thought

22 you were with me. Let me read it again. What General

23 Mpmembe says is, "Now I need to do my job and you all also

24 call me to remove firearms. I cannot go there and disarm

25 people, it would be bloodshed so then I need to go in a

<p style="text-align: right;">Page 21676</p> <p>1 specific house, disarm them, that is the only way." Do you 2 see that? 3 GENERAL MBOMBO: I can see it, Mr Chair. 4 MR BUDLENDER SC: Then can you go to line 5 28 and – 6 CHAIRPERSON: Before she goes to 28 she 7 can go to 7 to 10. Would you look at lines 7 to 10, still 8 on page 6. 9 MR BUDLENDER SC: Let me read it, I'll 10 read it. Line 7, "I need to be told, I need to go to the 11 house because that is the only way, eating this elephant 12 bit by bit, because me going there to the mountain, 13 disarming people, it is going to be bloodshed. It is 14 going to be bloodshed. That one I can assure you." Do you 15 see that? 16 GENERAL MBOMBO: I see that, Mr Chair. 17 MR BUDLENDER SC: Then can we go to line, 18 to the next one I want to show you, page 6. No, I'm sorry, 19 I've done that. Page 6 line – then, alright. 20 CHAIRPERSON: You were going to do line 21 28, I think, Mr Budlender. 22 MR BUDLENDER SC: Then page – 23 CHAIRPERSON: You said previously line 28 24 on that page. 25 MR BUDLENDER SC: Ja, I'm not – then now</p>	<p style="text-align: right;">Page 21678</p> <p>1 Third, you knew that rituals had been performed on the 2 koppie and fourth, General Mpmembe had said so. Now would 3 you like to comment on that? 4 GENERAL MBOMBO: Mr Chair, General Mpmembe 5 was overall commander of that operation. He is the general 6 I had given the instruction that my wish is that people 7 should hand over their weapons or we disarm them. These 8 things that he is saying here, as I see them, these are 9 things that were really being suspected but these are not 10 the things that were going to stop the police from working 11 because even him, when I was talking to him giving him the 12 instruction, he would look at different angles that they 13 would approach this thing from in order to get hold of the 14 firearms if they could not get hold of the firearms 15 peacefully – excuse me, in order to get hold of the weapons 16 if they could not get hold of the weapons peacefully. It 17 was important to all of us that the weapons are retrieved 18 peacefully. That is why he is emphasising here that a way 19 should be found in order to retrieve the weapons peacefully 20 because we all did not wish to see the bloodshed. 21 MR BUDLENDER SC: Okay, now I want to 22 come on to the question of the plan. You just read us 23 paragraph 16 of your statement where you made the points, 24 you said – I'm not going to read you, go back there again, 25 you said that you instructed, that once you'd instructed</p>
<p style="text-align: right;">Page 21677</p> <p>1 could you go to page 7 line 28, it's the bottom of the 2 page. Are you there? I'll read to you – 3 CHAIRPERSON: Before you – sorry, Mr 4 Budlender. What you put to her when I interrupted you and 5 referred to 7 to 10, was line 28 on page 6. 6 MR BUDLENDER SC: I don't think I need to 7 go there, Chair. I'll go straight on to the next page 8 because it is somewhat repetitive. Page 7 line 28 General 9 Mpmembe says, "I cannot go to the mountain. It is not, has 10 never been strategically in my training. I am not taught, 11 because I must disarm somebody. How do I de-arm somebody 12 with an axe and I have a firearm? It will never work. 13 There is no training in the world to be like that." Do you 14 see that? 15 GENERAL MBOMBO: I see that, Mr Chair. 16 MR BUDLENDER SC: Now that was his 17 opinion. He said that if the police went onto the koppie 18 to disarm the strikers there would be bloodshed, just as 19 you had said the previous day. Correct? 20 GENERAL MBOMBO: That is so, Mr Chair. 21 MR BUDLENDER SC: So I'm suggesting it to 22 you that there are four reasons why you knew or you should 23 have known that bloodshed was likely if you tried to disarm 24 the strikers on the koppie. First, you yourself had said 25 so. Second, crime intelligence had repeatedly said so.</p>	<p style="text-align: right;">Page 21679</p> <p>1 that the armed strikers must be disarmed, the plans – this 2 would be done on plans drawn by experienced public order 3 policing members together with such assistance as would be 4 obtained from other provinces and the national structures, 5 you remember that? 6 GENERAL MBOMBO: Yes, Mr Chair. 7 MR BUDLENDER SC: Now, actually the plan 8 was drawn by Lieutenant-Colonel Scott who is a member of 9 the special task force and not an experienced public order 10 policeman. 11 MR SEMENYA SC: No Chair, the plan was 12 not drawn by Colonel Scott. It was drawn by Colonel Scott 13 together with the members of the public order police. 14 MR BUDLENDER SC: We'll debate that in 15 due course. We are going to submit that the evidence shows 16 that the person who guided and who took control of the plan 17 and who was the chief planner was Lieutenant-Colonel Scott. 18 Do you know whether that is or isn't so? 19 GENERAL MBOMBO: As far as I know, Mr 20 Chair, he was part of the people who were doing the plan. 21 MR BUDLENDER SC: Are you aware that he 22 was in charge of the planning? 23 GENERAL MBOMBO: Mr Chair, I do not know 24 that he was in charge. All I was told and what I know is 25 that he was writing it down as an experienced person in</p>

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1 computers.

2 MR BUDLENDER SC: His evidence is that he

3 was working out the plan, considering what the plan should

4 be, working it out, formulating it and putting it down.

5 That was his evidence. Do you know that, whether that is

6 so?

7 GENERAL MBOMBO: I do not dispute that,

8 Mr Chair. All I'm saying is that I know him as part of the

9 people who were doing that job.

10 MR BUDLENDER SC: Let me not belabour

11 that point. The evidence will speak for itself at the end.

12 Can I just tell you we haven't yet heard evidence from

13 anybody else who said he was responsible for preparing the

14 plan. Lieutenant-Colonel Scott gave a great deal of

15 evidence for many days about the detail of the plan, how it

16 was formulated, when it was formulated, what the different

17 elements were and so on. Are you aware of that?

18 GENERAL MBOMBO: I know since he

19 testified.

20 MR BUDLENDER SC: And you've explained

21 that your, you weren't involved in the detail of the plan,

22 you left that to the police members with experience and

23 expertise in that matter.

24 GENERAL MBOMBO: That is correct, Mr

25 Chair, according to my statement.

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1 MR BUDLENDER SC: Yes. Now I'm sure

2 you'll accept that Colonel Scott is in the best position to

3 tell the Commission the detail of what the plan was at any

4 particular time.

5 GENERAL MBOMBO: That is correct, as

6 someone who was part of the planners.

7 MR BUDLENDER SC: He knows all of that in

8 the detail which you don't know, which you didn't expect to

9 have to know.

10 GENERAL MBOMBO: That is correct, Mr

11 Chair, but short reports were made to me.

12 MR BUDLENDER SC: I understand, but if

13 there was an inconsistency between what he says what the

14 plan was at a particular time and what you say it was at a

15 particular time, the Commission should rely on him because

16 he's really the person who was working with it all the

17 time.

18 MR SEMENYA SC: Chair, the witness has

19 not purported to say she did anything in relation to the

20 plan. There can't be those inconsistencies.

21 MR BUDLENDER SC: There is an

22 inconsistency and I'll come to it in a moment if I'm given

23 the opportunity, Chair. I'm saying if there is an

24 inconsistency between what you say the plan was at any

25 particular time and what Colonel Scott says the plan was at

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1 a particular time –

2 CHAIRPERSON: Sorry. Mr Semenya,

3 inasmuch as the question was a conditional one, if there's

4 inconsistency, I don't think your objection can be

5 sustained. Please proceed, Mr Budlender.

6 MR BUDLENDER SC: General, if there's an

7 inconsistency between what you say the plan was at a

8 particular time and what Lieutenant-Colonel Scott says it

9 was at a particular time, the Commission must rely on what

10 he says because he knew the detail and he was working with

11 the plans all the time from day to day. Is that fair

12 enough?

13 GENERAL MBOMBO: Mr Chair, I'm not sure

14 what type of inconsistencies would those be.

15 MR BUDLENDER SC: I'll come to them but

16 if there is an inconsistency –

17 CHAIRPERSON: No, no, sorry. The

18 question is if there is an inconsistency. At the moment Mr

19 Budlender hasn't told us what the inconsistency is that he

20 says there is, but he says if there is an inconsistency

21 then what he says should be preferred to what you say about

22 what the plan contained because he was intimately involved

23 with the plan. That's the question he asked you. It's

24 based on the proposition or rather based on the assumption

25 that there is an inconsistency because it's worded as

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1 follows, "if there's an inconsistency." You understand the

2 point that counsel is making?

3 GENERAL MBOMBO: I understand it, Mr

4 Chair.

5 MR BUDLENDER SC: And do you agree with

6 me in that regard? He is the man who knows what was being

7 done from day to day.

8 GENERAL MBOMBO: As someone who was part

9 of the planners.

10 MR BUDLENDER SC: Now can I take you to

11 your evidence on day 179, that's a couple of days ago, the

12 transcript of day 179, page 21476 and I'm looking at line

13 18. Page 21476 line 18. Right, and you'll see there at

14 line 18 is where I'm asking questions to you and I say,

15 "And from this conversation" – that's your conversation

16 with the National Commissioner – "we can see that you knew

17 that at this time" – I'm sorry, let me be fair. I think

18 this is a bit unfair. We were talking about the telephone

19 conversation that you had with the National Commissioner

20 while you were meeting with the Lonmin people, do you

21 remember that?

22 GENERAL MBOMBO: I remember that, Mr

23 Chair.

24 MR BUDLENDER SC: Right, and then at line

25 18 I say, "And from this conversation we can see that you

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1 knew that at that time the plan was to encircle the  
 2 strikers, but you knew this could only be done while the  
 3 number of strikers was limited. Is that correct?" And you  
 4 say, "That's what I was told, Mr Chair." And then you say,  
 5 "And you estimated 800 to a thousand might be possible.  
 6 Now we also know from  
 7 this that the National Commissioner would have  
 8 known the same thing because you told her 'We are planning  
 9 to encircle, but depends how many people are there.'" You  
 10 asked me to repeat the question. I apologised, I said, "We  
 11 know from the fact that you told her this, what I've just  
 12 read, that the National Commissioner was told by you, she  
 13 didn't know it already, that the plan was to encircle the  
 14 strikers, but it could only be done if there was a limited  
 15 number of strikers on the koppie." And you say, "According  
 16 to that there, that is correct." Do you remember that?  
 17 [10:02] GENERAL MBOMBO: I remember that, Mr  
 18 Chair.  
 19 MR BUDLENDER SC: So at the time of your  
 20 discussion with the National Commissioner on the 14th, the  
 21 plan was to encircle the strikers on the koppie, correct?  
 22 GENERAL MBOMBO: Mr Chair, the plan on  
 23 Tuesday the 14th, it entailed encirclement, yes Chair, but  
 24 there were criticisms from people who were discussing it.  
 25 That is why other means in the plan were devised. What I'm

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1 talking about, the one I'm talking about was also raised on  
 2 Tuesday.  
 3 MR BUDLENDER SC: General, we'll get  
 4 there step by step. You told the National Commissioner and  
 5 you confirmed to the Commission that on the Wednesday at  
 6 the time of that meeting, on the Tuesday at the time of  
 7 that meeting the plan was to encircle the strikers,  
 8 correct?  
 9 GENERAL MBOMBO: That is so, Mr Chair.  
 10 MR BUDLENDER SC: That is consistent with  
 11 the evidence of Colonel Scott. Can we go to day 134, page  
 12 14242? 14242, line 18 – can you go down a little bit  
 13 further? Right, thank you, and Mr Chaskalson is  
 14 questioning Colonel Scott and at line 18 Mr Chaskalson  
 15 says, "We know now from your statement that the original  
 16 encirclement plan, now in the guise of a phase 3 of the  
 17 overall plan, was still on the table at least on the  
 18 morning of Wednesday the 15th." And Colonel Scott says,  
 19 "That's correct." Do you see that?  
 20 GENERAL MBOMBO: I see that, Mr Chair.  
 21 MR BUDLENDER SC: And then I want to show  
 22 you what Brigadier Engelbrecht says about it, about that  
 23 same matter. Do you have his statement? It's one of those  
 24 you should have been given. It's not an exhibit yet,  
 25 Chair, it needs to be made an exhibit.

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1 CHAIRPERSON: What's the next exhibit  
 2 number?  
 3 MR BUDLENDER SC: LLL6, Chair.  
 4 CHAIRPERSON: So LLL6 will be statement  
 5 by Brigadier Engelbrecht. It's in the bundle of documents  
 6 to which the witness was referred. So I've marked my copy  
 7 LLL6.  
 8 MR BUDLENDER SC: Right. Could you go to  
 9 page 5 of that statement? It's about two-thirds of the way  
 10 down the page. Or perhaps you can go, sorry, could we go  
 11 to the previous page, page 4 paragraph 7, just to locate  
 12 it. Right, there we are. You see paragraph 7, Brigadier  
 13 Engelbrecht is talking about a JOC meeting which he  
 14 attended early in the morning of the 15th of August, that's  
 15 the Wednesday, correct? The Wednesday, yes. Do you see  
 16 that? And then on –  
 17 GENERAL MBOMBO: Yes.  
 18 MR BUDLENDER SC: On the next page about  
 19 two-thirds of the way down this is what he says about this  
 20 meeting on the Wednesday. It's 10 lines from the foot of  
 21 the page, it's the sentence there in the middle. Can you  
 22 stop – can you see on the screen these's a line which  
 23 starts, "Supportive of my views," it's about the fifth or  
 24 sixth line there and then he says the following. This is  
 25 what Brigadier Engelbrecht says, he says "I recall that

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1 during this meeting Lieutenant-Colonel Scott explained" –  
 2 do you have that?  
 3 GENERAL MBOMBO: I do, Chair.  
 4 MR BUDLENDER SC: "I recall that during  
 5 this meeting Lieutenant-Colonel Scott explained how the  
 6 disarming and dispersal would happen and he did so by way  
 7 of a PowerPoint presentation. As explained by Lieutenant-  
 8 Colonel Scott, the operation would include trying to  
 9 encircle the protesters at the koppie with barbed wire,  
 10 making an opening in the cordoned off area and then  
 11 processing the protesters through the opening." Do you see  
 12 that?  
 13 GENERAL MBOMBO: I see it, Mr Chair.  
 14 MR BUDLENDER SC: I take it that you  
 15 accept that Colonel Scott and Brigadier Engelbrecht are  
 16 telling the truth. Do you accept that they're telling the  
 17 truth?  
 18 GENERAL MBOMBO: As it appears in their  
 19 statements, Mr Chair.  
 20 MR BUDLENDER SC: Yes. I can also tell  
 21 you that Colonel Scott's evidence to the Commission was  
 22 that it was only after the JOCCOM meeting at 6 o'clock on  
 23 the Thursday that he was required to formulate the plan for  
 24 dispersing, disarming and arresting the strikers on the  
 25 koppie. Are you aware of that?



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1 GENERAL MBOMBO: Can you repeat the  
 2 question?  
 3 MR BUDLENDER SC: He said that it was  
 4 only after the JOCCOM meeting at 6 o'clock on the Thursday  
 5 morning that he was required to formulate the plan for  
 6 dispersing, disarming and arresting the strikers on the  
 7 koppie.  
 8 MR SEMENYA SC: Chair, in all fairness,  
 9 the witness must also be told that General Annandale's  
 10 evidence is to the contrary as well.  
 11 MR BUDLENDER SC: Chair, with great  
 12 respect, this is an inappropriate intervention of my  
 13 learned friend. I'm entitled to put to a witness what a  
 14 previous witness said and to ask her whether she agrees or  
 15 disagrees with it.  
 16 CHAIRPERSON: Perhaps the problem can be  
 17 solved as follows. Never mind what Colonel Scott said  
 18 because Colonel Scott told two stories and he wasn't sure  
 19 at the end which was correct, but the point was dealt with  
 20 pertinently by Brigadier Calitz. Brigadier Calitz said  
 21 that on the morning of the Thursday at the 6 o'clock  
 22 meeting it was agreed that a contingency plan would be  
 23 drafted if – it would deal with the situation that the  
 24 miners mightn't, the strikers mightn't lay down their arms  
 25 voluntarily and the intelligence information that they

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1 weren't going to hand them down and they were going to  
 2 fight to keep their weapons, in case that was correct. So  
 3 a plan had to be drawn to deal with that and he said that  
 4 the person to do that was Colonel Scott. That was the  
 5 evidence of Brigadier Calitz clearly on that point. So  
 6 Colonel Scott's evidence suffers from the defect that he  
 7 remembered it differently on different occasions, in the  
 8 end he couldn't say which of the two was correct but that  
 9 one, as I've summarised to you, is what Brigadier Calitz  
 10 said in express terms.  
 11 MR BUDLENDER SC: So Brigadier – you've  
 12 heard what the Chairperson said, Lieutenant-General, if I  
 13 can try to summarise it. Brigadier Calitz's evidence was  
 14 at the JOCCOM meeting it was agreed that a contingency plan  
 15 needed to be formulated for the event that the strikers  
 16 might not hand over the weapons voluntarily. Do you  
 17 understand the question?  
 18 CHAIRPERSON: And –  
 19 MR BUDLENDER SC: And that Colonel Scott  
 20 was the person who would have to do that.  
 21 CHAIRPERSON: And that the intelligence  
 22 was correct, that they would fight.  
 23 GENERAL MBOMBO: Mr Chair, we've got TT4,  
 24 page 1 the very second last paragraph where it says, can I  
 25 please read it? "If the situation escalates, stage 3 will

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1 be implemented but proper communication will be done with  
 2 all commanders when that decision is taken."  
 3 MR BUDLENDER SC: Yes.  
 4 GENERAL MBOMBO: Can I please ask, Mr  
 5 Chair, if that is then the case according to Mr Scott's  
 6 testimony, which stage 3 is being mentioned here on the  
 7 morning of the 16th? That is what I don't understand, Mr  
 8 Chair.  
 9 MR BUDLENDER SC: General, I can't answer  
 10 that question, I wasn't there but you know that the  
 11 correctness of these minutes is a matter of dispute, but  
 12 the point is that Brigadier Calitz – what do you say to  
 13 Brigadier Calitz's evidence that at that meeting it was  
 14 decided that, it was reported that crime intelligence said  
 15 that the strikers would not hand over their weapons, it was  
 16 decided that a contingency plan must be prepared to deal  
 17 with that eventuality and that Colonel Scott must now  
 18 prepare a contingency plan? What do you say to his  
 19 evidence? Do you say it's not the truth?  
 20 MR SEMENYA SC: But Chair, again the  
 21 witness is not in that meeting. How can she be called to  
 22 comment on whether that happened or didn't?  
 23 MR BUDLENDER SC: Well, let me put it –  
 24 that's fair enough, Chair. Let me just put – that's what  
 25 Brigadier Calitz said. Do you understand that?

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1 GENERAL MBOMBO: I hear what you're  
 2 saying.  
 3 MR BUDLENDER SC: Now let me read you  
 4 your statement LLL1.  
 5 CHAIRPERSON: I just want to say  
 6 something to the witness. You're relying on minutes which,  
 7 a copy of minutes which were produced at Roots after  
 8 several attempts to finalise the terms of the minutes.  
 9 Those minutes talk about the need for escalation before the  
 10 tactical option was gone to. That was already dealt with  
 11 yesterday. What we have now, what we didn't have when we  
 12 were originally given those minutes which only were  
 13 finalised at Roots, are the manuscript notes made at the  
 14 time of the meeting and they tell a different story. They  
 15 don't talk about anything that's going to happen after  
 16 escalation, they start with the words, "D-day. Terms and  
 17 conditions, not to continue" and so forth. So there's a  
 18 very strong argument, obviously we must keep an open mind  
 19 about it till the end, there's a very strong argument that  
 20 those minutes that were produced at Roots, which you've  
 21 been quoting which talk about escalation and so on, can't  
 22 be trusted and the more reliable way of looking at it is to  
 23 look at the original minutes which were, the manuscript  
 24 notes which tell a different story that today is D-day. We  
 25 don't have to debate that now but I'm just telling you that

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1 reliance on those late minutes, the Roots minutes, is  
 2 something which has to be treated with a fair degree of  
 3 care in the light of the facts I've put to you but anyway,  
 4 please carry on.  
 5 MR BUDLENDER SC: Paragraph 54 you say  
 6 the following, you say "I need to state that the decision  
 7 to disperse, disarm and arrest, DDA tactic the strikers,  
 8 was made by me already on Tuesday 14 August 2012 and I  
 9 communicated such decision to Mpembe, Naidoo and Annandale  
 10 in the afternoon of the same day. Now I've shown you in  
 11 your evidence that what you told the National Commissioner  
 12 on the, was that on the 14th the plan was encirclement.  
 13 I've shown you Colonel Scott's evidence which is also that  
 14 on the 14th the plan was encirclement and I've shown you  
 15 Brigadier Engelbrecht's statement which shows that on the  
 16 15th the plan was still encirclement. So now how can you  
 17 say that the DDA tactic was decided upon by you on the 14th?  
 18 It can't be true.  
 19 GENERAL MBOMBO: That is so, Mr Chair.  
 20 That is my truth because I heard it from them.  
 21 MR BUDLENDER SC: Alright, we'll leave it  
 22 there.  
 23 COMMISSIONER HEMRAJ: I'm sorry, when you  
 24 say you heard it from them, who do you refer to now?  
 25 GENERAL MBOMBO: I can't hear, Mr Chair?

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1 COMMISSIONER HEMRAJ: When you say you  
 2 heard it from them, who are you referring to?  
 3 GENERAL MBOMBO: Generals Mpembe and  
 4 Annandale on the afternoon of the 14th, they gave me a  
 5 report about the steps that they were looking at according  
 6 to this plan.  
 7 MR BUDLENDER SC: So it wasn't you who  
 8 decided on that tactic. You say you were told by them that  
 9 that was going to be the tactic, is that correct?  
 10 GENERAL MBOMBO: Mr Chair, as I've said  
 11 in paragraph 16 that I'm not an expert in planning things  
 12 concerning or pertaining to a crowd, I depended on them  
 13 with their expertise and I heard it from them.  
 14 MR BUDLENDER SC: I understand that but  
 15 then why do you say in your statement at paragraph 54, "For  
 16 completeness I need to state that the decision to disperse,  
 17 disarm and arrest, DDA tactic the strikers, was made by me  
 18 already on Tuesday the 14th of August."  
 19 GENERAL MBOMBO: It's because what I said  
 20 to them on Monday the 13th, that night, that a plan had to  
 21 be devised so that we can disarm these people, people who  
 22 had to be arrested should be arrested.  
 23 MR BUDLENDER SC: Yes, I understand that  
 24 but your evidence is that you didn't decide on the  
 25 specific tactic that was to be used. That you left to the

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1 people with the specialised knowledge, is that correct?  
 2 GENERAL MBOMBO: That is so, Mr Chair.  
 3 MR BUDLENDER SC: Alright, I just put it  
 4 to you that that's inconsistent with what you said in  
 5 paragraph 54. Would you like to say otherwise?  
 6 GENERAL MBOMBO: Mr Chair, when I spoke  
 7 to my generals about devising a plan of dispersing,  
 8 disarming and arresting these people, the generals are the  
 9 people who had to come with the details of how to effect  
 10 this plan.  
 11 MR BUDLENDER SC: Alright, let's move on,  
 12 Lieutenant-General. I now want to move to the reasons why  
 13 you decided –  
 14 CHAIRPERSON: I'd like to – sorry, before  
 15 you move on I want to ask a question or two about that.  
 16 Are you saying that the decision to which you refer in the  
 17 first line at paragraph 54, which you call the DDA tactic,  
 18 that that was something which arose after the idea of  
 19 proceeding by using the encirclement plan, it would no  
 20 longer have been persisted in? Do you remember you told,  
 21 you said initially there was a plan, you conceded initially  
 22 there was a plan to deal with the situation by an  
 23 encirclement of the koppie and you said later there were  
 24 questions raised about that, problems raised and then this  
 25 other plan was come up with, the DDA plan. Now am I

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1 summarising your evidence correctly?  
 2 GENERAL MBOMBO: Repeat that, Mr Chair,  
 3 please?  
 4 MR BUDLENDER SC: I understood you to say  
 5 that initially you were told of an encirclement plan but  
 6 that later there were problems raised about that and that  
 7 was no longer going to be proceeded with and instead there  
 8 was another plan and that was the DDA plan. Is that a  
 9 correct understanding of what you said?  
 10 [10:22] GENERAL MBOMBO: Mr Chair, they told me  
 11 about the options that they had, they were looking at on  
 12 the night when they were doing the planning that yes, they  
 13 came to encirclement, but as they were talking about it  
 14 they would then get advices from other people. These then  
 15 brought to their knowledge points that could be  
 16 problematic. Then this plan with a lot of phases that they  
 17 were talking about came up.  
 18 CHAIRPERSON: Now is that a plan we can  
 19 describe, as you do, as the DDA tactic?  
 20 GENERAL MBOMBO: That is correct, Mr  
 21 Chair.  
 22 CHAIRPERSON: And so the decision to  
 23 which you refer in the first two lines of paragraph 54, you  
 24 say "I made a decision to disperse, disarm, and arrest, DDA  
 25 tactic," so you made that decision on Tuesday the 14th. So

