

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 184

13 FEBRUARY 2014

PAGES 22144 TO 22312



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<p style="text-align: right;">Page 22144</p> <p>1 [PROCEEDINGS ON 13 FEBRUARY 2014] 2 [09:10] CHAIRPERSON: The Commission resumes. I 3 hope everyone who has a cell phone has turned it off. 4 Provincial Commissioner, you're still under oath. 5 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 6 CHAIRPERSON: Ms Lewis. 7 CROSS-EXAMINATION BY MS LEWIS (CONTD.): 8 Good morning, General. 9 GENERAL MBOMBO: Good morning, 10 Chairperson. 11 MS LEWIS: General, just to orientate 12 ourselves, can I ask for day 136 of the transcript to be 13 put up again? Page 14511, lines 3 to 7. So General, 14 you'll recall that we were looking at the testimony of 15 Colonel Scott who testified about a group that was brought 16 together and he said, his testimony was that they were 17 brought together to look at the policies of the police and 18 then he said, "And then obviously," and he used the word 19 "obviously," "the operation weighed up against the 20 policies." You see that, General? 21 GENERAL MBOMBO: I see it, Mr Chair. 22 MS LEWIS: And the persons who he 23 identified as, or who he could remember as having been part 24 of that group were Brigadier Mkhwanazi, Mr Ally, Brigadier 25 Hunter, and Colonel Twala. Can I ask for exhibit JJ203 to</p>	<p style="text-align: right;">Page 22146</p> <p>1 from the 3rd of September 2012 until the 7th of September 2 2012, also at Potchefstroom. You see that, General? 3 GENERAL MBOMBO: I see it. I see that. 4 MS LEWIS: If we turn to page 7, General, 5 we see that the group met from the 16th of September 2012 6 until the 20th of September, again at the Elgro Hotel in 7 Potchefstroom. You see that, General? 8 GENERAL MBOMBO: I see it, Mr Chair. 9 MS LEWIS: Now General, did you attend 10 any of these sessions? 11 GENERAL MBOMBO: Not all of them, Mr 12 Chair. 13 MS LEWIS: General, which sessions did 14 you attend? 15 GENERAL MBOMBO: The first day they 16 arrived I attended, when they came and told us what they 17 came there to do. 18 MS LEWIS: And General, what did they 19 tell you they were there to do? 20 GENERAL MBOMBO: They said they were sent 21 by the National Commissioner to come and see if the 22 operation was in accordance with our policies, look into 23 what challenges were there that were faced. 24 MS LEWIS: And General, did you attend 25 any other sessions on any other days?</p>
<p style="text-align: right;">Page 22145</p> <p>1 be put up on the screen? General, this is the call-up 2 instruction, or the call-up instructions for that group. 3 So if we go to page 4 we see the full group and that was 4 Major General Geldenhuys from Legal Services, Brigadier 5 Mkhwanazi, Brigadier Hunter, Colonel Makari, Colonel Twala, 6 Colonel Siva, Captain Percy Govender, and then two members 7 from ORS, and then Mr Faizel Ally. You see that? 8 GENERAL MBOMBO: I see it, Mr Chair. 9 MS LEWIS: Now this group met on a number 10 of occasions, General, and I just want to take you through 11 that, so if we go back - the group, the full group or 12 members of the group. So if we go back to page 1 we see 13 that from the 29th until the 31st of August five members of 14 the group - I don't think it's necessary for me to read 15 specifically which ones, but it seems as if the core group 16 met at the Burgers Park Hotel in Pretoria. You see that? 17 GENERAL MBOMBO: I see it, Mr Chair. 18 MS LEWIS: And then if we turn to the 19 third page we see - and this was a meeting of the full 20 group - we see that they met from the 10th of September, 21 this is 2012, until the 16th of September 2012 at the Elgro 22 Hotel in Potchefstroom. You see that? 23 GENERAL MBOMBO: I see it. 24 MS LEWIS: And then if we turn to page 5 25 we see that six members of the group were called up to meet</p>	<p style="text-align: right;">Page 22147</p> <p>1 GENERAL MBOMBO: They were also sent to 2 be present at Roots when I was also present there. 3 MS LEWIS: So sorry, before we get to 4 Roots, did you attend any of the other, of the sessions 5 that are referred to in this call-up instruction? 6 GENERAL MBOMBO: No, only the first one 7 when they told me the purpose of their visit there. 8 MS LEWIS: And General, were you required 9 to do anything on that first day? 10 GENERAL MBOMBO: Not from what I can 11 remember, or the way I can remember it. 12 MS LEWIS: So they didn't interview you 13 or ask you to report on anything? 14 GENERAL MBOMBO: I did not have an 15 interview with them or anything being reported to me - 16 CHAIRPERSON: Did they ask you - 17 GENERAL MBOMBO: I don't remember them 18 saying so. 19 CHAIRPERSON: Did they ask you any 20 questions at all? 21 GENERAL MBOMBO: There was no question 22 directed to me, Mr Chair. 23 CHAIRPERSON: Did you speak to them? Did 24 you give them an address, make some remarks at the 25 beginning of their session?</p>

<p style="text-align: right;">Page 22148</p> <p>1 GENERAL MBOMBO: When I met with them and 2 they were telling me the purpose of their visit, they told 3 me that they would ask to speak to certain police officers 4 from time to time when they're at Roots. I did not have a 5 problem with that because they were doing their job as they 6 were sent by the National Commissioner. 7 CHAIRPERSON: Do you know how many 8 officers they spoke to before they completed their work? 9 GENERAL MBOMBO: I am not sure, Mr Chair, 10 but I know when I spoke to them they asked to see General 11 Mpembe. I am sure about General Mpembe. 12 CHAIRPERSON: And at the end of their 13 session did you see any report they produced? 14 GENERAL MBOMBO: I did not hear the 15 question, Mr Chair. 16 CHAIRPERSON: After their sessions were 17 over did you see any report which they produced? 18 GENERAL MBOMBO: There is a report that 19 they sent, Mr Chair. 20 CHAIRPERSON: The question was did you 21 see the report they produced? 22 GENERAL MBOMBO: I saw it. 23 CHAIRPERSON: I see, and do I understand 24 you to say that you don't know, apart from General Mpembe, 25 you don't know which other officers they spoke to?</p>	<p style="text-align: right;">Page 22150</p> <p>1 of their report exactly. 2 COMMISSIONER HEMRAJ: Mr Budlender, is 3 this report to hand? 4 MR BUDLENDER SC: There was a short 5 document which we were provided, Chair, but I don't know 6 whether it's the same report as the General is referring 7 to. 8