<p style="text-align: right;">Page 21696</p> <p>1 that refers to that plan, the DDA plan as you've now 2 summarised it. Is that right? And not the encirclement 3 plan. 4 GENERAL MBOMBO: As far as I know it 5 refers to that plan, Mr Chair. 6 CHAIRPERSON: Yes, I see. Well, it's not 7 as far as you know; this is your affidavit that you're 8 talking about, so you must know what you meant. Now when 9 you made that decision, did you make it in the morning or 10 the afternoon? 11 GENERAL MBOMBO: It was already in the 12 afternoon, Mr Chair, after we learned about the body that 13 was found on the koppie. 14 CHAIRPERSON: So you say you only made 15 that decision after you heard about the body on the koppie? 16 GENERAL MBOMBO: The decision that we 17 should go to the DDA plan, but we had already had a plan to 18 go the next day to disperse, but that depended on the 19 negotiations and the show of force and so on. 20 CHAIRPERSON: I see. So would it be 21 correct to say that the encirclement plan was already 22 abandoned, but there was a plan to disperse and disarm 23 already in place on the Tuesday morning? Is that right? 24 GENERAL MBOMBO: The afternoon of 25 Tuesday, Mr Chair.</p>	<p style="text-align: right;">Page 21698</p> <p>1 discuss a plan, a suitable plan. 2 CHAIRPERSON: So did you not then have a 3 plan? By Tuesday morning the plan you had was to 4 negotiate, to have a show of force? Was that all the plan 5 involved at that stage? 6 GENERAL MBOMBO: After the encirclement 7 was criticised they were looking at other options that 8 would be applied if the weapons are not handed over. 9 CHAIRPERSON: In other words if the 10 weapons weren't handed over and the show of force didn't 11 work, then there wasn't a plan yet in place; there were 12 various options being looked at. Is that what you're 13 saying? 14 GENERAL MBOMBO: On Tuesday, Mr Chair, 15 all the other angles had been looked at, if this did not 16 work, what would then be the way forward. 17 CHAIRPERSON: It sounds as if you're 18 agreeing with the summary that I put to you that if the 19 negotiations failed, show of force failed, then there were 20 various options being looked at, but there was no decision 21 taken yet as to what was to happen in that event. That's 22 right, isn't it? 23 GENERAL MBOMBO: That was the case early 24 on Tuesday, Mr Chair. In the afternoon, Tuesday afternoon, 25 after we heard that there was another body found there,</p>
<p style="text-align: right;">Page 21697</p> <p>1 CHAIRPERSON: I'm interested in the 2 morning. What was the plan in the morning on Tuesday? 3 GENERAL MBOMBO: In the morning the plan 4 they were talking about was the encirclement plan, and they 5 also mentioned the problems that may crop up with that 6 plan. 7 CHAIRPERSON: So was there no decision 8 made in the morning, no definite plan decided upon in the 9 morning? 10 GENERAL MBOMBO: There was, Mr Chair, 11 there was a plan. 12 CHAIRPERSON: What was the decision on 13 Tuesday morning? 14 GENERAL MBOMBO: It was for us to go and 15 negotiate with these people, appeal to them to hand over 16 their weapons. 17 CHAIRPERSON: And if they didn't agree to 18 do so? 19 GENERAL MBOMBO: There was also a matter 20 of us showing a force to send a message to them that we are 21 many in numbers. 22 CHAIRPERSON: And if they weren't 23 impressed by the show of force? 24 GENERAL MBOMBO: Again on Tuesday they 25 were supposed to come back, we were supposed to sit and</p>	<p style="text-align: right;">Page 21699</p> <p>1 after they had been looking at all the different options, 2 they then came up with this plan that if we really do not 3 get cooperation, here is a plan that we could use. 4 CHAIRPERSON: That's the DDA plan? 5 GENERAL MBOMBO: That is correct, Mr 6 Chair. 7 CHAIRPERSON: Now you say they came up 8 with this. Now obviously they communicated it to you. Who 9 were they? 10 GENERAL MBOMBO: Generals Mpembe and 11 Annandale at that time were the people giving me these 12 reports. 13 CHAIRPERSON: I see. Thank you. 14 MR BUDLENDER SC: Now Lieutenant General, 15 I'd like to – when we spoke on Tuesday we looked at some of 16 the reasons you had given for why you decided it was 17 necessary for the police to intervene. You remember that? 18 GENERAL MBOMBO: I remember, Mr Chair. 19 MR BUDLENDER SC: I want to take that 20 discussion a little bit further. It's important, I'm sure 21 you'll agree that it is important when someone in a very 22 senior position like yours speaks to the public on 23 television you must choose your words carefully, correct? 24 GENERAL MBOMBO: That is true, Mr Chair. 25 MR BUDLENDER SC: And I should say that</p>

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1 you've given the impression, when one listens to the  
 2 television clips of what you say to the television, media –  
 3 I'm sorry, the media briefing and the TV interview, it  
 4 gives the impression that you are someone who chooses her  
 5 words carefully when she speaks to the media. Is that  
 6 correct?  
 7 GENERAL MBOMBO: I do not say so, Mr  
 8 Chair.  
 9 MR BUDLENDER SC: Do you say you're not  
 10 somebody who chooses her words carefully when she speaks to  
 11 the media?  
 12 GENERAL MBOMBO: Unfortunately, Mr Chair,  
 13 I'm not sure if I choose words correctly.  
 14 MR BUDLENDER SC: But you agree that you  
 15 should choose your words carefully?  
 16 GENERAL MBOMBO: I agree, Mr Chair.  
 17 MR BUDLENDER SC: You know where I'm  
 18 going. Let's listen to JJJ88. Could we have JJJ88,  
 19 please? While we're getting it, I'm sure you'll agree with  
 20 me that it was no concern of the SAPS as to whether the  
 21 strike continued or not. That was a matter between Lonmin  
 22 and its employees.  
 23 GENERAL MBOMBO: That is so, Mr Chair.  
 24 [VIDEO SHOWN]  
 25 MR BUDLENDER SC: Sorry, this is not the

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1 right one, Chair. This is the – could we just go to the  
 2 end of this? I'm looking for where the Provincial  
 3 Commissioner speaks outside to a television interviewer. I  
 4 don't think this is it.  
 5 CHAIRPERSON: That was apparently to eTV.  
 6 MR BUDLENDER SC: Yes.  
 7 CHAIRPERSON: It was an eNCA interview,  
 8 so you won't find it on the SABC clip.  
 9 MR BUDLENDER SC: Not the SABC clip.  
 10 CHAIRPERSON: There is a transcript of  
 11 it. I don't know the number –  
 12 MR BUDLENDER SC: The transcript –  
 13 CHAIRPERSON: No, this looks like it.  
 14 MR BUDLENDER SC: There it is. There we  
 15 are. Thank you very much. What exhibit is this? Anyway,  
 16 right, can we have that played, please?  
 17 CHAIRPERSON: It really would be helpful  
 18 if we were told what the exhibit is –  
 19 MR BUDLENDER SC: I don't know what the –  
 20 CHAIRPERSON: - so that when those who  
 21 read the record after us, we ourselves when we read it,  
 22 would like to know what the exhibit is.  
 23 MR BUDLENDER SC: We'll get the reference  
 24 number. It is an exhibit, Chair. We'll get the number and  
 25 give it to the Commission in due course. Can we just

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1 proceed –  
 2 CHAIRPERSON: Not give it to us; put it  
 3 on record.  
 4 MR BUDLENDER SC: To put it on record,  
 5 yes. Alright, can you play that, please?  
 6 [VIDEO SHOWN]  
 7 I'm advised, Chair, this is JJJ92.  
 8 CHAIRPERSON: Thank you.  
 9 MR BUDLENDER SC: Now you know what the  
 10 issue is, Lieutenant General. Why did you say to the TV  
 11 interviewer and to the world at large that the SAPS, that  
 12 "Today we intend to end this strike"? Why did you say  
 13 that?  
 14 GENERAL MBOMBO: It was a slip of the  
 15 tongue, Mr Chair. It was not our intention to end the  
 16 strike. Our goal was to end the violence that was going  
 17 together with the strike.  
 18 MR BUDLENDER SC: Well, I'm sure others  
 19 will – I have to say to you that I find it difficult to  
 20 understand how there could be such an important slip of the  
 21 tongue. There's a fundamental difference between the  
 22 strike and between violence. How could you say "We're  
 23 going to end the strike"?  
 24 GENERAL MBOMBO: As I'm saying, Mr Chair,  
 25 that was a slip of the tongue. Again there on the

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1 interview I got my bearings, I explained what our intention  
 2 was there and namely that it was to end the violence.  
 3 MR BUDLENDER SC: In fairness to you, you  
 4 did say at the end of the interview that you wanted to end  
 5 the violence and of course that is so. I just find it  
 6 difficult to understand how a person of your seniority,  
 7 speaking to the media in a situation where you're not in a  
 8 rush and you're not under any pressure, and we're not being  
 9 – words are not being put into your mouth, can say that  
 10 your intention is to end the strike. Can you explain it?  
 11 MR SEMENYA SC: The witness has, Chair,  
 12 and said it was a slip of her tongue.  
 13 CHAIRPERSON: He's trying to ask her how  
 14 the, he's asking how the slip of the tongue can arise. I  
 15 don't think there's anything wrong with the question. You  
 16 can carry on, Mr Budlender.  
 17 MR BUDLENDER SC: Mr Chair, I'm not sure  
 18 now how can I explain the slipping of my tongue.  
 19 MR BUDLENDER SC: Alright. I'm sorry,  
 20 was there something more you wanted to say, or should I  
 21 move to the next question?  
 22 GENERAL MBOMBO: No, I'm fine.  
 23 CHAIRPERSON: Are you moving away from  
 24 this point?  
 25 MR BUDLENDER SC: I'm moving away from

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1 the use of the word "strike," Chair. I'm moving into  
 2 another aspect of this interview.  
 3 CHAIRPERSON: I see. When did you  
 4 discover that you've made this slip of the tongue?  
 5 GENERAL MBOMBO: I did not realise at  
 6 that time, Mr Chair. It's probably when I was now  
 7 listening to the interview.  
 8 CHAIRPERSON: Was that in the course of  
 9 the same day?  
 10 GENERAL MBOMBO: No, Mr Chair, I could  
 11 not get this interview the same day.  
 12 CHAIRPERSON: So when was it?  
 13 GENERAL MBOMBO: I think it's when we  
 14 were now listening to it, trying to examine it what was it  
 15 saying. I'm not sure exactly when it was.  
 16 CHAIRPERSON: Approximately when was it?  
 17 How soon after the 16th – or you say it wasn't on the 16th  
 18 of August. How soon after the 16th of August did you  
 19 realise that you'd made this slip of the tongue?  
 20 GENERAL MBOMBO: Mr Chair, it could be  
 21 after the 16th, but some time when it was, when they kept on  
 22 playing it on television, but I cannot remember exactly  
 23 when it was.  
 24 CHAIRPERSON: A few days? They kept on  
 25 playing it, so was it a few days after that you saw it,

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1 realised that there had been a slip of the tongue?  
 2 GENERAL MBOMBO: It cannot be a few days,  
 3 Mr Chair. In those few days I did not really watch  
 4 television, but some time after that.  
 5 CHAIRPERSON: Was it a week? A week or  
 6 so?  
 7 GENERAL MBOMBO: I do not remember, Mr  
 8 Chair. I'm not sure exactly when.  
 9 CHAIRPERSON: I'm not asking you to be  
 10 sure. I'm just asking you to give me an approximation.  
 11 GENERAL MBOMBO: Mr Chair, I cannot even  
 12 estimate, but it was some time after it had happened.  
 13 CHAIRPERSON: As soon as you realised  
 14 that you had said this, or made this slip of the tongue,  
 15 was it clear to you that it was a serious slip of the  
 16 tongue because it was never the policy of the police to  
 17 break or end the strike?  
 18 GENERAL MBOMBO: That is so, Mr Chair.  
 19 CHAIRPERSON: Did you issue any statement  
 20 to the effect that it was an error, a slip of the tongue?  
 21 Did you hasten as soon as you could to correct this, any  
 22 misapprehension created by the slip of the tongue, which  
 23 you yourself say you realise was a serious thing?  
 24 GENERAL MBOMBO: I did not do so, Mr  
 25 Chair.

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1 MR BUDLENDER SC: Now Lieutenant General,  
 2 we heard what you said to the TV interviewer. You didn't  
 3 say that you would end matters that day if circumstances  
 4 permitted, did you? You send "We are going to end it  
 5 today."  
 6 [10:42] GENERAL MBOMBO: I did not hear the  
 7 question.  
 8 MR BUDLENDER SC: You didn't say to the  
 9 interviewer 'We will end matters that day if circumstances  
 10 permit us to do so.' You said, "We're going to end it  
 11 today," as you had said previously in your media briefing,  
 12 correct?  
 13 GENERAL MBOMBO: That is correct, Mr  
 14 Chair.  
 15 MR BUDLENDER SC: And you didn't say you  
 16 would end matters that day if the situation escalated, did  
 17 you?  
 18 GENERAL MBOMBO: I did not say so, Mr  
 19 Chair, because I did not deem it fit to explain everything  
 20 there.  
 21 MR BUDLENDER SC: No, Lieutenant General,  
 22 I don't want to go back to what we did the day before  
 23 yesterday, but there's no suggestion in your interview,  
 24 just as there's no suggestion in your media briefing before  
 25 that, that there's any condition attached to ending the

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1 matter today. You were resolute, we're going to end this  
 2 matter today, unconditional, not so?  
 3 GENERAL MBOMBO: As you say, Mr Chair,  
 4 that's how it looks in the media briefing.  
 5 MR BUDLENDER SC: That's what you  
 6 announced to the media at the briefing and that's what you  
 7 announced to the TV interviewer after the media briefing,  
 8 correct?  
 9 GENERAL MBOMBO: That is so, Mr Chair.  
 10 MR BUDLENDER SC: Alright. Now you've  
 11 explained that you –  
 12 CHAIRPERSON: Are you moving on to a new  
 13 point? I think we can take the tea adjournment now, unless  
 14 you want to make this point before tea?  
 15 MR BUDLENDER SC: No, it's a new point,  
 16 Chair.  
 17 CHAIRPERSON: We'll take the tea  
 18 adjournment.  
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 20 [11:06] CHAIRPERSON: The Commission resumes.  
 21 Provincial Commissioner, you're still under oath.  
 22 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 23 CHAIRPERSON: Mr Budlender.  
 24 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):  
 25 Thank you, Chair. Lieutenant General –

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1 CHAIRPERSON: I'm sorry, before you ask  
 2 your next question, I've decided that we're going to have a  
 3 half hour lunch adjournment today. We'll adjourn at 1 and  
 4 we will resume at 1:30.

5 MR BUDLENDER SC: Thank you, Chair. Now  
 6 Lieutenant General, you've explained to the Commission that  
 7 you were concerned that there should be no further violence  
 8 against people in Marikana.

9 GENERAL MBOMBO: That is correct,  
 10 Chairperson.

11 MR BUDLENDER SC: And I think you've  
 12 explained that that was really the main motive behind the  
 13 decisions which you took.

14 GENERAL MBOMBO: It is so.

15 MR BUDLENDER SC: Now we know that Mr  
 16 Twala, the man at the koppie, was murdered around the  
 17 middle of the afternoon on Tuesday the 14th of August,  
 18 correct?

19 GENERAL MBOMBO: Chairperson, what I know  
 20 is that –

21 CHAIRPERSON: I'm sorry, Mr Budlender,  
 22 I'm sorry, before the witness answers, I'm not sure that's  
 23 entirely correct. We know that the body was seen, I think,  
 24 from a helicopter at round about 2 o'clock or so in the  
 25 afternoon, and that eventually there were negotiations with

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1 some of the strikers and then the police went to retrieve  
 2 the body and that was done late in the afternoon. We're  
 3 not actually aware at this stage as to when he was killed.  
 4 There may be evidence about that later, but we haven't got  
 5 any evidence at this stage.

6 MR BUDLENDER SC: Thank you, Chair. I'm  
 7 sorry, my question was –

8 MR MAHLANGU: The response, Mr Chair,  
 9 was, "The body was discovered at about that time. I do not  
 10 know when he was actually killed."

11 MR BUDLENDER SC: Yes, that's right. Now  
 12 were there any further injuries or deaths after that on the  
 13 14th of August?

14 GENERAL MBOMBO: As far as I know there  
 15 were no injuries after that.

16 MR BUDLENDER SC: Were there any injuries  
 17 or deaths on the 15th of August?

18 GENERAL MBOMBO: I did not receive such a  
 19 report, Mr Chairperson.

20 MR BUDLENDER SC: Did you receive any  
 21 report of any injuries or deaths on the 16th before the  
 22 police commenced the operation?

23 GENERAL MBOMBO: There was no such  
 24 report, Chairperson.

25 MR BUDLENDER SC: So as far as you knew,

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1 at the time when the SAPS commenced the tactical operation  
 2 of stage 3 there had been no injuries or deaths for about  
 3 two days?

4 GENERAL MBOMBO: It is so, Chairperson.

5 MR BUDLENDER SC: So the key question  
 6 which we submit the Commission needs to understand the  
 7 answer to is what was the reason why you decided that stage  
 8 3, the tactical phase must be implemented on the Thursday,  
 9 and I want to ask you some questions about that. Now you  
 10 knew that most of the strikers left the koppie at night and  
 11 then returned during the following day.

12 GENERAL MBOMBO: If I could just  
 13 understand your question before this one?

14 MR BUDLENDER SC: I'm going to ask you  
 15 some questions about why you decided to implement stage 3  
 16 on the Thursday, and now I'm starting to ask those  
 17 questions, and the first question is you knew that most of  
 18 the strikers left the koppie at night and then returned to  
 19 the koppie during the day?

20 GENERAL MBOMBO: That was the report I  
 21 received, Chairperson.

22 MR BUDLENDER SC: And you also knew that  
 23 once there was a large number of strikers on the koppie it  
 24 was not possible to implement the encirclement plan?

25 GENERAL MBOMBO: That is what was said,

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1 Chairperson.

2 MR BUDLENDER SC: And by 9:30 on Thursday  
 3 when you announced that you would put an end to the matter  
 4 that day, it was already too late to implement the  
 5 encirclement plan on that day because there were too many  
 6 people on the koppie?

7 GENERAL MBOMBO: Firstly, Chairperson, we  
 8 should remember that on the day that we're talking about  
 9 there was no encirclement to be done at 9:30. In fact, the  
 10 plan of encirclement was the one that was criticised by the  
 11 people involved in the planning. And another thing, we  
 12 knew that we had Mr Mathunjwa who was making endeavour to  
 13 bring about a peaceful settlement.

14 MR BUDLENDER SC: Let me put the question  
 15 crisply. What is the reason – or I'm sorry, let me take a  
 16 step back. You decided on Thursday, or you decided in fact  
 17 on Wednesday that you must put an end to the matter. Now  
 18 you made your decision known on Thursday. Now is there a  
 19 reason why you couldn't wait till early Friday morning to  
 20 encircle the strikers on the koppie and deal with the  
 21 matter that way?

22 GENERAL MBOMBO: As I mentioned in my  
 23 statement here, Chairperson, that those people who were  
 24 doing the planning were going to, during the carrying over  
 25 of the plan, during the execution of the plan, knew that

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1 they were going to go on with the plan in accordance with  
 2 our Standing Order and our policy. That is when, Mr  
 3 Chairperson, we would have then made the decision in  
 4 accordance with the circumstances existing there if it was  
 5 appropriate to go on.  
 6 MR BUDLENDER SC: I'm afraid I don't  
 7 think that's an answer to the question. The question is  
 8 was there any reason why you could not wait until early on  
 9 the morning of Friday and deal with the strikers on the  
 10 koppie by encircling and arrest, disarming and arresting  
 11 them?  
 12 GENERAL MBOMBO: Maybe let me put it this  
 13 way, Mr Chairperson. According to me there wouldn't have  
 14 been any reason, but according to the people who were to  
 15 execute the plan they would have decided, taking into  
 16 consideration what the situation was, whether it was  
 17 possible to execute this plan.  
 18 MR BUDLENDER SC: I understand that. So  
 19 what you're saying is that, what you said is that there  
 20 wasn't a problem with implementing the encirclement plan  
 21 that you were aware of early on the Friday morning, but it  
 22 was a matter which you left at the decision of the generals  
 23 and the people in command as to which plan to implement.  
 24 Is that right?  
 25 GENERAL MBOMBO: No, it is not so,

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1 Chairperson. I did not speak of an encirclement.  
 2 MR BUDLENDER SC: But you said there was  
 3 no reason why there couldn't have been an encirclement  
 4 early on the morning of Friday, if I heard you correctly.  
 5 GENERAL MBOMBO: You possibly did not  
 6 understand me well, or otherwise I did not put it very  
 7 clear.  
 8 CHAIRPERSON: You were asked a question  
 9 in express terms, was there any reason why the encirclement  
 10 couldn't be done on the Friday morning early, and you said  
 11 no, there wasn't, but that's why Mr Budlender, as I  
 12 understand it, understood you to be saying what he  
 13 summarised in the question that he asked you. Now are you  
 14 withdrawing that answer you gave, which you gave to the  
 15 question as to whether there was any reason why the  
 16 encirclement couldn't be done early on the Friday morning?  
 17 You said there wasn't a reason. Are you withdrawing that  
 18 answer?  
 19 GENERAL MBOMBO: Chairperson, I explained  
 20 that on Thursday the 16th that the plan of encirclement was  
 21 not going to be done according to my knowledge.  
 22 CHAIRPERSON: That's not an answer to the  
 23 question. The question Mr Budlender asked you, whether was  
 24 there any reason you're aware of why the encirclement plan  
 25 couldn't be executed, put into operation early on the

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1 Friday morning, and I understood you to say that, to agree  
 2 with that proposition. If I misunderstood you, or if you  
 3 didn't intend to say that, then I asked you do you wish to  
 4 withdraw what you said, or do you wish to clarify it to  
 5 remove any misunderstanding on my part as to what you had  
 6 said in answer to the question Mr Budlender asked you.  
 7 GENERAL MBOMBO: Chairperson, I explained  
 8 that as far as I knew, that the plan of encirclement was  
 9 not going to be applied because the people that were  
 10 involved in the plan had already criticised it, criticism  
 11 that it would not be feasible. What I'm trying to explain,  
 12 Mr Chairperson, is whether it was going to be on a Friday,  
 13 as far as I know I don't think they were going to use that  
 14 plan because it wasn't an issue anymore.  
 15 MR BUDLENDER SC: Well, we had the  
 16 evidence about what the criticisms were of the plan. We  
 17 know that initially there was a – of encirclement – there  
 18 was a problem initially that there weren't enough police on  
 19 the scene who were familiar with the scene. We know there  
 20 was a problem that it couldn't be done during the day when  
 21 there were a lot of people there. We know it was felt that  
 22 it couldn't be done while negotiations were still taking  
 23 place. Are you aware of any other reason why encirclement  
 24 was considered inappropriate?  
 25 GENERAL MBOMBO: Those are the exact

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1 reasons that you have just mentioned. One other reason  
 2 that was mentioned to me, Mr Chairperson, was that they did  
 3 not have sufficient barbed wire.  
 4 MR BUDLENDER SC: Were you told that  
 5 additional barbed wire had been procured from Lonmin?  
 6 GENERAL MBOMBO: I don't remember being  
 7 told that –  
 8 CHAIRPERSON: [Microphone off, inaudible]  
 9 procured is the right word –  
 10 MR BUDLENDER SC: Made available.  
 11 CHAIRPERSON: Made available.  
 12 MR BUDLENDER SC: Made available by  
 13 Lonmin.  
 14 GENERAL MBOMBO: I don't remember, I  
 15 don't recall being told that.  
 16 MR BUDLENDER SC: In any event, General,  
 17 I must accept it wasn't, the decision whether to use the  
 18 encirclement or the decision to use the DDA plan was not a  
 19 decision you made. That was a decision which was made by  
 20 the commanders on the ground, correct?  
 21 GENERAL MBOMBO: It is correct,  
 22 Chairperson, after I had spoken, after it was spoken to  
 23 them about it.  
 24 MR BUDLENDER SC: Now I want to put it to  
 25 you that – and you're not yourself aware of any reason why

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1 the encirclement plan, why you couldn't wait – well, I  
 2 don't want to repeat the question. I want to put to you  
 3 the reason why the encirclement plan couldn't be  
 4 implemented, and the reason is that you'd already announced  
 5 publicly to the world that it would be ended on Thursday,  
 6 so they couldn't wait, the generals on the ground couldn't  
 7 wait till Friday. You had already decided and instructed,  
 8 "Today is the day."  
 9 GENERAL MBOMBO: Chairperson, the way in  
 10 which I work, I issue instructions to the people that I  
 11 work with. But, Mr Chairperson, they had a chance of  
 12 coming back to me if they realised that the instructions  
 13 that I'd given would have some problem, some difficulties.  
 14 MR BUDLENDER SC: Wouldn't they have a  
 15 trouble with that, difficulty with that, Lieutenant  
 16 General, because you'd already announced to the world,  
 17 you'd given a public undertaking that the matter would be  
 18 ended that day. Do you say they could have come to you  
 19 afterwards and said oh no, please let's do it tomorrow?  
 20 GENERAL MBOMBO: According to me yes, it  
 21 could be so. There wouldn't have been anything stopping  
 22 them from doing that.  
 23 MR BUDLENDER SC: No-one, none of the  
 24 generals raised that question with you?  
 25 GENERAL MBOMBO: They did not raise it.

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1 However, if the fact that they did not mention it, there  
 2 was nothing stopping them from doing so.  
 3 MR BUDLENDER SC: And we've already  
 4 established that by the time at 13:30 that you gave the  
 5 instruction that stage 3 must be implemented, there had  
 6 been no violence for approximately two days, correct?  
 7 GENERAL MBOMBO: It is so, Chairperson.  
 8 MR BUDLENDER SC: Now I want to discuss  
 9 with you the risks of implementing the DDA option. What  
 10 were the risks?  
 11 GENERAL MBOMBO: I think you said you  
 12 were going to put that to me as –  
 13 CHAIRPERSON: Are you saying there  
 14 weren't any risks that you were aware of, or were you aware  
 15 of risks? If there weren't any risks you were aware of,  
 16 then obviously you can't tell us what risks there were, but  
 17 perhaps we should ask that question first. Were you aware  
 18 of any risks that would arise if the DDA tactic were  
 19 implemented at 1:30 on Thursday afternoon when there were  
 20 something like 3 000 people on the koppie?  
 21 GENERAL MBOMBO: I knew, Mr Chairperson,  
 22 that there could be some problems. They also tried to  
 23 mention that they foresee certain problems that could  
 24 arise.  
 25 MR BUDLENDER SC: Well, what were those

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1 problems?  
 2 GENERAL MBOMBO: One of them was that if  
 3 the people would not respond to the notices that they would  
 4 give them before applying teargas and stun grenades, that  
 5 it would be possible that the people would move forward in  
 6 an attack, fighting. They told me that the barbed wire  
 7 would actually help in that respect.  
 8 MR BUDLENDER SC: Were there any other  
 9 risks or problems which were mentioned?  
 10 GENERAL MBOMBO: Some, Mr Chairperson,  
 11 was that if they would possibly run out of teargas, they  
 12 explained that they would then use water cannons, that it  
 13 would possibly be necessary to proceed further to rubber.  
 14 MR MPOFU: Sorry, Chairperson –  
 15 CHAIRPERSON: Yes, Mr Mpofo?  
 16 MR MPOFU: Yes, sorry that I allowed this  
 17 to go for after a few questions. I was just wondering  
 18 whether to raise it. There was about two questions ago  
 19 where the witness said that part of what the risks were,  
 20 were that the people would come up and fight, and then it  
 21 was –  
 22 CHAIRPERSON: [Microphone off,  
 23 inaudible].  
 24 MR MPOFU: Fighting, yes.  
 25 CHAIRPERSON: What was actually

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1 translated was come forward fighting.  
 2 MR MPOFU: Yes. It was said come  
 3 forward, attacking and fighting. But the attacking was not  
 4 there. She had just said fighting.  
 5 CHAIRPERSON: Mr Mahlangu, what do you  
 6 say about this criticism of your interpretation?  
 7 MR MAHLANGU: I agree, Mr Chairperson,  
 8 that the –  
 9 MR MPOFU: Slip of the tongue.  
 10 MR MAHLANGU: Possibly not slip of the  
 11 tongue, but the ambiguity in the language.  
 12 [11:26] CHAIRPERSON: At least this slip of the  
 13 tongue, whatever it was, was corrected immediately.  
 14 MR MAHLANGU: Thank you, Mr Chair.  
 15 MR BUDLENDER SC: Alright, so you've  
 16 mentioned – I've asked you what were the risks or the  
 17 problems. You've mentioned that there was a risk that the  
 18 people would come forward fighting but the barbed wire was  
 19 intended to deal with that. You've mentioned that it was  
 20 possible that they would run out of teargas, they had water  
 21 cannons but it might be necessary to proceed further to use  
 22 rubber. Right, and were there any other risks or problems  
 23 which were raised with you?  
 24 GENERAL MBOMBO: They mentioned that they  
 25 would try their level best, they say they would make, each



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1 and every thing they would try their level best to avoid  
 2 any spilling of blood, except when it is now beyond what,  
 3 their control.  
 4 MR BUDLENDER SC: Were there any other  
 5 risks or problems which were mentioned to you?  
 6 GENERAL MBOMBO: I don't remember each  
 7 and every thing more than what I have already explained to  
 8 you, Mr Chair.  
 9 MR BUDLENDER SC: Did no-one say to you  
 10 there's a risk that the POP members will not be able to  
 11 deal with the situation and the TRT will have to act?  
 12 GENERAL MBOMBO: They mentioned, Mr  
 13 Chairperson, that they were going to try their level best  
 14 to use everything according to their training, the powers  
 15 they have, in an endeavour to execute this plan except  
 16 where they possibly come to a position that things are  
 17 beyond their control.  
 18 MR BUDLENDER SC: General, I'm afraid  
 19 again you haven't answered my question. Did they explain  
 20 to you that one of the risks was that the POP would not be  
 21 able to succeed in their mission and the TRT would have to  
 22 come into play?  
 23 GENERAL MBOMBO: That's how I explain it,  
 24 Mr Chairperson, because where they mentioned that where  
 25 things go beyond their control, that is where they were

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1 thinking they would then be assisted by the TRT line.  
 2 MR BUDLENDER SC: So they did mention the  
 3 risk that the TRT would have to be called into play?  
 4 GENERAL MBOMBO: Not that the TRT was  
 5 part of the dispersion of the crowd but only to be there to  
 6 assist them if conditions were such that things went beyond  
 7 control.  
 8 MR BUDLENDER SC: General, it's a simple  
 9 question. Were you told that there was a risk that the POP  
 10 would not be able to deal with the situation and that the  
 11 TRT would then be called into play, yes or no?  
 12 GENERAL MBOMBO: It is so.  
 13 MR BUDLENDER SC: What would the TRT do  
 14 if they were called into play? What are their methods of  
 15 dealing with problems?  
 16 GENERAL MBOMBO: According to the plan  
 17 they were to come to the assistance only during the  
 18 disarmament when the arms were being taken from the people.  
 19 MR BUDLENDER SC: And the TRT carry only  
 20 sharp weapons, correct?  
 21 GENERAL MBOMBO: It is so, correct,  
 22 Chair.  
 23 MR BUDLENDER SC: If they have to use  
 24 their equipment that means they have to fire sharp weapons.  
 25 GENERAL MBOMBO: I take it, it so, Mr

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1 Chairperson, that they are trained, they are trained and  
 2 know as a result of the training under what circumstances  
 3 that sharp ammunition has to be used.  
 4 MR BUDLENDER SC: Did no-one say to you  
 5 that there's a risk that if the POP failed to carry it out  
 6 and the TRT are called in, there may be injuries or death  
 7 because the TRT may be called upon to shoot people?  
 8 GENERAL MBOMBO: When that was being  
 9 discussed and they were discussing it with me, mention was  
 10 made, Mr Chairperson, of the fact that the spilling of  
 11 blood should be avoided, we don't want that.  
 12 MR BUDLENDER SC: No, I'm not talking  
 13 about whether it should be avoided. Did anybody mention to  
 14 you that there was a risk that if the TRT was called into  
 15 play they would use their weapons and people might be  
 16 injured or killed?  
 17 GENERAL MBOMBO: They were called to that  
 18 area, Mr Chairperson, for one reason only, that they would  
 19 get involved in the operation during the dispersal unless  
 20 they were called upon to assist where the position was  
 21 beyond the control of the POP.  
 22 MR BUDLENDER SC: General, I'm asking you  
 23 for I think the fourth time now. Did anyone mention to you  
 24 that there was a risk that if the TRT were called into play  
 25 they might use their weapons as a result of which people

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1 might be injured or killed? Was that risk ever mentioned  
 2 to you?  
 3 GENERAL MBOMBO: It was mentioned amongst  
 4 all the other risks that were mentioned, Mr Chairperson.  
 5 MR BUDLENDER SC: Right, so of course –  
 6 why would the TRT be more effective than the POP? It's  
 7 only because they had sharp weapons, not so?  
 8 GENERAL MBOMBO: I'm not very sure of  
 9 being more effective.  
 10 MR BUDLENDER SC: Well, what would be the  
 11 reason? If the POP has failed why, in what way could the  
 12 TRT be helpful in achieving something that the TRT hadn't  
 13 achieved?  
 14 GENERAL MBOMBO: It was also important,  
 15 Mr Chairperson, that the police, members of the POP be  
 16 given the necessary protection.  
 17 MR BUDLENDER SC: General, that's again  
 18 not an answer. What could the TRT achieve that the POP  
 19 were not able to achieve?  
 20 GENERAL MBOMBO: Mr Chairperson, they  
 21 were not put there in any competition with the POP. The  
 22 reason they were there is that they should help if it  
 23 becomes necessary.  
 24 CHAIRPERSON: You said they were going to  
 25 protect the POP, is that right?

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1 GENERAL MBOMBO: One of the things they  
 2 were supposed to do.  
 3 CHAIRPERSON: Protect them from what?  
 4 GENERAL MBOMBO: If they came across the  
 5 condition where anything that was beyond their powers.  
 6 CHAIRPERSON: Protect them from what?  
 7 You haven't answered my question. Protect them from what?  
 8 GENERAL MBOMBO: If they were being  
 9 attacked and they were not in a position to protect  
 10 themselves, to get such protection.  
 11 CHAIRPERSON: How would the TRT have  
 12 protected them if they were being attacked? What would the  
 13 TRT have done, the members of the TRT have done to protect  
 14 them from being attacked, while they were being attacked?  
 15 GENERAL MBOMBO: It was assistance, Mr  
 16 Chairperson, in terms of their – according to the way they  
 17 are trained, to help, that kind of safety protection.  
 18 MR BUDLENDER SC: Lieutenant-General,  
 19 what was the TRT able to do that the POP were not  
 20 themselves able to do?  
 21 GENERAL MBOMBO: They, Mr Chairperson,  
 22 have sharp arms, sharp point ammunition, the guns they use.  
 23 They are trained, Mr Chairperson, to use these kind of  
 24 firearms with the necessary care. I think they were going  
 25 to use that kind of care in case there was any need for

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1 them to use these arms.  
 2 MR BUDLENDER SC: Yes, it's taken a long  
 3 time to get there but what the TRT could do is they could  
 4 use sharp ammunition but the result of that would be that  
 5 people would be injured or killed.  
 6 GENERAL MBOMBO: As you say, Chairperson,  
 7 but I know and the way they are trained, there could have  
 8 been injuries without possible fatalities.  
 9 CHAIRPERSON: There could have been  
 10 injuries and there could have been deaths, is that right?  
 11 GENERAL MBOMBO: Correct, Chairperson.  
 12 MR BUDLENDER SC: So when you went into  
 13 the operation you knew that one of the risks in the  
 14 operation was that the POP might not succeed, the TRT might  
 15 be called in and as a result people might be injured or  
 16 killed.  
 17 GENERAL MBOMBO: According to the risks  
 18 that were explained, Mr Chairperson, it is so but I'd been  
 19 given the assurance that all endeavours would be made, Mr  
 20 Chairperson, to avoid spilling of blood.  
 21 MR BUDLENDER SC: I've read you what –  
 22 CHAIRPERSON: Sorry to interrupt, Mr  
 23 Budlender. Who gave you that assurance?  
 24 GENERAL MBOMBO: The people who were  
 25 involved in the planning, Mr Chairperson. When the

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1 explanations were done they explained, they mentioned that  
 2 the plan must be executed with the necessary care to avoid  
 3 any bloodshed.  
 4 CHAIRPERSON: Who gave you that  
 5 assurance? You said the people involved in the planning  
 6 but give me names, who in particular?  
 7 GENERAL MBOMBO: General Mpembe mostly,  
 8 Mr Chairperson, who was mentioning this.  
 9 CHAIRPERSON: Mostly, and who else?  
 10 General Mpembe mostly, and who else?  
 11 GENERAL MBOMBO: I'm saying the person  
 12 who said it mostly was himself, Mr Chairperson, being  
 13 assisted by General Annandale.  
 14 CHAIRPERSON: When did they give you that  
 15 assurance, those assurances?  
 16 GENERAL MBOMBO: The morning of Thursday,  
 17 Mr Chairperson, when they gave me a short briefing.  
 18 CHAIRPERSON: When did they give you this  
 19 briefing? You say in the morning of the Thursday but when  
 20 in the morning?  
 21 GENERAL MBOMBO: I think it was before  
 22 nine, Mr Chairperson, at the time of my arrival there.  
 23 CHAIRPERSON: In other words, before your  
 24 media briefing.  
 25 GENERAL MBOMBO: It is correct, Chair.

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1 CHAIRPERSON: Yes, thank you.  
 2 COMMISSIONER HEMRAJ: Was it ever  
 3 conveyed to you, General, in what circumstances it was  
 4 envisaged that the TRT might need to come to the assistance  
 5 of POPS?  
 6 GENERAL MBOMBO: They would have looked  
 7 at the risks that would be there, Mr Chairperson. By the  
 8 time they were looking at the risks.  
 9 MR MAHLANGU: Corrected. By the time  
 10 they were looking at the risks.  
 11 GENERAL MBOMBO: It was mentioned to me  
 12 that the TRT should be at the back so that they could only  
 13 move forward when the people were being dispersed and are  
 14 being disarmed.  
 15 CHAIRPERSON: And if the people were  
 16 being attacked, you said there was a possibility that the  
 17 POP members might be attacked. Presumably if the POP  
 18 members were being attacked, the TRT people would then have  
 19 to spring into action to protect them, as you've said.  
 20 Would they then come forward also?  
 21 GENERAL MBOMBO: I'm not clear, Mr  
 22 Chairperson, the question?  
 23 CHAIRPERSON: You said you anticipated  
 24 the TRT would come forward or you understood that the TRT  
 25 members would come forward while the strikers were being

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1 disarmed but the question I asked you was, you also  
 2 understood that they might need protection. The TRT  
 3 members might have to protect the POP members if they were  
 4 being attacked. So I said, I asked you if they were being  
 5 attacked, did you understand that the TRT members would  
 6 also come forward in order to do what they had to do to  
 7 protect the POP members?  
 8 GENERAL MBOMBO: According to the  
 9 explanation given to me, Mr Chairperson, the people were  
 10 being dispersed, would have been encircled into smaller  
 11 groups and then disarmed. It would have then depended if  
 12 the POP found themselves in some difficulty or the TRT saw  
 13 it that way, they would only then have come forward when  
 14 they could see that there are problems.  
 15 MR BUDLENDER SC: General, I want to –  
 16 I'm sorry. I want to take a step back, let's describe the  
 17 situation which the police were facing. There were several  
 18 thousand men gathered on a koppie, correct?  
 19 GENERAL MBOMBO: Correct, Chairperson.  
 20 MR BUDLENDER SC: Many of them were armed  
 21 with dangerous weapons, correct?  
 22 GENERAL MBOMBO: It is so.  
 23 MR BUDLENDER SC: Some of, several of  
 24 them were believed to be armed with firearms, correct?  
 25 GENERAL MBOMBO: That's correct,

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1 Chairperson.  
 2 MR BUDLENDER SC: Some of them had  
 3 already shown a willingness to kill in order to achieve  
 4 their goals, correct?  
 5 GENERAL MBOMBO: Correct, Chairperson.  
 6 MR MPOFU: I object to that question,  
 7 Chairperson, honestly.  
 8 MR BUDLENDER SC: I can ask a question  
 9 which can be answered, Chair.  
 10 CHAIRPERSON: I don't think the objection  
 11 can validly be taken. The objection is disallowed.  
 12 MR MPOFU: Well, Chairperson –  
 13 CHAIRPERSON: I've given my ruling, Mr  
 14 Mpofu.  
 15 MR BUDLENDER SC: The crime intelligence  
 16 – that was the situation on the koppie. The intelligence  
 17 from, the information from crime intelligence was that the  
 18 strikers became agitated when their comfort zone was  
 19 threatened and they made it clear that they would never  
 20 surrender their weapons as they needed the weapons to  
 21 protect themselves against NUM members. You've seen, I've  
 22 shown you that.  
 23 GENERAL MBOMBO: You did show me, yes,  
 24 sir.  
 25 MR BUDLENDER SC: I want to suggest to

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1 you that under those circumstances it was reckless to  
 2 implement the DDA option as a way of dealing with the  
 3 matter because it was almost inevitable that it was going  
 4 to result in violence. Would you like to comment on that?  
 5 GENERAL MBOMBO: I think, Mr Chairperson,  
 6 this is according to me, our job is important, sir, that we  
 7 protect the lives of people. The same way we have on  
 8 several occasions protected the lives of people, though it  
 9 was explained that we were reckless. Our aim, Mr  
 10 Chairperson, is even if it was mentioned that we were  
 11 reckless, our aim was to protect the lives of people.  
 12 MR BUDLENDER SC: General, what I want,  
 13 what I'm putting to you, at the time that you implemented  
 14 that action there had been no injuries or deaths for two  
 15 days, correct?  
 16 GENERAL MBOMBO: It is so, sir.  
 17 MR BUDLENDER SC: There was the option  
 18 available of the encirclement option early the following  
 19 morning, correct?  
 20 GENERAL MBOMBO: I am not very sure if  
 21 you say there was such an option.  
 22 MR BUDLENDER SC: Well, the police could  
 23 have implemented the encirclement option early in the  
 24 following morning when there were few people on the koppie.  
 25 GENERAL MBOMBO: As far as I know, Mr

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1 Chairperson, that plan had already been criticised, it was  
 2 no more an issue.  
 3 MR BUDLENDER SC: Yes, we've been through  
 4 the criticisms. I want to put it to you again that to  
 5 implement the DDA option on Thursday afternoon, the 16th of  
 6 August, under the circumstances I've described was reckless  
 7 because it would almost inevitably lead to injury or death.  
 8 Do you agree or disagree with my comments?  
 9 [11:46] GENERAL MBOMBO: I totally do not agree  
 10 with you, Mr Chairperson.  
 11 MR MPOFU: No –  
 12 MR MAHLANGU: I'm sorry. I do not  
 13 entirely agree with you, Chairperson.  
 14 MR BUDLENDER SC: Which parts do you  
 15 agree with?  
 16 GENERAL MBOMBO: I am saying I do not  
 17 entirely agree with this because I'm explaining, sir, in  
 18 this explanation, I'm giving this explanation that the plan  
 19 dependant, was also dependant on the people that were going  
 20 to execute it at the koppie. They would have looked at the  
 21 circumstances facing them, looking at all the points that  
 22 could be problematic, make a decision in terms of the  
 23 situational appropriateness.  
 24 MR BUDLENDER SC: General, you'd already  
 25 made an announcement that you were going to remove the

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1 strikers on that day, you'd already decided you were going  
 2 to remove them that day and you'd already given an  
 3 instruction that it must be done that afternoon. So now  
 4 what could they do?  
 5 GENERAL MBOMBO: Chairperson, the  
 6 instructions that I gave to the police serving under me,  
 7 people I work with, this does not, Mr Chairperson, remove  
 8 the manner in which they, when they looked at the  
 9 situation, decide how to work on it.  
 10 MR BUDLENDER SC: General, Lieutenant-  
 11 General I'm sorry, I allowed myself to be deviated. You  
 12 said that you partly agreed with my proposition, my  
 13 description of the situation and that in that situation it  
 14 was reckless when there was another option available. Now  
 15 which part of that did you agree with?  
 16 MR SEMENYA SC: Chair -  
 17 CHAIRPERSON: Sorry, before the witness  
 18 answers the question -  
 19 MR SEMENYA SC: Chair -  
 20 CHAIRPERSON: Mr Semenya has turned on  
 21 his light.  
 22 MR SEMENYA SC: Chair, I would like here  
 23 Mr Mpofo and maybe Commissioner Tokota to help. It really  
 24 depended where that "entirely" is placed in the sentence.  
 25 If you say I don't agree entirely and you say I do not

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1 agree entirely, it depends where that "entire" is and -  
 2 MR MPOFU: No, that's very, that's very -  
 3 CHAIRPERSON: We'll ask our Xhosa  
 4 linguistic advisers to help us. Yes, Mr Mpofo, as a junior  
 5 you can speak first and then we'll get Mr Tokota, if he  
 6 disagrees.  
 7 MR MPOFU: Yes, thank you, Chairperson.  
 8 Yes that is, what Mr Semenya is saying is correct but it's  
 9 not just a matter of the word order, it's also inflection.  
 10 She, when she says (speaking Xhosa) it means she does not  
 11 entirely agree with you. If she was saying (speaking  
 12 Xhosa) that means I totally do not agree with you. So the  
 13 word, Mr Semenya is quite correct but she had certainly put  
 14 the emphasis on the "entirely."  
 15 COMMISSIONER TOKOTA: The way I  
 16 understand Xhosa, if she was saying I do not agree with you  
 17 totally, she would say (speaking Xhosa). She wouldn't say  
 18 (speaking Xhosa). She would say (speaking Xhosa).  
 19 MR MPOFU: That's even -  
 20 COMMISSIONER TOKOTA: - to say I don't  
 21 agree totally.  
 22 MR MPOFU: Totally, yes.  
 23 COMMISSIONER TOKOTA: But if she said  
 24 (speaking Xhosa), then she says I do not entirely agree  
 25 with you.

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1 MR MPOFU: Thank you.  
 2 CHAIRPERSON: Now we've got clarity from  
 3 our linguistic advisers. Now, Mr Interpreter, which of the  
 4 two did she say in Xhosa?  
 5 MR MAHLANGU: I beg your pardon,  
 6 Chairperson?  
 7 CHAIRPERSON: Mr Tokota who speaks, I  
 8 understand, what is described as a very deep Xhosa, he has  
 9 told us the two ways in which these things can be said, the  
 10 way you would say I do not entirely agree and the way you  
 11 would say I entirely disagree. Now, which of the two  
 12 formulations in Xhosa did the witness use when she gave her  
 13 evidence?  
 14 MR MAHLANGU: Adv Tokota is totally  
 15 correct, Mr Chairperson. The witness did not use the word  
 16 that I do not entirely agree with you, that I do not agree  
 17 with you at all, as Mr Tokota puts it. What she said was,  
 18 I do not entirely agree with what you are putting to me.  
 19 CHAIRPERSON: That seems to be the  
 20 answer, Mr Semenya. So Mr Budlender may proceed with this  
 21 line of questioning.  
 22 MR MPOFU: Thank you.  
 23 MR BUDLENDER SC: So with which parts of  
 24 what I said did you agree? It's a long time ago, General,  
 25 maybe it's fair for me to put the question, proposition to

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1 you again because I think you may not remember what I said.  
 2 The proposition I put to you was that under the  
 3 circumstances which prevailed at that time it was reckless  
 4 to proceed with the DDA operation that afternoon because  
 5 there was, it was a virtual certainty that it would result  
 6 in injuries or deaths. I think I'm correctly summarising  
 7 the proposition I put, and you say you don't entirely agree  
 8 with that. With which part of that do you agree?  
 9 GENERAL MBOMBO: What I agree with is  
 10 that even if there was the possibility that there would be  
 11 people injured if we go, went on, executed this operation,  
 12 though I had been given the assurance, Mr Chairperson, that  
 13 all endeavours would be done.  
 14 MR BUDLENDER SC: Alright, well, I think  
 15 I've taken that as far as I can take it. I'm now going to  
 16 move, I've told you -  
 17 CHAIRPERSON: I'm not sure I understand  
 18 the answer. Are you saying that you accept there was a  
 19 risk of bloodshed but you had been assured by the  
 20 operational commanders or those in command on the ground  
 21 that - or in the JOC - that care would be taken to  
 22 endeavour to reduce bloodshed to the minimum. Is that  
 23 effectively what you say?  
 24 GENERAL MBOMBO: Not exactly, Mr  
 25 Chairperson, what I'm saying. What I'm trying to explain

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1 here is that during the discussion there was mention that  
 2 there's a possibility of people being injured but we were  
 3 given the assurance and we also insisted that that is not  
 4 what we want should happen. They also mentioned, Mr  
 5 Chairperson, that they would try everything possible to  
 6 avoid any of that bloodshed.  
 7 CHAIRPERSON: It sounds as if you're  
 8 agreeing with me, that you accepted that there was a risk  
 9 of bloodshed but you'd been assured that every endeavour  
 10 would be made to reduce that to the absolute minimum.  
 11 GENERAL MBOMBO: It is so, sir.  
 12 MR BUDLENDER SC: Right, now I'm going to  
 13 move on to some shorter matters, Lieutenant-General.  
 14 Firstly, how many phone calls did you receive from the  
 15 Minister of Police before the operation commenced on the  
 16 16th?  
 17 GENERAL MBOMBO: I don't remember having  
 18 any telephonic discussion with him on the 16th. I am not  
 19 sure, I wouldn't be sure.  
 20 MR BUDLENDER SC: I'm sorry, I think I  
 21 didn't put my question very clearly. Think of the time  
 22 when you commenced the operation on the 16th. Now, in the  
 23 whole period that led, went before then, starting from the  
 24 9th how many phone calls did you receive from the Minister  
 25 of Police.

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1 GENERAL MBOMBO: I don't remember very  
 2 clearly on the 16th, Mr Chairperson, except after this  
 3 tragedy had, after the happening of this tragedy.  
 4 MR BUDLENDER SC: I asked how many phone  
 5 calls did you receive from the Minister of Police between  
 6 the 9th and the 15th?  
 7 GENERAL MBOMBO: The question, just  
 8 clarify sir?  
 9 MR BUDLENDER SC: How many phone calls  
 10 did you receive from the Minister of Police between the 9th  
 11 and the 15th of August.  
 12 GENERAL MBOMBO: Oh, between the 9th and  
 13 the 16th?  
 14 CHAIRPERSON: 15th.  
 15 MR MAHLANGU: The 9th and the 15th.  
 16 CHAIRPERSON: The Thursday before the  
 17 strikers marched to the Lonmin offices, the Thursday, until  
 18 the 15th which is the Wednesday of the week when the  
 19 shootings took place. Remember the shootings took place,  
 20 the 34 people were killed on Thursday the 16th. So the  
 21 question relates to the previous Thursday the 9th through to  
 22 Wednesday the 15th. How many phone calls over that period  
 23 did you receive from the Minister of Police, that's the  
 24 question you're being asked?  
 25 GENERAL MBOMBO: The one I remember, Mr

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1 Chairperson, is the one of the 12th. I'm not sure whether  
 2 he phoned me thereafter but it's possible. What I do  
 3 remember is that I am the person who then phoned him on the  
 4 13th, I think so.  
 5 MR BUDLENDER SC: Let's just get it  
 6 clear. So you say you, you say he phoned you on the 12th.  
 7 GENERAL MBOMBO: Correct.  
 8 CHAIRPERSON: That's the Sunday, that was  
 9 the Sunday.  
 10 MR BUDLENDER SC: And you say you phoned  
 11 –  
 12 GENERAL MBOMBO: That was on the Sunday,  
 13 Chairperson.  
 14 MR BUDLENDER SC: And you say you phoned  
 15 him on the 13th, is that correct?  
 16 GENERAL MBOMBO: That's how I remember  
 17 it, yes.  
 18 MR BUDLENDER SC: And were there any  
 19 other phone calls between you and the Minister of Police  
 20 between the 9th and the 15th of August?  
 21 GENERAL MBOMBO: I'm not very clear, I  
 22 don't remember well, sir.  
 23 MR BUDLENDER SC: Why did he phone you on  
 24 the 12th?  
 25 GENERAL MBOMBO: That's when he told me,

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1 Mr Chairperson, that he had been phoned by Mr Ramaphosa  
 2 raising his concern about what was happening.  
 3 MR BUDLENDER SC: What was the purpose of  
 4 the call, as you understood it?  
 5 GENERAL MBOMBO: Just clarify the  
 6 question?  
 7 MR BUDLENDER SC: I hear what you say,  
 8 that he told you about the phone call he'd had from Mr  
 9 Ramaphosa. What did you think was the reason he phoned you  
 10 on the 12th?  
 11 GENERAL MBOMBO: I think he just wanted  
 12 me to know that there are people that have concerns about  
 13 what is happening.  
 14 MR BUDLENDER SC: And was he not wanting  
 15 you to do, to take any – asking or encouraging you to take  
 16 any action?  
 17 GENERAL MBOMBO: When he spoke to me I  
 18 said to him attention is already being given to that,  
 19 Chair.  
 20 MR BUDLENDER SC: I understand that but  
 21 was he asking or encouraging you to take some action?  
 22 GENERAL MBOMBO: He said to me, just  
 23 saying that I'm hearing from Ramaphosa, General, is it  
 24 being attended to. I said yes, it is being given  
 25 attention.

<p style="text-align: right;">Page 21740</p> <p>1 MR BUDLENDER SC: So if I understand you 2 correctly there were two purposes. One was to give you the 3 information that Mr Ramaphosa had phoned him and the other 4 was to obtain information from you as to whether you were 5 attending to it, is that correct? 6 GENERAL MBOMBO: I would say so, yes. 7 MR BUDLENDER SC: No other purpose, no 8 purpose to encourage you to take action. 9 GENERAL MBOMBO: There was nothing more 10 he said to me except what I've already said. 11 MR BUDLENDER SC: And then when you 12 phoned him on the 13th, what was the purpose of that call? 13 GENERAL MBOMBO: This was after this 14 thing had taken place, the tragedy between the protesters 15 and the police. 16 MR BUDLENDER SC: Yes, and why did you 17 phone the Minister? 18 GENERAL MBOMBO: When I spoke to the 19 National Commissioner of Police telling her about what had 20 just happened, she said to me, she asked me to phone the 21 Minister because she had some problems, she was in Gauteng 22 but that she would come to me. 23 MR BUDLENDER SC: I see, so the purpose 24 was to inform the Minister about what had happened on the 25 13th?</p>	<p style="text-align: right;">Page 21742</p> <p>1 read these minutes. 2 GENERAL MBOMBO: I did read them, 3 Chairperson. 4 MR BUDLENDER SC: You were at the 5 meeting. 6 GENERAL MBOMBO: It is so. 7 MR BUDLENDER SC: Are the minutes 8 correct? 9 GENERAL MBOMBO: They do not contain 10 every explanation that I gave, Chairperson. 11 MR BUDLENDER SC: I accept that but is 12 everything which is stated in there, correct? 13 GENERAL MBOMBO: Not correct in the 14 manner in which I explained, Chairperson. 15 MR BUDLENDER SC: No, I understand that 16 some things are excluded which could have been included but 17 is there anything which was included which is not correct? 18 GENERAL MBOMBO: There is something 19 included, yes, which is not correct. I think I have 20 corrected in my evidence-in-chief. 21 MR BUDLENDER SC: I'm sorry, I've 22 forgotten that. What was the part that you corrected? 23 GENERAL MBOMBO: It was the last page. 24 MR BUDLENDER SC: Oh yes, that was about 25 who spoke to the – that's right, about the National</p>
<p style="text-align: right;">Page 21741</p> <p>1 GENERAL MBOMBO: That is so, sir. 2 MR BUDLENDER SC: And what was the 3 Minister's response to that? 4 GENERAL MBOMBO: He asked me if there 5 were other people that had been injured except those that 6 had already passed away. I told him yes, according to 7 information that had been given to me. He then said he 8 would speak to the National Commissioner. I did not know 9 if there was any discussion between them. 10 MR BUDLENDER SC: Did he express an 11 opinion about how you should respond to the situation or 12 what you should do? 13 GENERAL MBOMBO: He said that he would 14 speak to the National Commissioner, Mr Chairperson, he did 15 not say any further thing to me. 16 MR BUDLENDER SC: Alright, now I want to 17 – could you have a look at exhibit EE? 18 CHAIRPERSON: That's the minutes of the 19 special JOCCOM meeting held at 1:30 on the afternoon of the 20 16th? 21 MR BUDLENDER SC: That is so, Chair. 22 CHAIRPERSON: It's in your bundle of 23 cross-examination documents. 24 GENERAL MBOMBO: I see it, Chairperson. 25 MR BUDLENDER SC: Now, I take it you've</p>	<p style="text-align: right;">Page 21743</p> <p>1 Commissioner and the Minister of Police. I recall that, 2 yes, thank you. Nothing else that you're aware of that is 3 included that is incorrect? 4 GENERAL MBOMBO: It doesn't only end 5 there, Chairperson. I accept the statement mentioned by 6 the Chairperson that those minutes possibly have some 7 problems – 8 CHAIRPERSON: No, I wasn't – no, no, I 9 wasn't talking about those minutes. I was talking about 10 the 6 o'clock in the morning minutes. I didn't make any 11 comment about the accuracy of these minutes one way or the 12 other. There is a problem, as I indicated to you, about 13 the 6 o'clock in the morning minutes but there isn't a 14 problem that I'm aware of in relation to these minutes – 15 but maybe there is, but I'm certainly not aware of it. 16 MR BUDLENDER SC: Lieutenant-General, 17 you've read the minutes, you've told us that the statement 18 about the Minister and the National Commissioner is not 19 correct. Is there anything else that you've read in those 20 minutes that is not correct? 21 GENERAL MBOMBO: That which could have 22 been said by me, Mr Chairperson, is what is contained in 23 paragraph 3. 24 MR BUDLENDER SC: Oh, is there something 25 wrong with paragraph 3?</p>

<p style="text-align: right;">Page 21744</p> <p>1 GENERAL MBOMBO: Not totally.  2 MR BUDLENDER SC: Is there part of  3 paragraph 3 which is incorrect?  4 GENERAL MBOMBO: It's been put here, Mr  5 Chairperson, as though I said in that I was seated in a  6 meeting with Mr Mathunjwa. My brief explanation, my  7 explanation was brief, that I'd also spoken to Mr  8 Mathunjwa.  9 MR BUDLENDER SC: So you say the part  10 that is incorrect is where it says, "The Provincial  11 Commissioner, Lieutenant-General Mbombo, informed the  12 meeting that she was involved in meetings with the  13 leadership of AMCU, namely Mr Joseph Mathunjwa, to resolve  14 the current situation for the whole morning." You say  15 that's not correct?  16 [12:06] GENERAL MBOMBO: That is why I'm saying  17 it's not totally correct.  18 MR BUDLENDER SC: Yes, you had met him,  19 but you certainly hadn't been involved in meetings with him  20 for the whole morning.  21 GENERAL MBOMBO: These are not meetings,  22 Mr Chairperson. I met him, I asked him, yes. I spoke  23 about this thing, but how it is mentioned here the  24 impression is that it was a meeting where we were talking  25 about this thing only.</p>	<p style="text-align: right;">Page 21746</p> <p>1 this at one or the other time, Sir. I just don't remember  2 exactly when it was.  3 MR BUDLENDER SC: No, Lieutenant General,  4 you said all consistently through your evidence that you  5 are satisfied with the police presentation that was made.  6 So why did you not say this was wrong?  7 GENERAL MBOMBO: As I say, Chairperson,  8 there is a time where I mentioned that the phrasing of this  9 sentence is not as in exactly the way it happened.  10 MR BUDLENDER SC: It's not just a matter  11 of phrasing; it's flat-out wrong. It says you were busy  12 with him for the whole morning. In fact you just had one  13 brief session with him. So –  14 GENERAL MBOMBO: Yes.  15 MR BUDLENDER SC: - not just phrasing,  16 you'll agree with me?  17 GENERAL MBOMBO: I agree with you.  18 MR BUDLENDER SC: And to whose attention  19 did you draw that error?  20 GENERAL MBOMBO: The people who were busy  21 making this arrangement was Colonel Scott and Colonel  22 Visser.  23 MR BUDLENDER SC: So it's Colonel Scott's  24 fault and Colonel Visser's fault that this false  25 information is in the presentation because you told them</p>
<p style="text-align: right;">Page 21745</p> <p>1 MR BUDLENDER SC: And it wasn't the whole  2 morning either, was it?  3 GENERAL MBOMBO: No.  4 MR BUDLENDER SC: It was quite brief.  5 GENERAL MBOMBO: It was a brief session.  6 We were standing, talking, the two of us.  7 MR BUDLENDER SC: Right, now would you  8 pull out exhibit L? Can you go to slide 174? Do you have  9 it?  10 GENERAL MBOMBO: I have it, Sir.  11 MR BUDLENDER SC: Could you go to the  12 second bullet on 174. I'll read it to you, "The Provincial  13 Commissioner, Lieutenant General Mbombo, informed the  14 JOCCOM that she had been involved in a meeting the whole  15 morning with the president of AMCU, Mr Joseph Mathunjwa, to  16 resolve the current situation." That's not correct, is it?  17 GENERAL MBOMBO: It gives the impression,  18 Mr Chairperson, that I spent the whole morning with Mr  19 Mathunjwa.  20 MR BUDLENDER SC: Yes, it's not correct,  21 is it?  22 GENERAL MBOMBO: It is not correct.  23 MR BUDLENDER SC: Why didn't you correct  24 it when you were shown the presentation for your approval?  25 GENERAL MBOMBO: I think I have mentioned</p>	<p style="text-align: right;">Page 21747</p> <p>1 about it.  2 GENERAL MBOMBO: I do not want to say  3 that.  4 CHAIRPERSON: "False" is a strong word;  5 inaccurate –  6 MR BUDLENDER SC: Wrong?  7 GENERAL MBOMBO: No, I do not want to say  8 that. I also include myself, Mr Chairperson, as having had  9 a fault because I had the chance to correct it.  10 MR BUDLENDER SC: Yes. Yes, it doesn't  11 really help to blame them, does it, because you saw it  12 before the final presentation.  13 GENERAL MBOMBO: It is so.  14 MR BUDLENDER SC: Yes. While I'm there,  15 there's also a problem with the first –  16 CHAIRPERSON: Are you dealing with  17 something else? I think we should take a comfort break at  18 this point.  19 MR BUDLENDER SC: Can I just finish –  20 alright.  21 CHAIRPERSON: We'll take a comfort break  22 just for, let's keep it as short as we can.  23 [COMMISSION ADJOURNS COMMISSION RESUMES]  24 [12:16] CHAIRPERSON: The Commission resumes.  25 Provincial Commissioner, you're still under oath.</p>

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1 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 2 CHAIRPERSON: Mr Budlender.  
 3 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):  
 4 Lieutenant General Mbombo, I'd like you also, could you go  
 5 back to exhibit L, slide 174? Do you have it?  
 6 GENERAL MBOMBO: I have it, Mr Chair.  
 7 MR BUDLENDER SC: It seems to me there's  
 8 also a problem with the first bullet there. It says, "The  
 9 chairperson, Major General Annandale, called a special  
 10 JOCCOM meeting to evaluate the current strategy and the  
 11 possible implementation of stage 3." Now by that, you had  
 12 already decided the day before that stage 3 would be  
 13 implemented if the strikers did not hand over their arms,  
 14 correct?  
 15 GENERAL MBOMBO: That is correct, Mr  
 16 Chair.  
 17 MR BUDLENDER SC: And the strikers had  
 18 not handed over their arms, correct? The strikers had not  
 19 handed over their arms.  
 20 GENERAL MBOMBO: That is correct.  
 21 MR BUDLENDER SC: So the meeting was no  
 22 longer, was not a question about the possible  
 23 implementation of stage 3; the only matter that remained  
 24 outstanding was the time at which it would be implemented.  
 25 GENERAL MBOMBO: That is so, Mr Chair.

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1 MR BUDLENDER SC: Thank you. Then let's  
 2 move on. I want to deal with the question of the alleged  
 3 promise by Mr Mathunjwa that the strikers would lay down  
 4 their arms, and let me start by reading you again what's in  
 5 TT5. We've been there several times already. You know  
 6 what's in TT5. I don't really need to go there. That's on  
 7 the second page, paragraphs 9 and 10, we've got those  
 8 reports by Crime Intelligence that their information is  
 9 that the strikers will never surrender their weapons, they  
 10 will never hand their weapons to the police. We've been  
 11 there already, haven't we? You see that?  
 12 GENERAL MBOMBO: I agree, Mr Chair.  
 13 MR BUDLENDER SC: And while you had not  
 14 received the Crime Intelligence reports, General Annandale  
 15 must have known about it and General Mpembe must have known  
 16 about it.  
 17 GENERAL MBOMBO: I think so, Mr Chair.  
 18 MR BUDLENDER SC: And I want to read you  
 19 what General Annandale said about this promise. Could you  
 20 look at exhibit GGG1, triple G, 1. No, it's not there.  
 21 I'm afraid I'm wrong. Let me just put it to you this way.  
 22 The reference is wrong. General Annandale's evidence was  
 23 that he didn't believe that the strikers would lay down  
 24 their arms in the light of the circumstances. Let me just  
 25 put that to you. You don't know what his evidence was. I

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1 accept that.  
 2 GENERAL MBOMBO: As you say it, Sir.  
 3 MR BUDLENDER SC: And of course when Mr  
 4 Mathunjwa spoke with the strikers police members were  
 5 present and they heard what the strikers, how the strikers  
 6 replied to Mr Mathunjwa, correct?  
 7 GENERAL MBOMBO: That is correct, Mr  
 8 Chair.  
 9 MR BUDLENDER SC: And no-one has ever  
 10 suggested that the strikers themselves gave any undertaking  
 11 that they would lay down their arms. You accept that?  
 12 GENERAL MBOMBO: I agree, Mr Chair.  
 13 MR BUDLENDER SC: And do you know that  
 14 not all of the strikers were members of AMCU?  
 15 GENERAL MBOMBO: I do not know about  
 16 that, Mr Chair.  
 17 MR BUDLENDER SC: Well, what I want to  
 18 suggest to you is that no well-informed person could really  
 19 ever believe that what some call Mr Mathunjwa's promise was  
 20 anything more than a promise by him to do his best to  
 21 persuade the strikers to lay down their arms.  
 22 GENERAL MBOMBO: I did not get the  
 23 question, Mr Chair.  
 24 MR BUDLENDER SC: What his promise was,  
 25 was that he would do his best to persuade the strikers to

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1 lay down their arms.  
 2 GENERAL MBOMBO: I was not told about  
 3 "best."  
 4 MR BUDLENDER SC: Well, his promise was  
 5 that he would try to persuade the strikers to lay down  
 6 their arms.  
 7 GENERAL MBOMBO: I hear what you say, but  
 8 what I was told did not entail the words "best" or "try."  
 9 MR BUDLENDER SC: Do you say that he gave  
 10 an undertaking which could seriously be believed that the  
 11 strikers would lay down their arms?  
 12 GENERAL MBOMBO: Mr Chair, I believed  
 13 what I was told, that it's the truth. I trusted him as a  
 14 president.  
 15 MR BUDLENDER SC: Well, perhaps it's not  
 16 fair to pursue this further with you, because you weren't  
 17 party to those conversations. Let me move on to another  
 18 subject.  
 19 CHAIRPERSON: May I raise something on  
 20 this topic before you move away from it? According to Mr  
 21 Mathunjwa's evidence when you spoke to him eventually you  
 22 complained that he hadn't gone, he hadn't kept his promise,  
 23 he hadn't come back at 9 o'clock, he hadn't actually been  
 24 to the koppie, and he said that you said that he was  
 25 obliged to go and to convince the strikers to lay down



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1 their arms. Was that evidence that he gave correct?

2 GENERAL MBOMBO: Mr Chair, are you saying

3 he said so, or I said so?

4 CHAIRPERSON: He said that you said to

5 him that he was obliged to go to the koppie to convince the

6 strikers to lay down their arms. That was what he said.

7 Do you agree with that, that you said that to him?

8 GENERAL MBOMBO: I do not remember saying

9 so, Mr Chair. What I said to him was as I have heard that

10 he had this promise that the people on the koppie would

11 hand over their weapons, can he please halt that promise,

12 stop it -

13 SPEAKER: No, Mr Interpreter -

14 MR GOIRANA: Excuse me, Mr Chair.

15 GENERAL MBOMBO: Meaning he has to, in

16 English, not stop to it.

17 MR GOIRANA: Stick?

18 GENERAL MBOMBO: Stick to it, yes.

19 MR GOIRANA: Stick to the promise.

20 MR BUDLENDER SC: May I proceed to

21 another point, Chair?

22 CHAIRPERSON: So what exactly is the

23 difference between what he says you said and what you say

24 you said?

25 GENERAL MBOMBO: Mr Chair, my part was

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1 that he should remember to keep the promise because it

2 would help us.

3 CHAIRPERSON: The question is who made

4 the promise. Did Mr Mathunjwa make a promise as to what he

5 thought would happen, or did the strikers make a promise?

6 GENERAL MBOMBO: According to the

7 explanation I received, Mr Chair, he is the one who made

8 the promise.

9 CHAIRPERSON: Yes, thank you.

10 MR BUDLENDER SC: Just to finish off on

11 that, Lieutenant General, could you go to L158?

12 GENERAL MBOMBO: Page 158?

13 MR BUDLENDER SC: Exhibit L, page 158, or

14 slide 158.

15 GENERAL MBOMBO: I found it, Mr Chair.

16 MR BUDLENDER SC: Can you look at the

17 last bullet point? This is now discussing, this is

18 referring to your discussion with Mr Mathunjwa at 11

19 o'clock that morning, and this is what the third bullet

20 says, "The Provincial Commissioner reminded him that her

21 concern was with his commitment to finding a peaceful

22 solution and that he had to honour his commitment to

23 convince the group to disarm." Now isn't that exactly what

24 Mr Mathunjwa said?

25 GENERAL MBOMBO: I said so to him, Mr

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1 Chair, because I wanted him to ensure that the promise he

2 had made, he should keep.

3 MR BUDLENDER SC: But you realised he

4 would have to convince them? It wasn't in his power. He

5 would have to convince them to lay down their arms and

6 leave.

7 GENERAL MBOMBO: It was part of it, but I

8 was convinced that he, I was sure that he had convinced

9 them and he had to ensure that he keeps to the promise.

10 MR BUDLENDER SC: No, no, that's not what

11 it says. It says he had to honour his commitment to

12 convince them to disarm. In other words he still had to do

13 it. He still had to convince them, and you said "Now you

14 must go and convince them." Isn't that correct?

15 GENERAL MBOMBO: I said so, Mr Chair.

16 MR BUDLENDER SC: Yes. Alright, let's go

17 to -

18 CHAIRPERSON: That means that there was

19 no promise by the strikers to lay down their arms and you

20 knew that. What you were concerned about was that Mr

21 Mathunjwa had to do what he had promised to do, namely, as

22 it was put, to go and convince them to lay down their arms.

23 So there was no certainty at that stage that they would lay

24 down their arms. The situation was that the onus was on Mr

25 Mathunjwa, as you saw it, to go to the koppie and convince

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1 them - to use the word that was used - that they must lay

2 down their arms. That's correct, isn't it?

3 GENERAL MBOMBO: That is so, Mr Chair.

4 But when it was explained to me I thought that there was

5 already an agreement between him and them. What I was

6 emphasising here was that he should not miss the 9 o'clock

7 timeline, otherwise then he had to convince them again.

8 CHAIRPERSON: [Microphone off, inaudible]

9 conversation with him was much later than 9 o'clock. The 9

10 o'clock deadline time, as you put it, had long since

11 passed. What time did you meet with Mr Mathunjwa?

12 According to slide 158 in exhibit L this conversation that

13 you had with him, which was a telephonic one, was at 11

14 o'clock. So I don't understand your reference to mustn't

15 miss the 9 o'clock deadline time. That surely was a slip

16 of the tongue too.

17 GENERAL MBOMBO: Maybe I should correct

18 it, Mr Chair. You are correct when you say we met long

19 after 9 o'clock. What I was trying to explain to him is as

20 he had decided to meet the protesters at 9 o'clock, I was

21 thinking at that time that that was the agreement between

22 them. It was then possible that when he gets there they

23 would not be satisfied because of having to wait. He would

24 then have to plead with them again to go back to their

25 agreement. That is what I was trying to say here, Mr

<p style="text-align: right;">Page 21756</p> <p>1 Chair.</p> <p>2 MR BUDLENDER SC: Can I move on to</p> <p>3 another subject, Lieutenant General? I want to refer</p> <p>4 briefly to the extraordinary session which was held after</p> <p>5 the NMF meeting on the 15th of August. At that meeting you</p> <p>6 were told, you were offered additional resources by the</p> <p>7 National Commissioner and the provincial commissioners. Is</p> <p>8 that correct?</p> <p>9 GENERAL MBOMBO: That is correct, Mr</p> <p>10 Chair.</p> <p>11 MR BUDLENDER SC: Why didn't you say to</p> <p>12 them 'I have enough, I'm already, I'm going to move in</p> <p>13 tomorrow,' or did you say that?</p> <p>14 GENERAL MBOMBO: There was a request</p> <p>15 made, Mr Chair, that made me to talk to the Commissioner of</p> <p>16 Police, National Commissioner. That is why I still had to</p> <p>17 get those resources if they were available.</p> <p>18 MR BUDLENDER SC: Did you need additional</p> <p>19 resources for the operation on the 16th?</p> <p>20 GENERAL MBOMBO: That is how the people</p> <p>21 who were there, people like General Mpembe told me.</p> <p>22 MR BUDLENDER SC: So did you ask for</p> <p>23 additional resources for the 16th?</p> <p>24 GENERAL MBOMBO: Maybe I should explain</p> <p>25 how this resources issue comes into play. They had asked</p>	<p style="text-align: right;">Page 21758</p> <p>1 MR BUDLENDER SC: So on the evening of</p> <p>2 the 15th you did need additional resources in order to be</p> <p>3 able to carry out the operation on the 16th. Is that your</p> <p>4 evidence?</p> <p>5 GENERAL MBOMBO: That is correct, Mr</p> <p>6 Chair.</p> <p>7 MR BUDLENDER SC: Did you get those</p> <p>8 resources before you carried out the operation on the 16th?</p> <p>9 GENERAL MBOMBO: I am not sure, Mr Chair,</p> <p>10 but I know that the provincial commissioners agreed that</p> <p>11 they would release the resources and I told General Mpembe,</p> <p>12 I think Limpopo sent some people.</p> <p>13 MR BUDLENDER SC: When did they send</p> <p>14 them?</p> <p>15 GENERAL MBOMBO: I do not remember, Mr</p> <p>16 Chair.</p> <p>17 MR BUDLENDER SC: Was it before 1:30 the</p> <p>18 following afternoon?</p> <p>19 GENERAL MBOMBO: I cannot be sure, Mr</p> <p>20 Chair. I did not look at those details.</p> <p>21 MR BUDLENDER SC: At 1:30 in the</p> <p>22 afternoon when you gave the instruction to proceed did you</p> <p>23 ask, 'Have we now got all the resources we need?'</p> <p>24 [12:36] GENERAL MBOMBO: Mr Chair, I did not ask</p> <p>25 and if they did not have the resources they would have said</p>
<p style="text-align: right;">Page 21757</p> <p>1 for resources, additional resources, Tuesday or Wednesday,</p> <p>2 but earlier on, I can't remember. The problem was that</p> <p>3 other provinces were not happy in sending their people to</p> <p>4 Marikana because of the problems that they had. That is</p> <p>5 why I asked the National Commissioner to talk to these</p> <p>6 people, tell them that we need these resources, as the</p> <p>7 people on the ground needed them.</p> <p>8 MR BUDLENDER SC: Lieutenant General,</p> <p>9 this meeting was at about 9 o'clock on the evening of the</p> <p>10 15th of August. Is that correct?</p> <p>11 GENERAL MBOMBO: That is correct, Mr</p> <p>12 Chair.</p> <p>13 MR BUDLENDER SC: Did you need additional</p> <p>14 resources - at that time did you need additional resources</p> <p>15 in order to be able to carry out the operation on the 16th?</p> <p>16 GENERAL MBOMBO: As I was told on the</p> <p>17 14th, and again on the 15th, I deemed it fit that they had</p> <p>18 to get the resources if they still needed them.</p> <p>19 MR BUDLENDER SC: I'm afraid that's not</p> <p>20 an answer, Lieutenant General. On the evening of the 15th</p> <p>21 did you need additional resources in order to be able to</p> <p>22 carry out the operation on the 16th?</p> <p>23 GENERAL MBOMBO: Mr Chair, I was of the</p> <p>24 opinion that they still needed them because they haven't</p> <p>25 received all the resources that they needed.</p>	<p style="text-align: right;">Page 21759</p> <p>1 so.</p> <p>2 MR BUDLENDER SC: So your evidence is</p> <p>3 that on the Wednesday night you knew that you needed</p> <p>4 additional resources to carry out the operation, but you</p> <p>5 gave an instruction at 1:30 the following day to carry out</p> <p>6 the operation without finding whether those resources had</p> <p>7 arrived. Is that your evidence?</p> <p>8 GENERAL MBOMBO: I gave the instruction,</p> <p>9 Mr Chair, to people who knew what they need and what they</p> <p>10 had at the time.</p> <p>11 MR BUDLENDER SC: Did you make any effort</p> <p>12 to find out whether the additional resources had arrived?</p> <p>13 GENERAL MBOMBO: I won't lie, Mr Chair, I</p> <p>14 did not do that.</p> <p>15 MR BUDLENDER SC: Now I want to move to</p> <p>16 another subject –</p> <p>17 CHAIRPERSON: Before you move to another</p> <p>18 topic, when you raised this question of the need for</p> <p>19 additional resources, did you tell those present that your</p> <p>20 intention was to launch the operation the next day, that</p> <p>21 you were going to disarm the protesters, as they're called,</p> <p>22 the protesting masses, as the [inaudible] called them, on</p> <p>23 the Thursday, or did you just say I'm going to disarm them,</p> <p>24 without indicating when you intended to do so?</p> <p>25 GENERAL MBOMBO: As I said in my second</p>

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1 statement, Mr Chair, the second statement, I think it's  
 2 paragraph 45 – no, it's paragraph 43, Mr Chair, at the  
 3 bottom of the paragraph, I can read it, Mr Chair, what I  
 4 said. "I informed the meeting about the situation in  
 5 Marikana and about negotiations with protesters to  
 6 voluntarily surrender their weapons. I further informed  
 7 the meeting that if the strikers did not voluntarily  
 8 surrender their weapons on Thursday, 16 August 2012, I had  
 9 instructed the senior officers to disperse, disarm, and  
 10 arrest the strikers, if necessary."  
 11 CHAIRPERSON: It doesn't say in that  
 12 paragraph whether you told your colleagues who were there  
 13 with you that the instruction that you were going to give  
 14 would have to be carried out on the 16th. So it's possible  
 15 you simply said if they don't lay their arms down on the  
 16 16th, I'm going to give instructions for the DDA operation  
 17 to take place, without saying when you were going to – when  
 18 that operation was to take place. You know, what you say  
 19 in your statement is ambiguous in that regard, or leaves it  
 20 open. But can you now tell us whether you specifically  
 21 said on the Wednesday evening to your colleagues there if  
 22 they don't lay down their arms tomorrow, I'm going to give  
 23 instructions for the matter to be dealt with tomorrow by  
 24 the launching of this DDA operation?  
 25 GENERAL MBOMBO: I said so, Mr Chair.

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1 CHAIRPERSON: Thank you.  
 2 MR BUDLENDER SC: Now to move to another  
 3 brief matter, General Phiyega instructed you that the  
 4 allegations of Warrant Officer Myburgh should be  
 5 investigated. You remember that?  
 6 GENERAL MBOMBO: I remember that, Mr  
 7 Chair.  
 8 MR BUDLENDER SC: And you gave evidence  
 9 that the matter was referred to IPID – I'm sorry, that you  
 10 instructed General Tsumane to take a statement and that the  
 11 matter was then referred to IPID.  
 12 GENERAL MBOMBO: That is so, Mr Chair.  
 13 MR BUDLENDER SC: Do you know what  
 14 documents were sent to IPID?  
 15 GENERAL MBOMBO: Mr Chair, the statement  
 16 went to IPID with the agreement that we had with our legal  
 17 team that all the statements that were taken in connection  
 18 with Marikana would via them so that we have trace and  
 19 record thereof, and I do not have a record, Mr Chair, of  
 20 what is IPID doing or whether they received the statement  
 21 or not.  
 22 MR BUDLENDER SC: I just want to  
 23 understand that. Just to clarify, could you explain again  
 24 what was sent to IPID and by what route?  
 25 GENERAL MBOMBO: When this matter of

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1 Myburgh came to the fore, Mr Chair, I sent General Tsumane  
 2 to take a statement. He took the statement and brought it  
 3 to me and because of the agreement we had with the legal  
 4 team that the statements should not be sent anytime in  
 5 whatever manner, they should via them, the legal team, we  
 6 then sent the statement to the legal team to look at it and  
 7 to help pass the statement over to IPID and the Commission.  
 8 MR BUDLENDER SC: When you say the legal  
 9 team, do you mean the team representing the SAPS at the  
 10 Commission, or do you mean the internal legal advisors of  
 11 the SAPS?  
 12 GENERAL MBOMBO: I'm talking about the  
 13 people representing us, Mr Chair.  
 14 MR BUDLENDER SC: And their job was to  
 15 review the statement taken by General Tsumane and then to  
 16 forward it to IPID. Is that right?  
 17 GENERAL MBOMBO: That is correct, and as  
 18 well forward it to the Commission.  
 19 MR BUDLENDER SC: Yes, so it wasn't  
 20 actually the SAPS – if it was indeed sent to IPID, it  
 21 wasn't sent by the SAPS, it was sent by the SAPS legal  
 22 team. Is that correct?  
 23 GENERAL MBOMBO: That would have been the  
 24 case, Mr Chair, according to our agreement.  
 25 MR BUDLENDER SC: And have you ever

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1 received any acknowledgement from IPID of that matter, of  
 2 that complaint, or referral?  
 3 GENERAL MBOMBO: Mr Chair, IPID has never  
 4 given us an acknowledgement about anything that they had  
 5 received, except when they want something new.  
 6 MR BUDLENDER SC: The allegation by  
 7 Warrant Officer Myburgh was of course a very serious one.  
 8 It amounted to an allegation that a member of the SAPS  
 9 under your command had killed a striker in cold blood.  
 10 GENERAL MBOMBO: You are correct, that is  
 11 true, Mr Chair.  
 12 MR BUDLENDER SC: Have you ever followed  
 13 up with IPID to find out what the conclusion is of the  
 14 investigation?  
 15 GENERAL MBOMBO: Mr Chair, it is not only  
 16 Myburgh who has to be investigated by IPID about  
 17 allegations. That is why when I received the statement I  
 18 forwarded it to them and all the people that IPID is  
 19 investigating we will receive, or get reports about that.  
 20 MR BUDLENDER SC: My question, Lieutenant  
 21 General, is this; these events happened in August 2012,  
 22 nearly a year and a half ago. Are you not concerned to  
 23 know whether you might have a murderer on your staff and to  
 24 find out what the outcome of the investigation is?  
 25 GENERAL MBOMBO: That is so, Mr Chair,

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1 but what is for certain, I'm not supposed to disturb their  
 2 work.  
 3 MR BUDLENDER SC: No, I understand you  
 4 don't want to – you mustn't interfere with their work;  
 5 that's very important, but it's not interfering with their  
 6 work to say have you reached a conclusion of the matter,  
 7 because this matter concerns me. Have you asked them have  
 8 they reached a conclusion of the matter?  
 9 GENERAL MBOMBO: I have not personally  
 10 asked them.  
 11 MR BUDLENDER SC: Has anyone under your  
 12 command asked them?  
 13 GENERAL MBOMBO: I just know that at the  
 14 office we keep such particulars. When the time comes we  
 15 then ask them how far are they with these particulars.  
 16 MR BUDLENDER SC: Do you not think the  
 17 time has come, General?  
 18 GENERAL MBOMBO: Mr Chair, I thought I  
 19 was diligently dealing with this matter because I thought  
 20 that it is important that people who were to come before  
 21 this Commission and explain had to do that without any  
 22 fears. I thought then, Mr Chair, that after we had spoken  
 23 to this Commission we as the police would then embark on  
 24 this job.  
 25 MR BUDLENDER SC: No, Lieutenant General,

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1 you referred it to IPID to investigate. That's their job.  
 2 Are you not worried that there might possibly be a murderer  
 3 amongst the people under your command? Would you not like  
 4 to know whether that is or is not the case?  
 5 GENERAL MBOMBO: It is true; I do have a  
 6 problem with that -  
 7 MR BUDLENDER SC: But you haven't done  
 8 anything to follow it up. I'm sorry, I interrupted you.  
 9 GENERAL MBOMBO: And it is true that I  
 10 did not do anything to follow it up with IPID because I  
 11 think IPID does its job independently.  
 12 MR BUDLENDER SC: Alright, I'm not going  
 13 to go back again to that –  
 14 CHAIRPERSON: Alright, could I ask you a  
 15 question about that? Whenever a charge is laid against one  
 16 of your staff, one of your members under your command,  
 17 particularly if it's a serious charge, it's surely a matter  
 18 of concern to know whether the charge is justified, whether  
 19 the person against whom the charge has been laid is indeed  
 20 a criminal or has been falsely charged with something that  
 21 he or she didn't do, because if the person is a criminal  
 22 and was correctly charged with committing a serious crime,  
 23 that person shouldn't be allowed to continue in the  
 24 service. That's correct, isn't it?  
 25 GENERAL MBOMBO: It is so, Mr Chair.

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1 CHAIRPERSON: Now do you have a system in  
 2 your office of keeping track of charges or complaints that  
 3 have been referred to IPID to make sure they haven't fallen  
 4 through the cracks, that they haven't been somehow  
 5 overlooked?  
 6 GENERAL MBOMBO: We do have it, Mr Chair.  
 7 CHAIRPERSON: So I would imagine that in  
 8 your office you do what's done in many other offices in the  
 9 civil service; you have a series of reminders. In fact you  
 10 have, I suspect printed forms which are in effect reminders  
 11 which refer the person to whom you sent the letter to the  
 12 matter in question and ask for a report, ask whether you  
 13 can get any feedback. Do you have such a system in your  
 14 office?  
 15 GENERAL MBOMBO: We do not remind each  
 16 other that much about correspondence because we have an  
 17 agreement at the office, Mr Chair, where we have meetings  
 18 with the people from IPID. In those meetings they would  
 19 then explain to us one by one the cases that they are  
 20 handling. There would then be correspondence if they  
 21 request our assistance in connection with a particular  
 22 case, seeking information.  
 23 CHAIRPERSON: I take it it's important  
 24 that there shouldn't be undue delays in investigating  
 25 charges against members of the service under your command.

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1 Would you agree with that?  
 2 GENERAL MBOMBO: That is so, Mr Chair.  
 3 CHAIRPERSON: Do you attend these  
 4 meetings with the representatives of IPID where cases are  
 5 gone through file by file?  
 6 GENERAL MBOMBO: General Naidoo is my  
 7 deputy, sits in those meetings, and would chair them  
 8 alternatively with IPID.  
 9 CHAIRPERSON: So he's coming to give  
 10 evidence before the Commission, so he will be able to tell  
 11 us whether the case of the charges, or allegations made by  
 12 Warrant Officer Myburgh are being investigated and what  
 13 progress is being made. So I take it, it's not fair for me  
 14 to ask you the question, but he should be able to help us.  
 15 Is that correct?  
 16 GENERAL MBOMBO: I believe so, but can I  
 17 please explain again, as I have said this matter concerning  
 18 Marikana and the police, we handled it differently,  
 19 although exercising care because we want the police to come  
 20 here freely and give their account of the events. If I  
 21 remember correctly, Mr Chair, when the National  
 22 Commissioner of Police testified here she explained that we  
 23 agreed that all the mistakes that were done by the police  
 24 in this job, task, they should be recorded, those mistakes  
 25 should be recorded and once the Commission is done with

<p style="text-align: right;">Page 21768</p> <p>1 this function we will deal with those police officers.</p> <p>2 MR MPOFU: Sorry, Chairperson, I think</p> <p>3 she said something like it be recorded as they are received</p> <p>4 from the Commission, or whatever. But as they are</p> <p>5 received, ja.</p> <p>6 CHAIRPERSON: What do you say about that,</p> <p>7 Mr Interpreter?</p> <p>8 GENERAL MBOMBO: Mr Chair, I mean</p> <p>9 particulars that we receive not only from –</p> <p>10 MR MPOFU: As we receive them.</p> <p>11 GENERAL MBOMBO: - as we receive them,</p> <p>12 not only from here, from whatever sources, we will deal</p> <p>13 with them later.</p> <p>14 CHAIRPERSON: Alright, thank you. Mr</p> <p>15 Budlender, you say you're going to move on to another</p> <p>16 point. It's now by my watch 4 minutes to 1. Can you deal</p> <p>17 with it in four minutes, or should we take the lunch</p> <p>18 adjournment now?</p> <p>19 MR BUDLENDER SC: I can't be certain of</p> <p>20 that, Chair; perhaps we'd better take the lunch</p> <p>21 adjournment.</p> <p>22 CHAIRPERSON: We'll take the lunch</p> <p>23 adjournment, and we must endeavour though to be back by</p> <p>24 half past 1.</p> <p>25 [COMMISSION ADJOURNS COMMISSION RESUMES]</p>	<p style="text-align: right;">Page 21770</p> <p>1 GENERAL MBOMBO: I have no idea, sir. I</p> <p>2 don't know, Chairperson.</p> <p>3 MR BUDLENDER SC: Did he make any report</p> <p>4 or take any action after the events that you're aware of?</p> <p>5 GENERAL MBOMBO: I don't know it that</p> <p>6 way.</p> <p>7 MR BUDLENDER SC: Thank you.</p> <p>8 CHAIRPERSON: Were you introduced to him?</p> <p>9 GENERAL MBOMBO: Chairperson, I don't</p> <p>10 remember being introduced to this person.</p> <p>11 CHAIRPERSON: Did he ask you any</p> <p>12 questions?</p> <p>13 GENERAL MBOMBO: He did not ask any</p> <p>14 questions.</p> <p>15 MR BUDLENDER SC: The next matter I'd</p> <p>16 like to ask you some questions about is the command</p> <p>17 structure for the operation. Now, we know that Brigadier</p> <p>18 Calitz was the operational commander. Correct?</p> <p>19 GENERAL MBOMBO: It is so, Chair.</p> <p>20 MR BUDLENDER SC: He was responsible for</p> <p>21 coordinating the operation on the ground.</p> <p>22 GENERAL MBOMBO: Correct, Chairperson.</p> <p>23 MR BUDLENDER SC: He had to coordinate</p> <p>24 the whole operation.</p> <p>25 GENERAL MBOMBO: It is so.</p>
<p style="text-align: right;">Page 21769</p> <p>1 [13:34] CHAIRPERSON: The commission resumes. I</p> <p>2 tried to get us here to start at half past but we've only</p> <p>3 lost out by five minutes. It wasn't your fault, Provincial</p> <p>4 Commissioner. You're still under oath. Mr Budlender, it</p> <p>5 wasn't your fault either. Proceed with your cross-</p> <p>6 examination.</p> <p>7 CROSS-EXAMINATION BY MR BUDLENDER SC (CONT.):</p> <p>8 Thank you. Lieutenant General, we are told that on the 16th</p> <p>9 of August, the day of the shootings, that after the</p> <p>10 shootings you went on a walkthrough of the scene with an</p> <p>11 army general. Is that correct?</p> <p>12 GENERAL MBOMBO: An army general?</p> <p>13 MR BUDLENDER SC: General in the national</p> <p>14 defence force.</p> <p>15 GENERAL MBOMBO: I think it's a person</p> <p>16 that came together with General Mawela, Chairperson.</p> <p>17 MR BUDLENDER SC: Was there a military</p> <p>18 general with General Mawela when he arrived?</p> <p>19 GENERAL MBOMBO: Yes, I remember that he</p> <p>20 came with a person from the military.</p> <p>21 MR BUDLENDER SC: And who was he?</p> <p>22 GENERAL MBOMBO: I don't know what his</p> <p>23 name is.</p> <p>24 MR BUDLENDER SC: Have you any idea what</p> <p>25 a military general was doing on a police thing?</p>	<p style="text-align: right;">Page 21771</p> <p>1 MR BUDLENDER SC: And this meant that he</p> <p>2 had to coordinate the operation of the various units that</p> <p>3 were involved.</p> <p>4 GENERAL MBOMBO: I think so, Chairperson.</p> <p>5 MR BUDLENDER SC: Of course in order to</p> <p>6 coordinate the various units he had to know where each of</p> <p>7 them was and what it was doing.</p> <p>8 GENERAL MBOMBO: It should be so, yes.</p> <p>9 MR BUDLENDER SC: And he had to ensure</p> <p>10 that each unit played the right role in implementing the</p> <p>11 plan.</p> <p>12 GENERAL MBOMBO: It is correct.</p> <p>13 MR BUDLENDER SC: Of course situations</p> <p>14 sometimes change during an operation and require adjustment</p> <p>15 of a plan.</p> <p>16 GENERAL MBOMBO: It is correct as you</p> <p>17 say, sir.</p> <p>18 MR BUDLENDER SC: And it was his job to</p> <p>19 ensure that the units knew what they were supposed to do</p> <p>20 and did what they were supposed to do.</p> <p>21 GENERAL MBOMBO: Correct, Chairperson.</p> <p>22 MR BUDLENDER SC: Right, and then General</p> <p>23 Mpembe was the overall commander after the 13th of August.</p> <p>24 GENERAL MBOMBO: Correct, Chairperson.</p> <p>25 MR BUDLENDER SC: His role is overall</p>

<p style="text-align: right;">Page 21772</p> <p>1 command of the operation.</p> <p>2 GENERAL MBOMBO: Correct, Chairperson.</p> <p>3 MR BUDLENDER SC: Now, General Annandale</p> <p>4 was below General Mpembe in the chain of command for the</p> <p>5 operation.</p> <p>6 GENERAL MBOMBO: Correct, Chairperson.</p> <p>7 MR BUDLENDER SC: At the JOCCOM meeting</p> <p>8 at 13.30 on the 16th of August you instructed General</p> <p>9 Annandale to implement the plan. Why did you instruct him</p> <p>10 and not the commander to proceed to implement the plan?</p> <p>11 GENERAL MBOMBO: General Annandale,</p> <p>12 Chairperson, was the person chairing the JOCCOM meetings.</p> <p>13 When I gave the instructions then I gave the instructions</p> <p>14 to the chairperson.</p> <p>15 MR BUDLENDER SC: But with retrospect,</p> <p>16 Lieutenant General, that makes no sense at all. Why do you</p> <p>17 instruct the chairperson instead of the commander?</p> <p>18 GENERAL MBOMBO: The chairperson was the</p> <p>19 person in charge of the meeting that they were discussing</p> <p>20 with the other members.</p> <p>21 MR BUDLENDER SC: But he wasn't supposed</p> <p>22 to be in charge of the operation.</p> <p>23 GENERAL MBOMBO: I agree with you, sir.</p> <p>24 MR BUDLENDER SC: So why did you instruct</p> <p>25 a person who was not in charge of the operation to carry</p>	<p style="text-align: right;">Page 21774</p> <p>1 perhaps that by this time you had lost confidence in</p> <p>2 General Mpembe because you blamed him for some of the</p> <p>3 previous events?</p> <p>4 GENERAL MBOMBO: It could not have been</p> <p>5 so at all, Chairperson, because I had had a discussion</p> <p>6 already with General Mpembe.</p> <p>7 MR BUDLENDER SC: I have to confess that</p> <p>8 I still don't understand your answer but I'll – your</p> <p>9 explanation – but I'll move onto another subject.</p> <p>10 CHAIRPERSON: You know, according to your</p> <p>11 evidence you didn't believe what he told you about what</p> <p>12 happened on the 13th. That's what you told us yesterday,</p> <p>13 didn't you? Not yesterday, the day before. Remember the –</p> <p>14 when you were asked why you said all of a sudden the</p> <p>15 strikers turned around and attacked the police it was put</p> <p>16 to you that General Mpembe had said that what caused the</p> <p>17 trouble was – the spark that caused the trouble was the</p> <p>18 tear gas and the stun grenades that were used by the</p> <p>19 police. When it was put to you, you then – the explanation</p> <p>20 you gave for saying what you said was that you didn't</p> <p>21 believe what General Mpembe said. Is that right? Did I</p> <p>22 understand you correctly?</p> <p>23 GENERAL MBOMBO: Chairperson, I do not</p> <p>24 remember, Chairperson, that I said exactly that. Possibly</p> <p>25 the question of not believing him was as a result of</p>
<p style="text-align: right;">Page 21773</p> <p>1 out the operation?</p> <p>2 GENERAL MBOMBO: I gave it to him as the</p> <p>3 person in charge of the meeting so that they should discuss</p> <p>4 this in the meeting.</p> <p>5 MR BUDLENDER SC: No, no, no, it's got</p> <p>6 nothing to do with discussing in the meeting. It's at the</p> <p>7 end of the meeting or of your participation. Your instruct</p> <p>8 him to implement, so it's not about discussion at the</p> <p>9 meeting. It's about implementing. So why do you instruct</p> <p>10 the chairman and not the commander of the operation?</p> <p>11 GENERAL MBOMBO: My intention,</p> <p>12 Chairperson, was I was talking to the person who was</p> <p>13 chairing the meeting knowing that he is not the person in</p> <p>14 charge of the operation.</p> <p>15 MR BUDLENDER SC: But, Lieutenant</p> <p>16 General, that's a statement of what you did but it's not an</p> <p>17 explanation for what you did. You say you instructed the</p> <p>18 chairman not the overall commander. That's correct. The</p> <p>19 question is why did you do that?</p> <p>20 GENERAL MBOMBO: Because General</p> <p>21 Annandale was chairing the meeting.</p> <p>22 MR BUDLENDER SC: Is that the best answer</p> <p>23 you can come up with?</p> <p>24 GENERAL MBOMBO: Correct, Chairperson.</p> <p>25 MR BUDLENDER SC: Is the reason not</p>	<p style="text-align: right;">Page 21775</p> <p>1 another question.</p> <p>2 CHAIRPERSON: But you say that you didn't</p> <p>3 – there was nothing you didn't believe him on?</p> <p>4 GENERAL MBOMBO: If I remember very well</p> <p>5 that question arose, Chairperson, as a result of a question</p> <p>6 that was asked whether it was the tear gas that sparked the</p> <p>7 protestors to turn back.</p> <p>8 CHAIRPERSON: You say that – sorry, carry</p> <p>9 on.</p> <p>10 GENERAL MBOMBO: Certainly, Chairperson,</p> <p>11 it's that he did not mention that to me. That is what I</p> <p>12 was explaining, Chairperson, that I did not believe this</p> <p>13 because this is not how he – that is not what he told me.</p> <p>14 CHAIRPERSON: I thought I understood you</p> <p>15 to say that there was something in respect of which you</p> <p>16 didn't believe him. I must have misunderstood you.</p> <p>17 GENERAL MBOMBO: I really don't know, Mr</p> <p>18 Chairperson.</p> <p>19 CHAIRPERSON: It's a simple matter. I</p> <p>20 thought you said – I may have misunderstood – I thought you</p> <p>21 said that there was something on the 13th that you didn't,</p> <p>22 in respect of which you didn't believe what General Mpembe</p> <p>23 had said. Now, if I misunderstood you on that then I would</p> <p>24 be grateful to be corrected. Was I correct in thinking</p> <p>25 that you said there was something you didn't believe</p>

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1 General Mpembe on, on the Monday or was I wrong?  
 2 GENERAL MBOMBO: Mr Chairperson, that  
 3 which was said that he said people were – that the people  
 4 were scared by the tear gas.  
 5 CHAIRPERSON: Is that something that you  
 6 didn't believe him on or what was it?  
 7 GENERAL MBOMBO: I was saying because  
 8 when he made the report to me he did not report that to me.  
 9 That which was then said at the commission, Mr Chairperson,  
 10 I said I did not believe because he did not mention that to  
 11 me.  
 12 CHAIRPERSON: So you had full confidence  
 13 in him in what he told you on the 13th, 14th and 15th?  
 14 GENERAL MBOMBO: As he had reported it to  
 15 me, Mr Chairperson, yes, I had full confidence in him.  
 16 CHAIRPERSON: So you had no reason to  
 17 sideline him, to put someone over his head to determine  
 18 when the operation should be implemented? Nothing of that  
 19 kind applied, is that right?  
 20 GENERAL MBOMBO: I had no such reason, Mr  
 21 Chairperson. I also did not personally sideline him.  
 22 CHAIRPERSON: Now, according to slide 67  
 23 of exhibit L the designated command positions of people in  
 24 the JOC is dealt with and the role of Major General Mpembe  
 25 is described as commander JOC, role overall command of the

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1 operation and in the case of Major General Annandale he is  
 2 described as the chief of staff, role coordinates the  
 3 running of the operation by managing the dock with the  
 4 designated role-players representing each field. So in  
 5 what way can one regard the fixing of the time for the  
 6 implementation of stage three as falling under a role  
 7 described as managing the JOC?  
 8 GENERAL MBOMBO: There I do not have all  
 9 the full facts as to how that happened.  
 10 CHAIRPERSON: The full fact that we do  
 11 have is that you asked him to – you instructed him to  
 12 proceed with the implementation of stage three. That's how  
 13 it's described in the minutes of the meeting at 1.30.  
 14 Those are the full facts we have. That's what you – you  
 15 don't deny that, do you?  
 16 GENERAL MBOMBO: That is true, Mr  
 17 Chairperson. I don't deny that, but I was saying I was  
 18 talking to the person who was chairing the meeting in the  
 19 presence of General Mpembe who was the overall commander  
 20 who was part of those discussions.  
 21 CHAIRPERSON: Now, what you in fact did  
 22 is described in the minute as follows. The provincial  
 23 commissioner instructed Major General Annandale, "To  
 24 proceed with implementation of stage three." Now, what I  
 25 ask you is how can an instruction to someone to proceed

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1 with the implementation of stage three be regarded as  
 2 appropriately addressed to a person whose role it was to  
 3 manage the JOC and who was the chief of staff to the  
 4 commander?  
 5 GENERAL MBOMBO: Whilst they were in the  
 6 meeting, Mr Chairperson, whoever was in attendance in that  
 7 meeting he is the person who took all the details of the  
 8 particulars of what is to be discussed in that meeting.  
 9 That is why I gave the order to him to say this is what I  
 10 want to happen. Now talk about it.  
 11 CHAIRPERSON: Thank you.  
 12 MR BUDLENDER SC: Lieutenant-General, I  
 13 now want to refer briefly to the letter which Lieutenant-  
 14 Colonel Vermaak sent to you on the 12th of December 2012.  
 15 You don't need to go to it. I just want to ask you some  
 16 questions in that connection. The letter just for the  
 17 record is HHH68. Now, in that letter – or let me take a  
 18 step back. Lieutenant-Colonel Vermaak is an experienced  
 19 member of the South African Police Service. He's been in  
 20 the service for many years.  
 21 GENERAL MBOMBO: It is so, Mr  
 22 Chairperson.  
 23 MR BUDLENDER SC: And this experienced  
 24 lieutenant-colonel made serious allegations in that letter  
 25 about the conduct of the police.

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1 GENERAL MBOMBO: It is so, yes.  
 2 MR BUDLENDER SC: It's now almost 14  
 3 months later. Correct?  
 4 GENERAL MBOMBO: I hear you, sir.  
 5 MR BUDLENDER SC: Beg your pardon?  
 6 GENERAL MBOMBO: I hear you.  
 7 MR BUDLENDER SC: Well, it is, isn't it,  
 8 it's nearly 14 months later. On the 12th of February it  
 9 will be the 14 months anniversary of the letter.  
 10 GENERAL MBOMBO: It is so.  
 11 MR BUDLENDER SC: The SAPS has still not  
 12 investigated and reached a conclusion as to the correctness  
 13 of his allegations. Is that so?  
 14 GENERAL MBOMBO: As I have already  
 15 indicated so in this commission the letter, Mr Colonel  
 16 Vermaak's letter, was received by me. I forwarded it to  
 17 General Mpembe and say you and Brigadier Calitz come  
 18 together, read this letter and decide what has got to be  
 19 done. They did so, Mr Chairperson, as a result of a report  
 20 that was brought to me because some of the things that are  
 21 mentioned in that letter by Colonel Vermaak I have  
 22 mentioned that even our head office is doing something  
 23 about this together with all the allegations made against  
 24 members of the public order police.  
 25 MR BUDLENDER SC: I understand that but

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1 the fact is that 14 months later the matter – the SAPS have  
 2 not yet reached any conclusions as to whether his  
 3 allegations are correct or false.  
 4 GENERAL MBOMBO: I don't exactly  
 5 understand how, what you mean by that.  
 6 MR BUDLENDER SC: Look, he made a whole  
 7 lot of allegations. You were asked about them and you said  
 8 some of them you didn't understand and some of them you  
 9 didn't know whether they were true. It's now 14 months  
 10 since he made the allegations. The SAPS has not yet  
 11 reached a conclusion as to whether the allegations he made  
 12 were true. Is that not so?  
 13 GENERAL MBOMBO: As I say, Chairperson, I  
 14 said those that were found to have some substance our head  
 15 office is busy with this together with other allegations  
 16 from other quarters. I mentioned the other day that we  
 17 have even decided that there should be a conference of the  
 18 public order which was held during last week, but some of  
 19 the things that he'd said here are being corrected as time  
 20 goes on.  
 21 MR BUDLENDER SC: Well, I don't want to  
 22 go into the detail of those. It will take us a very long  
 23 time. You've already given your answers in your evidence  
 24 in chief to the various matters which he raised. You said  
 25 some are correct. I think you said some are correct, some

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1 are not correct, some you don't understand, etcetera. I  
 2 don't want to go back there. So let's move on to – but I  
 3 do want to deal with one aspect of that letter. I want to  
 4 read to you what General Mpembe said about that letter.  
 5 Could we have the transcript of day 149? This is General  
 6 Mpembe's evidence. Could we go to page 64 of that  
 7 transcript? For some reason the pages are numbered from 1  
 8 onwards. Page 64, could we go to line 13 please?  
 9 [13:53] MR BUDLENDER SC: Now there the  
 10 Chairperson is asking questions to General Mpembe and line  
 11 13 the Chairperson says the following, "Now you say both  
 12 letters, I think you said. You unfortunately only saw the  
 13 December letter now, it would appear. Is that correct?  
 14 Exhibit HHH68 hasn't been shown to you until now. Is that  
 15 what you tell us? You never saw it in the course of your  
 16 ordinary work as a deputy commissioner in the North West  
 17 province. Your attention was never drawn, if I understand  
 18 you correctly – if I don't, please correct me –was never  
 19 drawn to exhibit HHH68. Is that right?" and General Mpembe  
 20 answers, "Chairperson, it might be during the course of my  
 21 work Brigadier Calitz might have mentioned it to me that I  
 22 got another letter from Colonel Vermaak." Then go to the  
 23 next page. And the Chairperson says, "Yes, so he may have  
 24 mentioned it to you, but you never saw the letter? You see  
 25 what I," and Major General Mpembe says, "Correct,

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1 Chairperson."  
 2 Now only one of you can be telling the truth,  
 3 Lieutenant General. He says he never saw the letter. You  
 4 say you gave it to him. What is the Commission to make of  
 5 that?  
 6 GENERAL MBOMBO: Chairperson, if I  
 7 receive letters of this nature which falls under that  
 8 deputy in terms of his work, I work in that manner that I  
 9 forward it to that deputy with instructions from me as to  
 10 what I think should be done. As it is, Chairperson,  
 11 General Mpembe could have forgotten, but the letter, when I  
 12 received it I did forward it.  
 13 CHAIRPERSON: Now when you forward a  
 14 letter of this kind do you do so under cover of a letter  
 15 that you write, setting out what you want the person to  
 16 whom you're sending the letter to, to do about it?  
 17 GENERAL MBOMBO: I don't send it under  
 18 cover of a letter, Chairperson. I write on that particular  
 19 letter.  
 20 CHAIRPERSON: I see. So if the original  
 21 letter can be found we will see on it a note in your  
 22 handwriting addressed to General Mpembe, saying please  
 23 investigate, do the necessary, or whatever.  
 24 GENERAL MBOMBO: It would be so, Mr  
 25 Chair.

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1 CHAIRPERSON: And where will the letter  
 2 be now?  
 3 GENERAL MBOMBO: General Mpembe received  
 4 it and he worked in accordance with what I said; the copy  
 5 could be found in the files.  
 6 CHAIRPERSON: Would it be possible for us  
 7 to get a copy of – to get the original copy of the letter  
 8 with your writing on it, to give it to the South African  
 9 Police Service legal team and they can make it available to  
 10 us?  
 11 GENERAL MBOMBO: I will do so,  
 12 Chairperson.  
 13 MR BUDLENDER SC: Now to move on to  
 14 another topic, Lieutenant General, we know from the  
 15 evidence that certain of the strikers were shot and injured  
 16 or killed with shotgun pellets on the 16th of August.  
 17 GENERAL MBOMBO: If you could just repeat  
 18 the question, Sir?  
 19 MR BUDLENDER SC: Certainly. We know  
 20 that certain of the strikers were shot and injured or  
 21 killed with shotgun pellets on the 16th of August. Have you  
 22 heard that?  
 23 GENERAL MBOMBO: I heard this being  
 24 mentioned, Sir.  
 25 MR BUDLENDER SC: And we also know that



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1 in 2006 an instruction was issued that shotgun pellets were  
2 no longer to be issued and used except for training,  
3 correct?  
4 GENERAL MBOMBO: It is so, Mr  
5 Chairperson.  
6 MR BUDLENDER SC: [Microphone off,  
7 inaudible] – sorry, the transcript, day 178, page 21398.  
8 Thank you. And at line 10 Mr Semenya says, “And you say  
9 that you can state in clear terms that no birdshot  
10 ammunition is issued to members of the service in your  
11 province?” and your answer is, “That is what I said, Mr  
12 Chair.” You remember that?  
13 GENERAL MBOMBO: I remember this,  
14 Chairperson.  
15 MR BUDLENDER SC: Now I take it that from  
16 this evidence you would like the Commission to conclude  
17 that whoever fired at those strikers with shotgun pellets,  
18 it couldn't have been the SAPS members because they don't  
19 use shotgun pellets?  
20 GENERAL MBOMBO: As far as I know,  
21 Chairperson, they are not to use that in any operations.  
22 As far as I know further they are not issued with such  
23 ammunition for operations.  
24 MR BUDLENDER SC: And therefore the  
25 Commission should conclude that whoever shot those strikers

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1 with the shotgun pellets, it wasn't members of the SAPS, it  
2 was somebody else?  
3 GENERAL MBOMBO: I think so, Chairperson.  
4 MR BUDLENDER SC: Now we know that in  
5 recent weeks in your province protesters at Mothotlung were  
6 shot by members of the SAPS using prohibited shotgun  
7 pellets. That's been reported. I take it, it's been  
8 brought to your attention.  
9 GENERAL MBOMBO: It is so, Chairperson.  
10 MR BUDLENDER SC: Would you not agree  
11 with me that this give rise to a suspicion that the people  
12 who were shot with the prohibited ammunition at Marikana  
13 were also shot by members of the SAPS?  
14 GENERAL MBOMBO: As you say, Chairperson,  
15 that it could be a suspicion, but as far as I know it  
16 should not have happened in that manner.  
17 MR BUDLENDER SC: I accept that, but if  
18 it happened it was contrary to instructions?  
19 GENERAL MBOMBO: That's correct.  
20 MR BUDLENDER SC: But in the light of the  
21 unfortunate events at Mothotlung there must be at least a  
22 suspicion that that is what happened?  
23 GENERAL MBOMBO: You can say so, Sir.  
24 But one other thing is that these things are obtainable;  
25 people buy them.

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1 MR BUDLENDER SC: Including members of  
2 the SAPS apparently.  
3 GENERAL MBOMBO: What I know is that  
4 people who are in possession of shotguns and are licensed  
5 for these firearms, many of them being hunters, are allowed  
6 to buy this.  
7 MR BUDLENDER SC: Yes, indeed. Are you  
8 aware of any hunters being on the scene at Marikana on the  
9 16th of August?  
10 GENERAL MBOMBO: No, no, Sir, I don't  
11 have such knowledge.  
12 MR BUDLENDER SC: But there were members  
13 of the SAPS and we know that other members of the SAPS in  
14 this province used shotgun pellets against strikers,  
15 against protesters, unfortunately.  
16 GENERAL MBOMBO: I do not deny that, Sir.  
17 I agree with you where you say it's a perception.  
18 MR BUDLENDER SC: Or a suspicion.  
19 GENERAL MBOMBO: Or a suspicion, yes.  
20 MR BUDLENDER SC: Alright, now I want to  
21 move to the – what you'll be glad to hear is the last major  
22 topic I want to deal with. On the 16th of August you  
23 attended the initial part of the JOCCOM meeting at 13:30  
24 and you then left.  
25 GENERAL MBOMBO: It is so, Sir.

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1 MR BUDLENDER SC: You returned to the JOC  
2 before the operation started.  
3 GENERAL MBOMBO: Correct, Sir.  
4 MR BUDLENDER SC: And you regarded it as  
5 important that you should be at the JOC for this important  
6 and large and high-profile operation.  
7 GENERAL MBOMBO: Correct, Chairperson.  
8 MR BUDLENDER SC: And the purpose of  
9 being – and I take it, I take it that you were paying  
10 attention to what was happening there because that was the  
11 purpose of your being there?  
12 GENERAL MBOMBO: Not exactly that I would  
13 be looking and listening, but I was there, seeing to it  
14 that I should be there.  
15 MR BUDLENDER SC: And you were paying  
16 attention to what was happening around you.  
17 GENERAL MBOMBO: It is so.  
18 MR BUDLENDER SC: Otherwise – you weren't  
19 there for a picnic; you were there to observe what was  
20 happening.  
21 GENERAL MBOMBO: Correct, Chairperson.  
22 MR BUDLENDER SC: And you say that when  
23 you heard of the shootings you immediately telephoned the  
24 National Commissioner and told her. You remember that?  
25 GENERAL MBOMBO: Correct, Chairperson.

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1 MR BUDLENDER SC: Now we can actually  
 2 place the time of that call. Could we look at LLL – my  
 3 note says 7, but I think it's 3 actually. I think it's 3.  
 4 Could we look at LLL3? This is the analysis of the calls  
 5 which you made and received over this period. You see  
 6 that?  
 7 GENERAL MBOMBO: I haven't found it as  
 8 yet, Chair. LLL?  
 9 MR BUDLENDER SC: 3.  
 10 GENERAL MBOMBO: 3. The one I have here  
 11 is KKK4 that pertains to phone –  
 12 MR BUDLENDER SC: No, that's a different  
 13 one. KKK4 deals with calls of many people. LLL3 deals  
 14 only with your calls.  
 15 GENERAL MBOMBO: Oh, okay. It's not  
 16 marked.  
 17 MR BUDLENDER SC: I think yours is marked  
 18 KKK4, but it's actually exhibit LLL3.  
 19 GENERAL MBOMBO: Okay.  
 20 MR BUDLENDER SC: Okay, you've got that.  
 21 GENERAL MBOMBO: Yes, I do, Sir.  
 22 MR BUDLENDER SC: Now I don't know, I  
 23 think your pages may be printed slightly differently from  
 24 mine, but on my set on page 8 on the 16th of August 2012,  
 25 could you try to find the entry for the 16th of August 2012

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1 at 16:32:48?  
 2 GENERAL MBOMBO: I see that one, Sir.  
 3 MR BUDLENDER SC: Good, thank you.  
 4 GENERAL MBOMBO: 16:32:48, or 49?  
 5 MR BUDLENDER SC: Yes, those are the two,  
 6 those are the same call, Lieutenant General. You'll see it  
 7 says General Phiyega, 16:32:48, NTC, that means an incoming  
 8 call, and then on the right is Lieutenant General Mbombo,  
 9 so it's from you, and the next one says Lieutenant General  
 10 Mbombo, 16:32:49, MOC, that's an outgoing call from you in  
 11 the right-hand column to General Phiyega. It's the same  
 12 call for some reason with the one second difference in the  
 13 timing. You see that?  
 14 GENERAL MBOMBO: I see that one, Sir.  
 15 MR BUDLENDER SC: And we see that at  
 16 16:32 – let's leave out the seconds – at 16:32 you  
 17 telephoned General Phiyega and you spoke to her for 63 or  
 18 64 seconds. You see that?  
 19 GENERAL MBOMBO: I see that, Sir.  
 20 MR BUDLENDER SC: I've been through this  
 21 list and that is the first call that you made to General  
 22 Phiyega after the operation had commenced, first phone call  
 23 you made to her. So that must be the call when you  
 24 reported the shooting to her.  
 25 GENERAL MBOMBO: It is so.

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1 MR BUDLENDER SC: Because there's no  
 2 other phone call you made to her around that time, correct?  
 3 GENERAL MBOMBO: I don't remember  
 4 making –  
 5 MR BUDLENDER SC: Well, you can't see any  
 6 other call recorded around that time. This is the only one  
 7 that you made to her around that time, correct?  
 8 GENERAL MBOMBO: Yes, it is so,  
 9 Chairperson, because I'm not sure of that 16:02, what it  
 10 was that I was doing.  
 11 MR BUDLENDER SC: 16 August – 16:02,  
 12 we'll come back to 16:02 in a moment because I think you  
 13 may have put your finger on the solution to a problem I'm  
 14 going to show you. But 16:32 you telephoned General  
 15 Phiyega, and then we can see that at 16:34 she telephoned  
 16 you and you spoke for 448 or 449 seconds. That's the next  
 17 two entries. You see that?  
 18 GENERAL MBOMBO: I see that one.  
 19 MR BUDLENDER SC: And you spoke for about  
 20 seven and a half minutes, 448 seconds, correct?  
 21 GENERAL MBOMBO: It is so.  
 22 MR BUDLENDER SC: Now while you're on 16,  
 23 you mentioned 16:02; 16:02 is indeed a communication  
 24 between you and General Phiyega, but you'll see it says  
 25 MOSMS, that means you sent her an SMS. You didn't phone

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1 her at 16:02, you sent her an SMS at 16:02. You see that?  
 2 GENERAL MBOMBO: I see that one,  
 3 Chairperson.  
 4 MR BUDLENDER SC: So the first phone call  
 5 you made to her was at 16:32, correct?  
 6 GENERAL MBOMBO: It is so.  
 7 MR BUDLENDER SC: Right. Now you gave  
 8 evidence, your evidence-in-chief was that you heard of the  
 9 shootings from a telephone discussion between General  
 10 Annandale and General Naidoo. You remember you said that  
 11 General Annandale came to you holding a telephone and he  
 12 said General Naidoo had given this report? You remember  
 13 that?  
 14 GENERAL MBOMBO: That's what he said to  
 15 me, yes, Chairperson.  
 16 MR BUDLENDER SC: Yes, now the operation  
 17 commenced at about 15:40. You know that, correct?  
 18 GENERAL MBOMBO: I think so.  
 19 MR BUDLENDER SC: Your call to the  
 20 National Commissioner was at 16:32. We've established  
 21 that. So now I've looked to see when did General Naidoo  
 22 phone General Annandale, or when did General Annandale  
 23 phone General Naidoo between the time when the operation  
 24 commenced and the time when you phoned the National  
 25 Commissioner. You understand what I've done?

<p style="text-align: right;">Page 21792</p> <p>1 GENERAL MBOMBO: I understand, Sir.  2 MR BUDLENDER SC: And I found three. The  3 first one is at –  4 CHAIRPERSON: This will be another  5 exhibit because the present exhibit we're looking at is  6 only telephone calls –  7 MR BUDLENDER SC: Yes, I'm sorry –  8 CHAIRPERSON: - phone records involving  9 the witness.  10 MR BUDLENDER SC: Yes, this is the true  11 KKK4, Chair. Could we have that up, the true KKK4? And  12 could we go to 15:49 on the 16th?  13 CHAIRPERSON: We've now lost the time  14 through the enlargement of the page.  15 MR BUDLENDER SC: There we go. Right, so  16 you'll see that at 15:49 Major General Naidoo phoned  17 Brigadier Calitz. What I've done is I've checked all of  18 Major General Naidoo's calls, okay. So we know that at  19 15:49 he phoned Brigadier Calitz, but that can't be the  20 call you're referring to because Brigadier Calitz was in  21 the field, and at any rate it was before the shootings took  22 place. Correct?  23 GENERAL MBOMBO: It is so, Chairperson.  24 MR BUDLENDER SC: And then at 15:53 Major  25 General Naidoo phoned Brigadier Calitz again, but again we</p>	<p style="text-align: right;">Page 21794</p> <p>1 GENERAL MBOMBO: It was so, yes,  2 Chairperson, because at the time General Annandale is  3 talking to General Naidoo he did not give us complete  4 particulars or details of how many were injured and how  5 many had passed away. I hoped that at the time I phoned  6 the National Commissioner I would be having sufficient  7 particulars, even if it would not be a total thereof.  8 MR BUDLENDER SC: So you're saying –  9 GENERAL MBOMBO: At least some  10 information.  11 [14:13] MR BUDLENDER SC: So you're saying that  12 at 16:17 you received information that strikers had been  13 shot and you waited 15 minutes before you phoned the  14 National Commissioner and told her. Is that what you say?  15 GENERAL MBOMBO: That's what I'm saying,  16 Chairperson.  17 MR BUDLENDER SC: I want to put it to you  18 that that's inconsistent with the statement which you made  19 to this Commission. In your statement to the Commission  20 you say that you telephoned, and in your evidence you say  21 that you telephoned the National Commissioner immediately  22 you got that information. Do you consider immediately the  23 same as waiting for 15 minutes?  24 GENERAL MBOMBO: I have a problem there,  25 Mr Chairperson.</p>
<p style="text-align: right;">Page 21793</p> <p>1 know that can't be the call because Brigadier Calitz was in  2 the field, he wasn't in the JOC. Correct?  3 GENERAL MBOMBO: Let me correct that,  4 Chairperson. General Annandale mentioned that the phone he  5 was using did not belong to him, it belonged to Brigadier  6 Pretorius.  7 MR BUDLENDER SC: That's why I'm checking  8 all of the calls which Major General Naidoo made, because  9 we know the call came from Major General Naidoo.  10 GENERAL MBOMBO: Yes.  11 MR BUDLENDER SC: So I'm not referring to  12 General Annandale's phone calls; I'm only referring to  13 General Naidoo, all the calls that he made and received  14 over that period. And then at 16:17 we see that Brigadier  15 Pretorius phoned General Naidoo. Now that must be the call  16 because that's the only other call that Major General  17 Naidoo made or received during that period.  18 GENERAL MBOMBO: I think so, Chairperson.  19 MR BUDLENDER SC: So if your evidence is  20 correct, and the call we see lasted 32 seconds, so if your  21 evidence is correct, that phone call was received at 16:17,  22 that information was received at 16:17, and you waited for  23 15 minutes after that call before you phoned the National  24 Commissioner at 16:32 to tell her about the shootings. Do  25 you think that's possible?</p>	<p style="text-align: right;">Page 21795</p> <p>1 MR BUDLENDER SC: Yes.  2 GENERAL MBOMBO: According to me and the  3 way in which I interpret immediately I wouldn't be able to  4 say immediately would be after the lapse of, what time  5 should lapse. The truth of the matter is I wanted to have  6 facts when I phoned the National Commissioner. I knew she  7 was going to ask questions, like how many people are you  8 talking of. I wanted to have at least that information,  9 that it's so much but they are still counting.  10 MR BUDLENDER SC: So when you gave  11 evidence that you telephoned the National Commissioner  12 immediately you received the information, what you really  13 meant was you telephoned the Commissioner after you'd  14 waited for 15 minutes after you received the information.  15 Is that what your evidence is?  16 GENERAL MBOMBO: As I explained,  17 Chairperson, because according to me 15 minutes for a  18 person going up and down, searching, looking for  19 information, it would be my immediate. I have to apologise  20 to the Commission if my interpretation is wrong.  21 MR BUDLENDER SC: All I'm asking you is  22 this; when you say you did something immediately, what you  23 mean is you did it after waiting for 15 minutes?  24 GENERAL MBOMBO: It is so, Sir, because  25 that is how it happened.</p>

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1 MR BUDLENDER SC: So your evidence now is  
 2 that it was at 16:17 that you learned that there had been  
 3 shootings and people had been injured.  
 4 GENERAL MBOMBO: It could be so, because  
 5 that is when I received that information from General  
 6 Annandale. I did not know what time it was at that time.  
 7 MR BUDLENDER SC: I want to refer you to  
 8 what you said – can we look at the transcript for day 178,  
 9 please? Chair, I've been corrected, and correctly  
 10 corrected; the statement by the witness that she telephoned  
 11 the National Commissioner immediately is not in her  
 12 statement, it is in her evidence before this Commission.  
 13 It's in other words not in the statement and the evidence;  
 14 it's only in her evidence, and I'm correctly corrected on  
 15 that.  
 16 CHAIRPERSON: Where is it in the  
 17 evidence? It doesn't appear, unless I'm missing it, on the  
 18 pages which are presently on the screen.  
 19 MR BUDLENDER SC: No, I'll find the  
 20 reference, Chair, but – here we are. It's at page – it's  
 21 not on this, not on here. It's at page 21382. Perhaps we  
 22 can go there, perhaps just for the sake of completeness to  
 23 get it all straight. It's on day 178, and it is at page  
 24 21382 and this is what – from line 11, the evidence is as  
 25 follows, General Mbombo, "General Annandale came to me, Mr

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1 Chairperson, holding a telephone as though he was talking  
 2 on the phone. He said to me he is talking to General  
 3 Naidoo on the phone, that it was General Naidoo who was  
 4 reporting to him that there was confrontation with the  
 5 police on the koppie and that during this confrontation  
 6 certain people got injured and that there are fatalities.  
 7 He mentioned that there was a second koppie. When we  
 8 enquired as to the number of people there he did not have  
 9 these particulars, the complete particulars at the time."  
 10 Then Mr Semenya says, "You then informed the National  
 11 Commissioner about that and gave a report to her?" General  
 12 Mbombo, "I immediately phoned the National Commissioner,  
 13 Chairperson, and reported to her that this tragic incident  
 14 had occurred, but said to her that you did not have  
 15 complete figures as to how many people were injured and how  
 16 many were deceased and how many people were arrested. I  
 17 said to her that we would report to her as we get more  
 18 information." You see that?  
 19 GENERAL MBOMBO: I see this, Chairperson.  
 20 MR BUDLENDER SC: And you say what you  
 21 mean is you waited for 15 minutes – you already said that  
 22 you waited 15 minutes before phoning her to say there's  
 23 some people dead, there's some people injured, but I don't  
 24 know how many.  
 25 GENERAL MBOMBO: I did so, Mr

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1 Chairperson, after having tried and could not find the  
 2 exact numbers.  
 3 MR BUDLENDER SC: Did you not think it  
 4 was terribly important that the National Commissioner  
 5 should know immediately that members of the public,  
 6 strikers, had been shot dead by the South African Police  
 7 Service?  
 8 GENERAL MBOMBO: It was, Sir.  
 9 MR BUDLENDER SC: And it was important  
 10 that she should know immediately?  
 11 GENERAL MBOMBO: It is exactly so.  
 12 MR BUDLENDER SC: So why did you wait for  
 13 15 minutes before telling her?  
 14 GENERAL MBOMBO: According to me and  
 15 under the circumstances in which we were working there, I  
 16 didn't even know there was a 15-minutes lapse.  
 17 MR BUDLENDER SC: You've just agreed that  
 18 there was a 15-minute lapse.  
 19 GENERAL MBOMBO: As I see now here on the  
 20 record –  
 21 MR BUDLENDER SC: Well, that means you  
 22 waited for 15 minutes, doesn't it?  
 23 GENERAL MBOMBO: Not waiting, Mr  
 24 Chairperson; trying to find information. It wasn't  
 25 deliberate, not at all.

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1 MR BUDLENDER SC: Lieutenant General,  
 2 members of the public had been shot dead by members of the  
 3 South African Police Service and you didn't think it was  
 4 necessary to give that information immediately to the  
 5 National Commissioner, even if you didn't know how many  
 6 they were?  
 7 GENERAL MBOMBO: I thought so,  
 8 Chairperson, but because I knew she would be interested in  
 9 knowing how much damage has been caused there, how many  
 10 were – because whenever we receive reports of this nature,  
 11 Mr Chairperson, we have to give particulars of the extent  
 12 of the damage.  
 13 MR BUDLENDER SC: Come on, Lieutenant  
 14 General. Are you really saying that if you phoned the  
 15 National Commissioner and you said I've got to tell you  
 16 that very unfortunately members of the South African Police  
 17 have shot dead members of the public at Marikana, the  
 18 National Commissioner would say I'm not interested in  
 19 hearing this until you tell me how many there are?  
 20 GENERAL MBOMBO: She wouldn't have said  
 21 so, Chairperson.  
 22 MR BUDLENDER SC: She would have been  
 23 very interested in knowing immediately.  
 24 GENERAL MBOMBO: What I'm trying to  
 25 explain here is that I tried my level best to immediately

<p style="text-align: right;">Page 21800</p> <p>1 inform her. That is the reason, Mr Chairperson, I wasn't 2 even aware of how much time has lapsed. 3 MR BUDLENDER SC: I want to put it to 4 you, Lieutenant General, that that is simply not credible, 5 that you're a responsible person, you're a very senior 6 person, and any responsible person and any senior person 7 would have immediately phoned the National Commissioner and 8 said, 'National Commissioner, South African Police Service 9 have shot dead some strikers at Marikana. I don't yet know 10 how many there are. I will phone you again as soon as I 11 know how many there are,' and then gone on with the 12 investigations of how many. I put that to you. 13 GENERAL MBOMBO: I did so, Chairperson; 14 when I phoned her and I did not have the complete 15 particulars, I did exactly that. 16 MR BUDLENDER SC: No, but you didn't do 17 that. You waited for 15 minutes. You didn't do what I say 18 any sensible senior responsible person would have done, 19 which is immediately inform her of the deaths and then go 20 and find out for more detail. 21 GENERAL MBOMBO: But I would not be able 22 to give any other reason, Mr Chairperson, because there is 23 none. 24 MR BUDLENDER SC: I'm going to give you 25 another reason, suggest another reason to you in a moment,</p>	<p style="text-align: right;">Page 21802</p> <p>1 say is when she was told people were injured she 2 immediately said stop the operation, I'm coming, and 3 conveyed the information to the National Commissioner. 4 MR BUDLENDER SC: Right. 5 CHAIRPERSON: That happened on the 6 Monday. 7 MR BUDLENDER SC: Right. Now when 8 people, that was what you did when you heard that people 9 had been injured. Now when you heard on the 16th that 10 people had been shot dead, did you say if that's the case, 11 stop the operation? 12 GENERAL MBOMBO: When I heard about this, 13 Chairperson, I thought then the operation was over. 14 MR BUDLENDER SC: Who told you that? 15 GENERAL MBOMBO: I said I thought it was 16 over – 17 MR BUDLENDER SC: Why did you think – 18 GENERAL MBOMBO: I didn't hear from 19 anybody. 20 MR BUDLENDER SC: I'm sorry. Why did you 21 think it was over? 22 GENERAL MBOMBO: Because General Naidoo 23 when he phoned he said he was there already. As far as I 24 know he was in the forward holding area 1 and he had people 25 there who had to help if there were any injuries.</p>
<p style="text-align: right;">Page 21801</p> <p>1 and I'll come to that in a moment, but first I want to take 2 you to that same day 178, page 21307, line 7. Right, now 3 let's start at line 4, Mr Semenya says to you, this is a 4 discussion about the events of the 13th of August, the 5 Monday. Mr Semenya says, "When you were telling General 6 Mpmembe to withdraw from the scene you hadn't arrived back 7 in Marikana at that time?" and your answer is, "I was on 8 the way when he phoned me and he told me that there were 9 people injured. I told him if that is the case they should 10 stop the operation, I'm on my way, I'm coming." You see 11 that? 12 GENERAL MBOMBO: I see that, Chairperson. 13 MR BUDLENDER SC: Now you say at 17 14 minutes past 4 on the – have I got the right time? At 15 16:17 you – 16 CHAIRPERSON: Isn't the passage that 17 you've shown us the passage relating – now, the one now on 18 the screen, doesn't that relate to what happened on Monday 19 the 13th? 20 MR BUDLENDER SC: Yes, relates to Monday 21 the 13th. That's what I said, Chair. 22 CHAIRPERSON: I see. 23 MR BUDLENDER SC: This is what she said 24 on - 25 CHAIRPERSON: Monday the 13th, what you</p>	<p style="text-align: right;">Page 21803</p> <p>1 MR BUDLENDER SC: There had already been 2 scene 1 and scene 2? Is that what you're saying? 3 GENERAL MBOMBO: It is so, Chairperson. 4 MR BUDLENDER SC: How did you know there 5 wasn't going to be a scene 3? 6 GENERAL MBOMBO: Just clear the question, 7 Sir. 8 MR BUDLENDER SC: There were people 9 killed at scene 1. The police then proceeded and killed 10 further people at scene 2. How did you know they wouldn't 11 proceed further and kill people at a scene 3? Why didn't 12 you say, 'Stop now'? 13 GENERAL MBOMBO: The truth is that 14 according to me when it was said, it was him who was 15 phoning. I understood the operation to be over. 16 MR BUDLENDER SC: Did you speak to him? 17 GENERAL MBOMBO: I did not, not me, Sir. 18 That – 19 MR BUDLENDER SC: Why did you think the 20 operation was over? What did he say in that conversation 21 reported to you that made you think that the operation was 22 over? 23 GENERAL MBOMBO: He said to General 24 Annandale they were there together with the medics. That's 25 what made me think the operation is over.</p>

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1 MR BUDLENDER SC: That was a 30-second,  
 2 32-second conversation, and you were told that there was a  
 3 scene 2, correct?  
 4 GENERAL MBOMBO: He spoke of the koppie,  
 5 in the koppie.  
 6 MR BUDLENDER SC: Why didn't you say –  
 7 I've asked you already, I don't want to repeat it.  
 8 Actually by the time you were – alright. So you say that  
 9 the first time you heard that there were deaths was at  
 10 16:17 and it follows from what you say that people in the  
 11 JOC generally must have known at 16:17 that there had been  
 12 deaths.  
 13 GENERAL MBOMBO: That's when I heard, Mr  
 14 Chairperson.  
 15 MR BUDLENDER SC: And that must have been  
 16 made known generally to people at the JOC. It wasn't kept  
 17 a secret.  
 18 GENERAL MBOMBO: It's not clear what  
 19 you're asking, Sir.  
 20 MR BUDLENDER SC: You knew and General  
 21 Annandale knew, I take it everybody in the JOC was told  
 22 there's been shootings and the police have shot dead some  
 23 strikers.  
 24 GENERAL MBOMBO: It can be so, yes.  
 25 MR BUDLENDER SC: And everybody in the

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1 JOC would have known about that.  
 2 GENERAL MBOMBO: It is so.  
 3 MR BUDLENDER SC: Yes, and the person  
 4 that gave you the information was General Annandale, you  
 5 say.  
 6 GENERAL MBOMBO: Correct, Chairperson.  
 7 MR BUDLENDER SC: Yes. Now I want to  
 8 show you some other material about the shootings at scene  
 9 1. We know that from the evidence that in fact they took  
 10 place at 15:53. Now I want to show you some other things  
 11 that happened around that time. We know according to his  
 12 statement that at 15:55 General Naidoo heard a radio report  
 13 from Lieutenant Colonel Vermaak – well, he doesn't put a  
 14 time to it; let me say that immediately, but we know that  
 15 General Naidoo heard – let me start again. We know that  
 16 General Naidoo says that before he set off he heard a radio  
 17 report from Lieutenant Colonel Vermaak that bodies were  
 18 down and medical assistance was needed, and he heard that  
 19 over the radio. Did you hear that report?  
 20 GENERAL MBOMBO: Not whilst I was there,  
 21 Mr Chairperson.  
 22 MR BUDLENDER SC: And did no-one in the  
 23 JOC tell you that there's been that report over the radio?  
 24 GENERAL MBOMBO: Whilst the operation was  
 25 going on, that's not how I received it.

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1 MR BUDLENDER SC: Nobody in the JOC told  
 2 you there's been a radio report from Lieutenant Colonel  
 3 Vermaak that bodies are down and medical assistance is  
 4 needed?  
 5 GENERAL MBOMBO: I don't remember  
 6 receiving such a report, Chairperson.  
 7 MR BUDLENDER SC: Well, surely you would  
 8 remember it if you were told it.  
 9 GENERAL MBOMBO: I think so, yes.  
 10 MR BUDLENDER SC: It's not the sort –  
 11 GENERAL MBOMBO: If I had been told I  
 12 would remember it.  
 13 MR BUDLENDER SC: Yes, it's not the sort  
 14 of thing you would forget. It would have been a very  
 15 serious matter, not so?  
 16 GENERAL MBOMBO: It is so.  
 17 MR BUDLENDER SC: I'd like you to go to  
 18 FFF25, page 25. This is a transcription of the occurrence  
 19 book at the JOC.  
 20 GENERAL MBOMBO: What page, Sir?  
 21 MR BUDLENDER SC: Page 25. You see that?  
 22 Sorry –  
 23 GENERAL MBOMBO: I see it now.  
 24 MR BUDLENDER SC: Now can you look at  
 25 item 1017?

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1 GENERAL MBOMBO: I see that.  
 2 MR BUDLENDER SC: Let's read it together.  
 3 It says, "15:55, situation report, Papa1 reporting the  
 4 group are moving to TRT members and they tried to attack  
 5 them. Papa1 reporting that the people are moving around  
 6 and some are down." Now it seems that this reference to  
 7 Papa1 is probably incorrect and it was probably the report  
 8 from Lieutenant Colonel Vermaak, but you can see there that  
 9 at 15:55 there was a report received in the JOC that the  
 10 group are moving to the TRT members and they tried to  
 11 attack them and the people are moving around and some are  
 12 down. You see that?  
 13 GENERAL MBOMBO: I see that, Chair.  
 14 MR BUDLENDER SC: That is a report which  
 15 is received in the JOC at 15:55, correct?  
 16 GENERAL MBOMBO: I see it, yes.  
 17 MR BUDLENDER SC: It was received and  
 18 written down in the occurrence book, correct?  
 19 GENERAL MBOMBO: It is so.  
 20 MR BUDLENDER SC: Did anyone tell you  
 21 about it?  
 22 GENERAL MBOMBO: Nobody told me about it.  
 23 MR BUDLENDER SC: You're the Provincial  
 24 Commissioner.  
 25 GENERAL MBOMBO: You are right there.

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1 MR BUDLENDER SC: You're in the JOC.  
 2 GENERAL MBOMBO: I was outside the JOC  
 3 there.  
 4 MR BUDLENDER SC: At 15:55 you were  
 5 outside the JOC?  
 6 GENERAL MBOMBO: Yes, I was seated  
 7 outside.  
 8 MR BUDLENDER SC: How do you remember  
 9 where you were at 15:55? Where were you at 15:54?  
 10 GENERAL MBOMBO: At 20 past 3 I arrived  
 11 and spoke to Annandale. After talking to Annandale I went  
 12 out and went to the ladies room.  
 13 [14:33] On my way from there I sat outside the JOC. I'm  
 14 thinking that at that 15:55 that I was not in the JOC at  
 15 the time, I was either still at the ladies or on my way  
 16 outside.  
 17 MR BUDLENDER SC: How do you know that  
 18 that wasn't at 15:50? How can you so comfortably tell us,  
 19 under oath, that that's what happened at 15:55?  
 20 GENERAL MBOMBO: Let me better put it  
 21 this way. After talking to General Annandale, according to  
 22 me the operation had not started exactly then. I then went  
 23 outside, Chairperson, I went to the ladies' rooms, came  
 24 back and sat outside. I am now thinking that this 15:55  
 25 could have been that I'd been back from the ladies and I

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1 was seated outside, but I'm certain exactly about the time.  
 2 CHAIRPERSON: What time did you go back  
 3 into the JOC?  
 4 GENERAL MBOMBO: Is Chairperson referring  
 5 to the time of my arrival at the JOC or after I'd gone out  
 6 to the ladies?  
 7 CHAIRPERSON: You went to the ladies, you  
 8 then stood outside for some time you say and you then, I  
 9 take it, went back into the JOC at some stage did you not?  
 10 And what I want to know from you is what time did you go  
 11 back into the JOC?  
 12 GENERAL MBOMBO: Chairperson, what I do  
 13 remember is that I left and went to the ladies before the  
 14 commencement, starting of the operation. Coming back from  
 15 the ladies I'm not sure of the time, what time it was.  
 16 That is why I think that this 15:55 the possibility is that  
 17 I could have been still at the ladies or somewhere outside  
 18 there. I'm not very sure of it.  
 19 CHAIRPERSON: If you're not sure when you  
 20 went in then how can you be sure that you were outside at  
 21 15:55? You're not sure when you went back, how you can be  
 22 sure that at 15:55 you weren't in the JOC?  
 23 GENERAL MBOMBO: That's what I'm saying,  
 24 Chairperson, as I'm correcting what I am saying is I'm not  
 25 very sure of the time that I came back from the toilet, but

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1 on my way from there I sat for some time outside.  
 2 CHAIRPERSON: I understand that, but if  
 3 you're not sure what time you went back to the JOC then you  
 4 can't be sure that you weren't back by 15:55. What's your  
 5 answer?  
 6 GENERAL MBOMBO: Let me explain it, I  
 7 want to explain it again, Chairperson. I said I went out  
 8 of the JOC before the commencement, the start of the  
 9 operation I went to the toilet. I don't know how long I  
 10 was there. I came back, I sat outside in the shade,  
 11 outside the JOC, Chair. Even that time, Chairperson, I  
 12 cannot say what time exactly it was.  
 13 COMMISSIONER HEMRAJ: May I ask you,  
 14 Ma'am, where you were when General Annandale approached you  
 15 while he was talking on the telephone?  
 16 GENERAL MBOMBO: I was still seated  
 17 outside there when General Annandale came to talk to me.  
 18 MR BUDLENDER SC: That was at 16:17 that  
 19 General Annandale came and spoke to you, correct?  
 20 GENERAL MBOMBO: That is so.  
 21 MR BUDLENDER SC: So you're now telling  
 22 the Commission that you came back to the JOC specially for  
 23 this operation, that it was important for you to be there,  
 24 that you were attention to what was going on around you,  
 25 but you sat outside the JOC for more than 20 minutes. Is

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1 that your evidence?  
 2 GENERAL MBOMBO: It is, Chairperson, but  
 3 there was a time when I was in during those minutes. But  
 4 again I went out and sat outside there.  
 5 MR BUDLENDER SC: Why were you sitting  
 6 outside all that time?  
 7 GENEREL MBOMBO: Because inside there  
 8 people were busy, they were going up and down listening to  
 9 the radios and –  
 10 MR BUDLENDER SC: Yes and if you come  
 11 inside there's a risk you might hear what's on the radio.  
 12 GENERAL MBOMBO: I knew, Chairperson,  
 13 that I had people who were listening over there and if it  
 14 was necessary they would come out, it wasn't necessary for  
 15 me to hear something they would tell me.  
 16 MR BUDLENDER SC: General, I don't want  
 17 to be unkind but I said you, earlier I said to you, you  
 18 were there because you were there to pay attention and I  
 19 rather frivolously said you weren't for a picnic. You were  
 20 there to be there and to listen, but it seems to me you  
 21 were on a jaunt, on some sort of frolic if you weren't even  
 22 inside. Why weren't you inside - you're the Provincial  
 23 Commissioner.  
 24 GENERAL MBOMBO: Chairperson, firstly  
 25 there were people inside there who were listening to

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1 everything that was happening. I knew that if they hear  
 2 anything that I'm supposed to know they would tell me. As  
 3 I say, Chairperson, as I say, people were very busy inside,  
 4 everybody listening.  
 5 MR BUDLENDER SC: All right. Well let's  
 6 follow that up. We know that at 15:55 the JOC heard a  
 7 report that the group are moving to TRT members and they  
 8 tried to attack them. Papa1 reporting that the people are  
 9 moving around and some are down. Did no one come and tell  
 10 you that?  
 11 GENERAL MBOMBO: I don't remember that.  
 12 MR BUDLENDER SC: I'm not asking whether  
 13 – if they had told you, you would surely have remembered  
 14 it. It was terribly important, people had been shot by  
 15 members of the police. You say nobody told you that.  
 16 GENERAL MBOMBO: You are right that I  
 17 should have remembered, but I don't remember anybody  
 18 telling me.  
 19 MR BUDLENDER SC: Well if you had been  
 20 told then you would remember it because it was very  
 21 important.  
 22 GENERAL MBOMBO: Very much, Sir.  
 23 MR BUDLENDER SC: So from that we can  
 24 conclude that you weren't told because you don't remember  
 25 it.

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1 GENERAL MBOMBO: I don't remember being  
 2 told.  
 3 MR BUDLENDER SC: And from that we can  
 4 conclude that you weren't told.  
 5 GENERAL MBOMBO: Just repeat the  
 6 question, Sir.  
 7 MR BUDLENDER SC: From the fact that you  
 8 don't remember being told we can conclude that you weren't  
 9 told.  
 10 GENERAL MBOMBO: I think so. I was not  
 11 told, I don't remember being told.  
 12 MR BUDLENDER SC: You're the Provincial  
 13 Commissioner, there's a big police operation, a report is  
 14 received that the TRT members are being attacked, people  
 15 are moving around and some are down and no one bothers to  
 16 tell you.  
 17 GENERAL MBOMBO: I wasn't told by anybody  
 18 about that report.  
 19 MR BUDLENDER SC: Let's move to 1018.  
 20 Now the times on this are not precise because the reports  
 21 are being made as they come in, but let's see what gets  
 22 reported from 15:56 onwards. Papa1 reporting, "that people  
 23 are running towards the houses, running towards the western  
 24 side of the koppie. 18 bodies are down, chopper 1  
 25 reporting that is at the back of the koppie, other people

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1 are running towards Karee Hostel." Now is that a report  
 2 which was received in the JOC, correct?  
 3 GENERAL MBOMBO: It is so as it is  
 4 written here.  
 5 MR BUDLENDER SC: Did you hear that  
 6 report?  
 7 GENERAL MBOMBO: I do not remember it.  
 8 MR BUDLENDER SC: Did anyone tell you  
 9 about that report?  
 10 GENERAL MBOMBO: Nobody did, Chairperson.  
 11 MR BUDLENDER SC: So now we have the  
 12 situation that the police in JOC had a report that 18  
 13 bodies are down, the Provincial Commissioner is sitting  
 14 outside and they don't bother to tell her, is that what  
 15 you're saying?  
 16 GENERAL MBOMBO: I was not told, Sir.  
 17 MR BUDLENDER SC: I have to put it to  
 18 you, Lieutenant-General, that that stains one's belief,  
 19 that the police are so negligent that they don't tell the  
 20 Provincial Commissioner who is in attendance for that  
 21 purpose, for the purpose of finding out what's going on,  
 22 that 18 bodies are down. I find that impossible to  
 23 believe.  
 24 GENERAL MBOMBO: They did not tell me,  
 25 Sir.

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1 MR BUDLENDER SC: Would you agree that  
 2 that was shocking behaviour by the police?  
 3 GENERAL MBOMBO: I agree with you there.  
 4 MR BUDLENDER SC: Absolutely shocking.  
 5 GENERAL MBOMBO: It is so.  
 6 MR BUDLENDER SC: What have you done  
 7 about it? What have you done about saying to the people in  
 8 the JOC why didn't you tell me that 18 bodies are down?  
 9 GENERAL MBOMBO: Long after this thing  
 10 happened I tried to enquire as to why is it that I did not  
 11 hear about this. I was then told, they said they were  
 12 trying to find out, to ascertain whether these are bodies  
 13 of people lying down or what the position is because –  
 14 MR MPOFU: No –  
 15 CHAIRPERSON: Go on interpreting, Mr –  
 16 GENERAL MBOMBO: I said after this had  
 17 happened I tried to enquire as I see this report,  
 18 Chairperson. I asked them why it was so that I wasn't told  
 19 about this. General Annandale said to me they were trying  
 20 all the time from the time they received this report,  
 21 trying to find out if these were bodies of people lying  
 22 down or people that were deceased.  
 23 MR MPOFU: I'm sorry, Chairperson.  
 24 CHAIRPERSON: Yes, Mr Mpofo, are you  
 25 intervening as a linguistic expert?



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1 MR MPOFU: If I'm allowed to yes,  
 2 Chairperson.  
 3 CHAIRPERSON: As a linguistic expert.  
 4 MR MPOFU: Yes. The witness said she  
 5 wanted to ascertain whether these bodies or people.  
 6 GENERAL MBOMBO: Correctly so,  
 7 Chairperson.  
 8 CHAIRPERSON: I take it that means,  
 9 translated from the vernacular means she wanted to find out  
 10 if these were dead bodies or people who were still alive,  
 11 that's probably a short way of saying it. Mr Tokota who's  
 12 my linguistic advisor on my left, who has a knowledge of  
 13 deep Xhosa tells me that's he understands it to mean.  
 14 MR MPOFU: No, that's not what she said.  
 15 She said –  
 16 CHAIRPERSON: Mr Mpofo, let's ask the  
 17 witness, the witness knows what she meant. And the witness  
 18 can understand our discussion in English and she can tell  
 19 us what she meant when she spoke in Xhosa and if she wants  
 20 to tell us in Xhosa so that Mr Mahlangu can interpret it  
 21 she's free to do so.  
 22 GENERAL MBOMBO: I was explaining, Sir,  
 23 that General Annandale said to me they spent some time  
 24 trying to ascertain the meaning of the bodies down, did it  
 25 mean these are bodies of people that were passed away or

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1 people that were made to lie down because according to the  
 2 operation that was being conducted there were people there  
 3 to be arrested during the dispersal and the disarmament.  
 4 MR MAHLANGU: I just want to say, Mr  
 5 Chairperson, with all due respect this is exactly what I  
 6 had interpreted when Mr Mpofo intervened.  
 7 MR MPOFU: No, it's not. The record will  
 8 show that Mr Mahlangu said bodies – whether there were  
 9 bodies of people, not or people and she said whether these  
 10 were bodies –  
 11 CHAIRPERSON: If he said of instead or  
 12 I'm sure it was a slip of the tongue which has now been  
 13 corrected.  
 14 MR MPOFU: Well as long as it's  
 15 corrected, with due respect.  
 16 MR BUDLENDER SC: Can we proceed with  
 17 what the occurrence book says?  
 18 "Water canon moving forward to the koppie, we're  
 19 still 1018, people are moving out of the koppie. Papa1  
 20 instructing the members to go to the next koppie. People  
 21 are running to the direction of members, Papa5, instructing  
 22 members to make arrests, six people arrested. Chopper 2  
 23 reporting two bodies down. Group of people running into  
 24 the bush. Instructions given to the medics to go and  
 25 assist at holding area. There are 30 people/bodies lying

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1 down." Did you hear that report?  
 2 GENERAL MBOMBO: I did not hear all this.  
 3 I did not hear all these reports.  
 4 MR BUDLENDER SC: Nobody told you about  
 5 this, that the JOC had received this report?  
 6 GENERAL MBOMBO: I do not remember.  
 7 MR BUDLENDER SC: All right, I'll come  
 8 back to that in a moment. And you say General Annandale  
 9 said they deliberately didn't tell you because they were  
 10 collecting more information. Is that your evidence?  
 11 GENERAL MBOMBO: He did not mention that  
 12 he did not tell me deliberately, Chairperson.  
 13 MR BUDLENDER SC: You asked him why he  
 14 didn't tell and he gave you the reason why he didn't tell  
 15 you.  
 16 GENERAL MBOMBO: That's what he said,  
 17 yes, Chairperson. That they wanted to make doubly sure and  
 18 they were struggling to get this information.  
 19 MR BUDLENDER SC: Now we know that  
 20 Captain Loest was a member of TRT line that fired the shots  
 21 at scene 1 at 15:53. Are you aware of that? Have you  
 22 heard of Captain Loest?  
 23 GENERAL MBOMBO: I know him, yes.  
 24 MR BUDLENDER SC: And he was one of the  
 25 members of the TRT line that fired the shots at scene 1,

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1 correct?  
 2 GENERAL MBOMBO: I think so, Chairperson.  
 3 MR BUDLENDER SC: Yes. And we know that  
 4 Brigadier Pretorius was the operation room commander at the  
 5 JOC, correct?  
 6 GENERAL MBOMBO: It is so, Chairperson.  
 7 MR BUDLENDER SC: And what L67 tells us,  
 8 I'm not going to go there, that's the one which describes  
 9 the function of the various people and it says, "Brigadier  
 10 Pretorius, operation room commander, Brigadier Pretorius  
 11 managed the information flow and record keeping in the  
 12 JOC." That was her job wasn't it?  
 13 GENERAL MBOMBO: It is so.  
 14 MR BUDLENDER SC: She was responsible for  
 15 receiving and distributing information, correct?  
 16 GENERAL MBOMBO: It is so, Chairperson.  
 17 MR BUDLENDER SC: Now can we go to KKK4,  
 18 16:05? You'll see that 16:05 Captain Loest phoned  
 19 Brigadier Pretorius, do you see that? It may be easier to  
 20 look at this on the screen, Lieutenant -  
 21 GENERAL MBOMBO: 16:05 I see,  
 22 Chairperson.  
 23 MR BUDLENDER SC: Captain Loest who was  
 24 one of the shooting line of the TRT phoned Brigadier  
 25 Pretorius at the JOC at 16:05, correct?

<p style="text-align: right;">Page 21820</p> <p>1 GENERAL MBOMBO: I see it yes.  2 MR BUDLENDER SC: That's 12 minutes after  3 the shooting, correct?  4 GENERAL MBOMBO: I see that, Chair.  5 MR BUDLENDER SC: Do you think he  6 mentioned the shootings to her?  7 GENERAL MBOMBO: I think he must have  8 told her.  9 MR BUDLENDER SC: Yes and at 16:08  10 Brigadier Pretorius phoned Captain Loest. Can you see that  11 at 16:08?  12 GENERAL MBOMBO: I see, Chairperson.  13 MR BUDLENDER SC: Do you think they must  14 have discussed the fact again that there were shootings?  15 GENERAL MBOMBO: I think so.  16 MR BUDLENDER SC: Yes, and at 16:13 she  17 telephoned him again. Do you see that?  18 GENERAL MBOMBO: I see that , Sir.  19 MR BUDLENDER SC: Brigadier Pretorius  20 must have been told during those calls that there had been  21 shootings and that people had been injured, correct?  22 GENERAL MBOMBO: I see that.  23 MR BUDLENDER SC: She was responsible for  24 receiving and distributing information, correct?  25 GENERAL MBOMBO: It is so.</p>	<p style="text-align: right;">Page 21822</p> <p>1 MR BUDLENDER SC: Well, we don't have a  2 statement yet by Brigadier Pretorius, but we have  3 interviewed her and she says she told General Annandale  4 about the shooting. Now if she's telling the truth General  5 Annandale kept that information away from you.  6 GENERAL MBOMBO: It's possible that she  7 told him because he was also inside there.  8 MR BUDLENDER SC: Can you think of any  9 reason why General Annandale, now having been told that  10 members of – the strikers had been shot and injured by the  11 police, would keep that information away from you?  12 GENERAL MBOMBO: I don't think there  13 could be a reason.  14 MR BUDLENDER SC: If he did that it would  15 be shocking.  16 GENERAL MBOMBO: It is so.  17 MR BUDLENDER SC: It would be  18 disgraceful, yes?  19 GENERAL MBOMBO: Yes.  20 MR BUDLENDER SC: Do you think that's how  21 General Annandale behaved, shockingly and disgracefully?  22 [14:53] GENERAL MBOMBO: No, Chair, it is on the  23 preposition that General Annandale is aware of the  24 witness's presence outside, there are a whole lot of  25 explanations.</p>
<p style="text-align: right;">Page 21821</p> <p>1 MR BUDLENDER SC: Did she tell you that  2 people had been shot by the members of the SAPS?  3 GENERAL MBOMBO: She did not,  4 Chairperson.  5 MR BUDLENDER SC: Do you think she kept  6 this a secret to herself?  7 GENERAL MBOMBO: I don't think so,  8 Chairperson.  9 MR BUDLENDER SC: Do you think she told  10 other members of the JOC?  11 GENERAL MBOMBO: Possibly so, yes.  12 MR BUDLENDER SC: But they also didn't  13 tell you.  14 GENERAL MBOMBO: They did not tell me,  15 Chair.  16 MR BUDLENDER SC: The first call is at 16  17 – from Captain Loest is at 16:05, we know that at 16:05  18 Brigadier Pretorius must have known that the police had  19 shot and injured people and no one told you for 12 minutes.  20 Do you really think – is that what you ask the Commission  21 to accept as the truth?  22 GENERAL MBOMBO: It's the truth, Sir.  23 Truth that cannot be denied because I have no reason to  24 come and lie to the Commission to say I was told if I was  25 not told.</p>	<p style="text-align: right;">Page 21823</p> <p>1 CHAIRPERSON: Well, that explanation can  2 be given by the witness and not by counsel from the bar.  3 But carry on, Mr Budlender.  4 MR BUDLENDER SC: Did General Annandale  5 know that you were at the JOC? You told us you were  6 talking to him at various times.  7 GENERAL MBOMBO: He was aware of the fact  8 that I'm around there.  9 MR BUDLENDER SC: Yes, you weren't hiding  10 from the JOC, were you?  11 GENERAL MBOMBO: No, I wasn't hiding.  12 MR BUDLENDER SC: Your presence outside  13 the JOC wasn't a secret, was it?  14 GENERAL MBOMBO: It is so.  15 MR BUDLENDER SC: Everybody knew you were  16 present, yes?  17 GENERAL MBOMBO: It is so.  18 MR BUDLENDER SC: Including General  19 Annandale, yes?  20 GENERAL MBOMBO: It is correct.  21 MR BUDLENDER SC: Yes, but he didn't tell  22 you about the shootings?  23 GENERAL MBOMBO: I don't remember him  24 telling me that, Chairperson.  25 MR BUDLENDER SC: I want to suggest to</p>

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1 you – so what you are saying, Lieutenant General, is that  
 2 the JOC received a report at 15:55 that people were down  
 3 and you weren't told about that. They received another  
 4 report after 16:05 that people were down, that 18 people  
 5 were down, that 30 people were injured or down, and that  
 6 was kept away from you; that Captain Loest must have  
 7 reported to the JOC at 16:05 that people had been shot and  
 8 injured and that also was kept away from you. That is the  
 9 effect of the evidence which you've given. Correct?  
 10 GENERAL MBOMBO: It is so, Chairperson,  
 11 because I don't – there's nothing like this that had been  
 12 mentioned –  
 13 MR BUDLENDER SC: Well, I want to suggest  
 14 to you, General, that there are only two possible  
 15 explanations for this remarkable evidence. One  
 16 possibility, one explanation is that there was a concerted  
 17 attempt by people in the JOC to keep that information away  
 18 from you. The other possible explanation is that you're  
 19 not telling the truth. Can you think of any other  
 20 explanation?  
 21 GENERAL MBOMBO: I do not agree with both  
 22 your –  
 23 MR BUDLENDER SC: Well, can you think of  
 24 another explanation why all of these things were not  
 25 reported to you?

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1 MR SEMENYA SC: No, Chair, the witness  
 2 must be given a chance to answer. This is badgering –  
 3 CHAIRPERSON: Yes, I think Mr Semenya is  
 4 correct, Mr Budlender. The witness was still speaking, I  
 5 think –  
 6 MR BUDLENDER SC: I apologise.  
 7 CHAIRPERSON: So let's give her an  
 8 opportunity to finish, then you can ask your question.  
 9 Yes, Provincial Commissioner, what were you saying?  
 10 GENERAL MBOMBO: I'm saying, Chairperson,  
 11 I do not agree with both the suggestions that are being put  
 12 to me. There could have been other reasons or things that  
 13 they were looking at. Secondly, this is according to me,  
 14 Mr Chairperson, I have no reason to come and lie to this  
 15 Commission because as at now this thing happened which is  
 16 hurting to all of us. What is of importance, Sir, is that  
 17 we talk the truth here so that we all come right and  
 18 spiritually be healed.  
 19 MR BUDLENDER SC: So you think the reason  
 20 they didn't tell you, you say you're telling the truth that  
 21 you weren't told and the reason is that they were doing  
 22 other things. Is that what you're saying?  
 23 GENERAL MBOMBO: I'm trying to say that  
 24 they possibly had their own reason –  
 25 MR BUDLENDER SC: But can you say what

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1 the reasons might be?  
 2 GENERAL MBOMBO: - not that they were  
 3 trying to keep this information away from me.  
 4 MR BUDLENDER SC: Can you think of any  
 5 other valid reason they would have, or any valid reason  
 6 they would have had not to tell you? Or any – excuse me,  
 7 sorry to interrupt you, can you think of any reason why  
 8 every one of the members of the people present at the JOC –  
 9 and there were many of them – had a reason not to tell you  
 10 about any one of these reports?  
 11 GENERAL MBOMBO: Truthfully as of now I  
 12 don't think, I'm not thinking of any reason. I don't know  
 13 of any reason.  
 14 MR BUDLENDER SC: I want to suggest to  
 15 you, General Mzembe, another explanation for what happened  
 16 – General Mbombo, my apologies – another possible  
 17 explanation for what happened. Could you look, we're at  
 18 KK3, KK4, I beg your pardon. Could you look at 16:03?  
 19 GENERAL MBOMBO: I see, Chairperson.  
 20 MR BUDLENDER SC: There we see that  
 21 Brigadier Pretorius sent an SMS at 16:03 to Mr Molatsedi at  
 22 IPID. You see that?  
 23 GENERAL MBOMBO: I see, Chairperson.  
 24 MR BUDLENDER SC: Now we don't yet have a  
 25 statement from Brigadier Pretorius, but it is, we know what

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1 IPID do. They investigate alleged offences by the police,  
 2 and it's difficult to think why she would – we know that  
 3 strikers had been shot and injured and killed nine minutes  
 4 before that SMS was sent, 10 minutes before the SMS was  
 5 sent. Can you think of any reason why Brigadier Pretorius  
 6 would phone IPID in the middle of an operation if not to  
 7 give them the report that people had been shot and killed?  
 8 CHAIRPERSON: She did not phone, sent an  
 9 SMS, Mr Budlender.  
 10 MR BUDLENDER SC: SMS, I beg your pardon.  
 11 Can you think of any other reason why in the middle of an  
 12 important operation, she's got to be concentrating on the  
 13 job, she would send an SMS to IPID, other than to report  
 14 injuries or deaths?  
 15 GENERAL MBOMBO: I wouldn't know, Mr  
 16 Chairperson.  
 17 MR BUDLENDER SC: Then can we go to LLL3?  
 18 CHAIRPERSON: Sorry to interrupt you, Mr  
 19 Budlender. As far as I can recall - Adv Hemraj has a  
 20 similar memory, we have this, I'll ask Mr Tokota in a  
 21 minute. We have a memory that we have seen a statement by  
 22 Brigadier Pretorius saying that she contacted IPID because  
 23 people had been injured.  
 24 COMMISSIONER HEMRAJ: She actually says  
 25 that she did not get through to the person she called and

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1 left a message and then got a call back and then sent a  
 2 text message.  
 3 MR BUDLENDER SC: [Microphone off,  
 4 inaudible]  
 5 CHAIRPERSON: I'd said I'll ask Mr  
 6 Tokota. He also agrees.  
 7 MR BUDLENDER SC: It's JJJ187A and this  
 8 is what – perhaps we should get it up. JJJ187A.  
 9 GENERAL MBOMBO: I don't have it.  
 10 MR BUDLENDER SC: We'll look at it on the  
 11 screen. Could you go to page 9 please, on the screen,  
 12 paragraph 33. Right, so this is what it says, "After I  
 13 received the report of casualties I phoned Mr Molatsedi,  
 14 the Acting Provincial Head of IPID, to inform him about the  
 15 incident. I'm not sure about the time of this call. His  
 16 phone was on voicemail, but he later phoned me back and  
 17 promised to send Mr Motaung of the IPID office at  
 18 Rustenburg to attend to the scene." Now what we know from  
 19 that is that Brigadier Pretorius received the report of  
 20 casualties and immediately attempted to contact Mr  
 21 Molatsedi, correct?  
 22 GENERAL MBOMBO: It is so.  
 23 MR BUDLENDER SC: She says she phoned him  
 24 but his phone was on voicemail. You see that?  
 25 GENERAL MBOMBO: I see that, yes.

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1 MR BUDLENDER SC: Now we'll have to ask  
 2 Brigadier Pretorius when she comes about the SMS record,  
 3 but we know from this in any event that whether it was an  
 4 SMS or a missed phone call or whatever it was, at 16:03  
 5 Brigadier Pretorius knew about the casualties because that  
 6 is when she contacted Mr Molatsedi, correct?  
 7 GENERAL MBOMBO: It can be so.  
 8 MR BUDLENDER SC: Well, it must be so.  
 9 That's what she says. Correct?  
 10 GENERAL MBOMBO: It could be so. That is  
 11 what she says.  
 12 MR BUDLENDER SC: Yes, alright, now  
 13 let's –  
 14 CHAIRPERSON: Mr Budlender, I'd like to  
 15 take the tea adjournment when it's convenient for you.  
 16 MR BUDLENDER SC: I'm in the middle of a  
 17 point, if I may just finish, Chair.  
 18 CHAIRPERSON: I said when it's convenient  
 19 for you.  
 20 MR BUDLENDER SC: Thank you, Chair. Then  
 21 could you go to LLL3?  
 22 GENERAL MBOMBO: I don't think I've got  
 23 that on.  
 24 MR BUDLENDER SC: That's the one which is  
 25 called KKK4 in your bundle. We've just done that to

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1 confuse you, Lieutenant General. Not me. You have KKK4.  
 2 Could you look at – LLL3, could you look at the entry at  
 3 16:02 –  
 4 CHAIRPERSON: On the 16th?  
 5 MR BUDLENDER SC: On the 16th of August,  
 6 and we see that at 16:02 you sent an SMS to the National  
 7 Commissioner. You see that?  
 8 GENERAL MBOMBO: I see it, Chairperson.  
 9 MR BUDLENDER SC: What was that SMS  
 10 about?  
 11 GENERAL MBOMBO: I do not remember what  
 12 it contained.  
 13 MR BUDLENDER SC: Let me suggest to you  
 14 what must have happened. This is at almost exactly the  
 15 same time as Brigadier Pretorius is sending an SMS or a  
 16 message to IPID about the injuries, right?  
 17 GENERAL MBOMBO: I hear you say so, Sir.  
 18 MR BUDLENDER SC: Well, it is. Hers is  
 19 at 16:03 and yours is at 16:02, correct?  
 20 GENERAL MBOMBO: I hear you.  
 21 MR BUDLENDER SC: So we know that at that  
 22 time she knew that there had been shootings and injuries,  
 23 correct?  
 24 GENERAL MBOMBO: I understand that.  
 25 MR BUDLENDER SC: And I want to suggest

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1 to you what actually happened, or must have happened. I  
 2 don't know; I wasn't there, but what must have happened is  
 3 the message must have come through that there had been  
 4 shootings and injuries and Brigadier Pretorius immediately  
 5 contacted IPID and you immediately contacted the National  
 6 Commissioner by sending her an SMS. Isn't that what  
 7 happened?  
 8 GENERAL MBOMBO: Sir, I do not remember  
 9 the contents of this SMS.  
 10 MR BUDLENDER SC: And that's why all of  
 11 these reports weren't – if the reports weren't given to  
 12 you, they weren't given to you because you already knew  
 13 that there had been shooting incidents. You'd already told  
 14 the National Commissioner.  
 15 GENERAL MBOMBO: I don't remember it that  
 16 way, Sir.  
 17 MR BUDLENDER SC: Well, what was the  
 18 SMS –  
 19 CHAIRPERSON: Sorry, what would you have  
 20 sent an SMS about at that stage? What would you have sent  
 21 an SMS to the National Commissioner about at 16:02 on that  
 22 Thursday afternoon?  
 23 GENERAL MBOMBO: Chairperson, I don't  
 24 remember. It could have been something about the  
 25 operation, but I don't know exactly what it was that I was

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1 saying.

2 MR BUDLENDER SC: Well, it's unlikely

3 that in the middle of the operation of this kind you send

4 her an SMS about anything other than the operation, isn't

5 it?

6 GENERAL MBOMBO: It is so.

7 MR BUDLENDER SC: It's most likely that

8 it's something about the operation and we know that the JOC

9 had already received the report that people had been shot

10 and injured, so isn't the most likely thing that you were

11 telling her at 16:02 people had been shot and injured?

12 GENERAL MBOMBO: I really don't remember.

13 COMMISSIONER HEMRAJ: From where you were

14 outside the JOC, could you hear what was happening inside

15 the JOC, Ma'am?

16 GENERAL MBOMBO: Not exactly what was

17 happening, not all the talk, but at the time that I said I

18 had been inside the JOC General Annandale mentioned a

19 problem they were encountering about communication with the

20 radios. As I was seated outside, Commissioner, I did not

21 hear everything that was being said.

22 CHAIRPERSON: If what you tell us is

23 correct, that you didn't know what was happening, then you

24 didn't have anything really to report to the National

25 Commissioner. I could understand if something had been

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1 communicated to you as to what was happening, you would

2 have had something to report to the National Commissioner,

3 but if you were still in a state of ignorance - through no

4 fault of your own on your version - about what was

5 happening, you would obviously have waited until you knew

6 something about the operation and what was going on before

7 you communicated with the National Commissioner. But it

8 does seem at least prima facie to be, I mean it's possible

9 that you contacted, you sent her an SMS to tell her what

10 you just heard, namely that there had been these injuries.

11 That's essentially what Mr Budlender is putting to you.

12 I'm just asking you whether there's - you say you can't

13 remember. Is it possible that what he says is correct?

14 GENERAL MBOMBO: Chairperson, if I'd

15 heard that, I would have phoned her, as I did later. I

16 don't remember sending an SMS about that. The truth of the

17 matter is that the SMS that I sent her must have had

18 something to do with the operation, possibly that I was

19 explaining that it was still going on, but I don't remember

20 the contents of what exactly I said.

21 CHAIRPERSON: I understand you say you

22 can't remember. I'm just asking you whether what Mr

23 Budlender is putting to you is possibly correct. That's

24 all.

25 GENERAL MBOMBO: Chairperson, because

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1 nothing of the sort had been reported to me, it cannot be a

2 possibility that I was reporting that.

3 CHAIRPERSON: Before we take the tea

4 adjournment, I take it we can take it now, with your

5 permission, Mr Budlender, but before we get your

6 permission, which we've got, so we've now got your

7 permission. After we've got your permission, Mr Mpofo

8 wants to say something, either to give us or refuse us his

9 permission.

10 MR MPOFU: No, I would give my

11 permission, Chairperson. I just wanted to point out just

12 for the record and in fairness to the witness that what she

13 said in relation to whatever was happening inside the JOC

14 was that she could not hear all that was being said in the

15 JOC, indicating that she could hear some of it as opposed

16 to - I think it came out as if she said I couldn't hear

17 anything. We are back to that entire -

18 CHAIRPERSON: Alright.

19 MR MPOFU: In other words she couldn't

20 pick everything that was being -

21 CHAIRPERSON: Alright. She's raising her

22 hand and she's turned her machine on, so we'll give her the

23 last word before we take tea.

24 GENERAL MBOMBO: I ask permission to

25 explain this, Chairperson. My response was, my answer was

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1 whilst I was outside there I did not hear everything that

2 was going in inside because of the noise that was

3 happening.

4 CHAIRPERSON: If you say you didn't hear

5 everything, then we're back on the same kind of linguistic

6 tangle we were in before. When you say you didn't hear

7 everything, that could mean I heard something, but I didn't

8 hear everything. Alternatively it could mean I didn't hear

9 anything. Now which of the two is it?

10 GENERAL MBOMBO: It's difficult to

11 explain it in isiXhosa.

12 COMMISSIONER TOKOTA: But the way I

13 understood you is that you didn't hear anything because of

14 the noise. It's not about everything. You heard nothing.

15 GENERAL MBOMBO: What I'm saying is

16 whilst I was outside, because of the volume of noise inside

17 I could not hear what they were saying, not anything.

18 CHAIRPERSON: So what you're really

19 saying, if I may be so bold as to try to summarise, what

20 you're saying is you could hear noises inside, but you

21 couldn't make out what was happening. There were noises,

22 but it was unintelligible to you in the circumstances. Is

23 that what you're saying?

24 GENERAL MBOMBO: You have put it much

25 more clearer, Mr Chairperson.

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1 CHAIRPERSON: One does try from time to  
 2 time. We'll now take the tea adjournment.  
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 4 [15:31] CHAIRPERSON: The Commission resumes.  
 5 Provincial Commissioner, you're still under oath.  
 6 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 7 CHAIRPERSON: Mr Budlender.  
 8 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):  
 9 Lieutenant General –  
 10 COMMISSIONER HEMRAJ: Mr Budlender, may I  
 11 just ask a question before you do, please? Ma'am, from the  
 12 time you left the JOC just before the operation until the  
 13 time Major General Annandale came to you, did no-one else  
 14 from the JOC communicate anything to you?  
 15 GENERAL MBOMBO: I do not remember it  
 16 like that, Mr Chair. All I remember is when I went in at  
 17 some stage General Annandale told me that they were  
 18 experiencing problems communicating over the radio.  
 19 COMMISSIONER HEMRAJ: No, no, I'm not  
 20 sure you understood my question. From the time you left  
 21 the JOC just before the operation started, you said you  
 22 went outside and you sat outside in the shade. From the  
 23 time you left until the time Major General Annandale came  
 24 to you at 16:17, did anyone else from the JOC communicate  
 25 anything to you while you were there outside?

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1 GENERAL MBOMBO: The only thing I hear,  
 2 Mr Chair, was a problem communicating over the radio. That  
 3 is all.  
 4 MR BUDLENDER SC: Lieutenant General,  
 5 you'll be pleased, as I'm pleased, that I'm nearly at the  
 6 end. We'll both be pleased. Finally, you were asked  
 7 whether the SAPS made any errors in this operation and you  
 8 said that you made errors with regard to the communication  
 9 system and by failing to obtain video footage of the  
 10 events. What other errors did the SAPS make?  
 11 GENERAL MBOMBO: Mr Chair, the only area  
 12 that was left out on that day, I thought we would continue  
 13 with it, talk about it, was that an unexpected tragedy  
 14 happened in that operation. That was that 34 people were  
 15 killed and 78 people were seriously injured. That is  
 16 something that was never the intention and wish of the  
 17 police. As our doctrine, or Standing Order says, that we  
 18 measure the failure or success of an operation by its  
 19 results. What happened was sad.  
 20 MR BUDLENDER SC: And by that measure  
 21 this operation was a failure.  
 22 GENERAL MBOMBO: It appears to be a  
 23 failure to me. It did not have the desired results.  
 24 MR BUDLENDER SC: Well, that's a very  
 25 fair admission and I thank you for that. You said that the

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1 police made mistakes in relation to the communication  
 2 system and in relation to recording by video what happened.  
 3 Can you think, are there any other mistakes which the  
 4 police made which led to this failure?  
 5 GENERAL MBOMBO: There could be many more  
 6 other mistakes, Mr Chair, but this Commission would also  
 7 help us in explaining or raising the other mistakes.  
 8 MR BUDLENDER SC: You will help the  
 9 Commission if you tell the Commission what other mistakes  
 10 you think there were. What were they?  
 11 GENERAL MBOMBO: As I've already said, Mr  
 12 Chair, that our biggest enemy was a communication problem  
 13 that was not functioning properly and the issue that we  
 14 injured people –  
 15 COMMISSIONER TOKOTA: No, Mr Interpreter,  
 16 that thing was off when you explained the problems. Your  
 17 mike was off.  
 18 MR GQIRANA: Oh, sorry, Mr Chair.  
 19 CHAIRPERSON: Repeat what you said so it  
 20 will be recorded.  
 21 COMMISSIONER TOKOTA: The earlier answer,  
 22 not this one.  
 23 MR SEMENYA SC: Our biggest challenge was  
 24 the communication –  
 25 GENERAL MBOMBO: Our biggest challenge

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1 was the communication with the radio, and secondly that our  
 2 people could not take footage nor photos that could  
 3 indicate what happened, and thirdly the fact that we  
 4 injured, seriously injured people. And the other thing  
 5 that I think was an important thing I noticed, we really  
 6 had problems with command and control in that operation.  
 7 There could be many causes for that, but it was a problem.  
 8 MR BUDLENDER SC: Well again, Lieutenant  
 9 General, I think that's a very fair statement that you  
 10 make, if I may say so. What were the problems in command  
 11 and control? What were the failures of command and  
 12 control?  
 13 GENERAL MBOMBO: Mr Chair, if the command  
 14 and control of this operation went according to plan in all  
 15 the levels of command there, maybe people's lives would  
 16 have been spared. I also listened to Brigadier Calitz's  
 17 testimony that he did not notice that people, there was  
 18 damage behind him, people were injured and others killed,  
 19 and the fact that the other commanders did not explain that  
 20 to him, that is sad.  
 21 MR BUDLENDER SC: And there was also a  
 22 problem, I think you'll agree, that at scene 2 Brigadier  
 23 Calitz parked 150 metres away from the scene and didn't  
 24 exercise command and control over what was happening at  
 25 that koppie.

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1 GENERAL MBOMBO: I hear that as you say,  
 2 Sir. That is also a problem.  
 3 MR BUDLENDER SC: Thank you, Chair, I  
 4 have no further questions.  
 5 CHAIRPERSON: Thank you, Mr Budlender.  
 6 Mr Bizos, I understand you are next. Now the documents to  
 7 which you will be referring, the list was only made  
 8 available to the witness this morning, but if you can  
 9 perhaps cross-examine from now until 4 o'clock without  
 10 referring to the documents, then we can use up the time –  
 11 MR BIZOS SC: I'll do that.  
 12 CHAIRPERSON: Yes, thank you.  
 13 CROSS-EXAMINATION BY MR BIZOS SC:  
 14 Commissioner, I want to follow my learned colleague about  
 15 the number of mistakes that were obviously made, and you  
 16 can just tell us whether you agree or disagree. Although  
 17 we agree to the two or three that you have mentioned, there  
 18 are dozens more. Let's start. You know the Standing  
 19 Orders?  
 20 GENERAL MBOMBO: That is so, Mr Chair.  
 21 MR BIZOS SC: Do you know of your duty to  
 22 debrief what happened after any incident, particularly if  
 23 the President has said that you, the Commission must decide  
 24 whether there were any acts or omissions which took place  
 25 and what steps, if any, should be taken in order to avoid

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1 any future disaster? Did you know that?  
 2 GENERAL MBOMBO: I know, Mr Chair, that  
 3 after every operation there should be a debriefing.  
 4 MR BIZOS SC: The answer is a simple yes.  
 5 Did you have a debriefing during the nine days that you  
 6 spent in Potchefstroom making up a story?  
 7 CHAIRPERSON: No, no Mr Bizos –  
 8 MR SEMENYA SC: No, no, no –  
 9 MR BIZOS SC: Oh, sorry, I'll leave the  
 10 last bit, Mr Chair.  
 11 CHAIRPERSON: No, I don't think I can  
 12 allow you to –  
 13 MR BIZOS SC: I'll leave the last bit for  
 14 the time being. Did you discuss a debriefing at  
 15 Potchefstroom during the nine days as provided for in the  
 16 Standing Orders and as the heading of the Commission as to  
 17 what the President is expecting from the Commission, did  
 18 you have a debriefing, yes or no?  
 19 GENERAL MBOMBO: We did not have a  
 20 debriefing, Sir.  
 21 MR BIZOS SC: Now isn't it a very serious  
 22 error to have an honest debriefing after 34 people died and  
 23 76 were seriously injured? Isn't that a very serious  
 24 matter to consider, and wasn't it absolutely necessary for  
 25 you to have a debriefing session?

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1 GENERAL MBOMBO: That is so, Mr Chair.  
 2 We should have had one, but I explained here the reasons  
 3 why we did not have one, or why we agreed not to have one.  
 4 MR BIZOS SC: The President himself in  
 5 the preamble in creating this Commission requested that  
 6 that should be done and you knew that when you were in  
 7 Potchefstroom.  
 8 CHAIRPERSON: Remind us what the preamble  
 9 says, Mr Bizos.  
 10 MR BIZOS SC: Well precisely, yes, Mr  
 11 Chairman. It will also investigate whether by act or  
 12 omission the company directly or indirectly caused –  
 13 CHAIRPERSON: [Microphone off, inaudible]  
 14 refers to Lonmin.  
 15 MR BIZOS SC: Sorry, whether –  
 16 CHAIRPERSON: That paragraph refers to  
 17 Lonmin.  
 18 MR BIZOS SC: Yes, whether by act or  
 19 omission it directly or indirectly caused loss of life or  
 20 harm to persons or property. I think that that is verbatim  
 21 what is in the beginning of the establishment of the  
 22 Commission. Did you know that?  
 23 GENERAL MBOMBO: I know of it, Mr Chair.  
 24 I know that, Mr Chair, but according to me I thought that  
 25 preamble refers to this Commission.

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1 MR BIZOS SC: Yes. Why did you ignore  
 2 the President's request?  
 3 MR SEMENYA SC: Chair, I thought this -  
 4 GENERAL MBOMBO: Mr Chair, the President  
 5 was referring to this Commission.  
 6 CHAIRPERSON: Mr Semenya?  
 7 MR SEMENYA SC: Chair, I'd meant to say  
 8 no more than that perhaps my learned colleague and the  
 9 witness are speaking past each other.  
 10 MR BIZOS SC: I didn't hear the last bit.  
 11 MR SEMENYA SC: That apparent, to me it  
 12 appears as though my learned colleague and the witness are  
 13 speaking past each other.  
 14 MR BIZOS SC: Oh well, I don't know in  
 15 what way we are talking past one another. The question is  
 16 clear, in my submission. You knew what the President  
 17 expected of you. When you were in Potchefstroom and  
 18 thereafter, why did you not have such, did you not fulfil  
 19 the requirement of the Standing Order and the requirement  
 20 from the President in relation to the terms of reference of  
 21 the Commission?  
 22 CHAIRPERSON: Mr Bizos, you've dealt with  
 23 the Standing Orders.  
 24 MR BIZOS SC: Yes.  
 25 CHAIRPERSON: You're now really busy with

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1 the presidential proclamation.  
 2 MR BIZOS SC: Yes.  
 3 CHAIRPERSON: The passage you read sets  
 4 out the terms, sets out one of the terms of reference for  
 5 the Commission –  
 6 MR BIZOS SC: Yes.  
 7 CHAIRPERSON: - what the Commission has  
 8 to do. You're now putting to the witness that that says  
 9 what the police must do. Now I think I understand what  
 10 you're about, but it's not, clearly it's not in express  
 11 terms what the Commission – sorry, I understand it's not in  
 12 express terms what the police have to do; it's in express  
 13 terms what we have to do. So I think the question requires  
 14 some reformulation in order to convey clearly what it is  
 15 that you want the witness to answer, and that's really what  
 16 Mr Semenya is saying.  
 17 MR BIZOS SC: Thank you, Mr Chair.  
 18 Please read what it says at the bottom there. Please read  
 19 what it says –  
 20 CHAIRPERSON: It says, "Truth,  
 21 restoration, and justice." That's what –  
 22 MR BIZOS SC: "Committed to finding the  
 23 truth in the interest of restitution and justice."  
 24 MR SEMENYA SC: Not restitution, Chair.  
 25 I think it's restoration.

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1 CHAIRPERSON: Restoration.  
 2 MR BIZOS SC: I'm so sorry, restoration.  
 3 Do you read that?  
 4 GENERAL MBOMBO: I can see it, Mr  
 5 Chairperson –  
 6 CHAIRPERSON: The words are, "Committed  
 7 to finding the truth in the interest of restoration and  
 8 justice."  
 9 GENERAL MBOMBO: Yes.  
 10 CHAIRPERSON: And what I think Mr Bizos  
 11 wants to know is, is that what you were setting about  
 12 assisting the Commission to do in the exercise you  
 13 performed at Roots. Is that your question, Mr Bizos?  
 14 MR BIZOS SC: That is so, Mr Chair.  
 15 GENERAL MBOMBO: That is what we are  
 16 doing, Mr Chair.  
 17 MR BIZOS SC: That's what you have not  
 18 deliberately been doing before this Commission,  
 19 Commissioner. Can I give you some examples?  
 20 GENERAL MBOMBO: I think so, Mr Chair.  
 21 MR BIZOS SC: All the senior officers,  
 22 including you, managed somehow or other to be both blind  
 23 and deaf to what was happening whilst the people were being  
 24 killed. You were outside the JOC. The previous witness  
 25 was 400 metres away, locked up in a police vehicle, and

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1 others. None of you, five or six senior officers, were  
 2 anywhere near where the killings were taking place. Is  
 3 that a correct summary of what has been happening before  
 4 this Commission, or not?  
 5 GENERAL MBOMBO: I will respond to what  
 6 concerns me, Mr Chair.  
 7 MR BIZOS SC: No, can you please in  
 8 responding tell us who was there to see and hear the police  
 9 killing people. Who was there to see and come and give  
 10 evidence of the senior officers that made the plan, that  
 11 put it into application, that condoned it, supervised it?  
 12 Please show us one that was anywhere near to tell the  
 13 Commission the truth.  
 14 CHAIRPERSON: Mr Bizos, you –  
 15 MR BIZOS SC: So that justice is saved.  
 16 CHAIRPERSON: You've now effectively  
 17 asked two questions. The first question dealt with her and  
 18 your suggestion was that she was outside the JOC and didn't  
 19 know what was going on. She wants to reply to that.  
 20 MR BIZOS SC: Yes.  
 21 CHAIRPERSON: You've now asked a second  
 22 question as to was there any senior officer available on  
 23 the scene to see what happened so he or she can tell the  
 24 Commission what happened. So those are the two questions.  
 25 I think we must give the witness an opportunity to deal

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1 with them one after another.  
 2 MR BIZOS SC: Thank you, Mr Chairman, I'm  
 3 sure that she will be given the opportunity to answer both.  
 4 [15:50] GENERAL MBOMBO: Mr Chair, as I have  
 5 said, the way we do our job is that there would be an  
 6 operational commander who is assisted by the section  
 7 commanders, who will directly be at the operation. It is  
 8 then the operational commander himself and his assistants  
 9 who control the operation. Again, Mr Chair, there would  
 10 what is called an overall commander who will then be  
 11 present in the JOC when he's doing his duties. At times he  
 12 would also maybe go to the operation itself and go and have  
 13 a look. The operation is then dependent on all these  
 14 people.  
 15 MR BIZOS SC: I'm sorry to interrupt you.  
 16 The question was –  
 17 CHAIRPERSON: Mr Bizos, the witness is  
 18 still answering the question. Give her an opportunity to  
 19 finish her answer before you raise the point you want to  
 20 raise.  
 21 GENERAL MBOMBO: Brigadier Calitz was  
 22 present at the operation together with other sectional  
 23 commanders. General Mpembe was also there. Both these  
 24 people are senior officers.  
 25 MR BIZOS SC: You're finished?



<p style="text-align: right;">Page 21848</p> <p>1 GENERAL MBOMBO: That is correct, Mr 2 Chair. 3 MR BIZOS SC: The question was of all the 4 senior commanders, including yourself, who was present to 5 see and hear how people were killed and why were they 6 absent and not in the position to come and give evidence, 7 this is what I saw happen, this is what I hear? Why have 8 you all avoided being present where it mattered most? 9 GENERAL MBOMBO: Mr Chair, I'm not sure 10 when you're talking about avoiding - 11 MR BIZOS SC: You were not there, that's 12 what it means, "avoid." 13 CHAIRPERSON: No, no, no, "avoid" means 14 you weren't there on purpose. 15 MR BIZOS SC: On purpose, of course. 16 CHAIRPERSON: There are two points. One 17 is were they there? If so, why weren't they there? The 18 third question is if they weren't there, was the reason 19 that they were absent deliberately? Those are three 20 questions. I think we must give the witness an 21 opportunity - 22 MR BIZOS SC: Yes, could I put a clearer 23 one? Is it a coincidence that every one of them happened 24 to be absent the whole, over the whole area? You can 25 answer all the questions with as many words as you like.</p>	<p style="text-align: right;">Page 21850</p> <p>1 MR BIZOS SC: Was it a coincidence that 2 Mr Calitz was in a Nyala 400 metres away where he couldn't 3 hear and he couldn't see what was happening? Was that a 4 coincidence? 5 GENERAL MBOMBO: I am not sure, Mr Chair. 6 CHAIRPERSON: Mr Bizos, to be fair to the 7 witness, she did concede that among the problems in 8 connection with this operation was what she called command 9 and control problem, and she specifically referred to the 10 evidence that Brigadier Calitz gave in respect of his 11 inability to deal with what happened, directly from his own 12 knowledge what happened at scene 1 and also at scene 2. 13 MR BIZOS SC: Yes. 14 CHAIRPERSON: So she's already conceded 15 that in her evidence, to be fair to her. 16 MR BIZOS SC: Where was Colonel Scott? 17 He also wasn't there to see or hear. Was that a 18 coincidence? 19 GENERAL MBOMBO: I am not sure, Mr Chair. 20 MR BIZOS SC: General Mpembe went on a 21 helicopter where he wasn't aware of what is happening. Was 22 that a coincidence? 23 CHAIRPERSON: I don't see how we can 24 expect the witness to answer that question. Colonel Scott 25 was a member of the JOCCOM, so he was expected to be in the</p>
<p style="text-align: right;">Page 21849</p> <p>1 CHAIRPERSON: Provincial Commissioner, I 2 know it's difficult now. I shouldn't allow, but it's 3 nearly 4 o'clock, so let's to save time, allow it. Mr 4 Bizos has actually asked you four questions. If you 5 remember what they are, please answer them one by one, and 6 if he tries to interrupt you while you're busy answering 7 I'll deal with him. 8 GENERAL MBOMBO: Mr Chair, I cannot 9 remember them. 10 MR BIZOS SC: Was it by chance that you 11 were outside and at the toilet? 12 CHAIRPERSON: No, no, no, no, no, Mr 13 Bizos, I'm not going to allow - 14 MR BIZOS SC: That you were outside. 15 CHAIRPERSON: I'm not going to allow that 16 question. There may well have been a reason, but I don't 17 want to hear. Ask the questions that you asked before, one 18 by one - 19 MR BIZOS SC: One by one. 20 CHAIRPERSON: - and give her a chance to 21 answer. 22 MR BIZOS SC: Was it a coincidence that 23 you were outside the JOC? 24 GENERAL MBOMBO: I do not believe so, Mr 25 Chair.</p>	<p style="text-align: right;">Page 21851</p> <p>1 JOC, as I understand. General Mpembe as the overall 2 commander was also a member of the JOCCOM and was expected 3 to be in the JOC. He explained that he went in, because he 4 didn't know what was happening he decided to go into a 5 helicopter to see if he could see from the air what was 6 happening. That was his evidence. There may be points of 7 criticism about what he did or didn't do while he was in 8 the helicopter, but you can't be expected to answer for 9 those, as I understand it. So please proceed with the next 10 point, Mr Bizos. 11 MR BIZOS SC: General Annandale didn't 12 see or hear anything. Was that also a coincidence? 13 GENERAL MBOMBO: Mr Chair, I think all 14 these people explained their reasons why there were these 15 problems. 16 MR BIZOS SC: Yes, the question was, was 17 it also a coincidence that practically all the senior 18 officers were not in a position to see or hear what 19 happened and to control the people with the guns that 20 killed the people? 21 GENERAL MBOMBO: I'm not sure, Mr Chair, 22 I cannot say so. 23 CHAIRPERSON: Sorry, Mr Bizos, it's now 4 24 o'clock. I propose to take the adjournment - 25 MR BIZOS SC: May I just put the -</p>

1 CHAIRPERSON: I'll allow you to put your  
 2 last question, as long as –  
 3 MR BIZOS SC: Yes.  
 4 CHAIRPERSON: - provided it's only one  
 5 question, not two or four -  
 6 MR BIZOS SC: I'm going to put to you,  
 7 Commissioner, that from the early days of apartheid, right  
 8 from Sharpeville, senior officers as a matter of habit  
 9 throughout manage to be away from the killings in order to  
 10 have the defence that I'm not responsible, those who shot  
 11 are responsible; we as leaders are not responsible.  
 12 Unfortunately I have lived throughout that period and I  
 13 have taken part in a number of cross-examinations of this  
 14 nature and I want to assure the Commission that we will  
 15 give them a list of all the commissions where the hearing,  
 16 the result was no-one to blame. Having told you all that,  
 17 we are going to submit that you and your senior colleagues  
 18 are following the example of the apartheid leaders of the  
 19 police by putting yourself in a position, we are not to  
 20 blame.  
 21 CHAIRPERSON: What is your comment on  
 22 that accusation, Provincial Commissioner?  
 23 GENERAL MBOMBO: I want to explain, Mr  
 24 Chair, that I personally since started working with the  
 25 police, especially during the democratic time, everywhere

1 where I've been where talk was made of policing we were  
 2 told that we should respect the rights of people. That is  
 3 what I also did when I was talking to the officers. You  
 4 will remember, Mr Chair, even the OB-entry I made on the  
 5 13th I try, I emphasised that we should work here with the  
 6 necessary diligence, make sure that there is peace amongst  
 7 the people. I can say, Mr Chair, I do my utmost best in  
 8 order not to do my job in the way counsel is putting to me.  
 9 CHAIRPERSON: Alright, thank you very  
 10 much for what you've said so far, and thank you for your  
 11 question, Mr Bizos, and we will resume –  
 12 MR BIZOS SC: Thank you for the  
 13 opportunity, Mr Chair.  
 14 CHAIRPERSON: - the cross-examination on  
 15 Monday morning at 9 o'clock. The Commission will now  
 16 adjourn.  
 17 [COMMISSION ADJOURNED]  
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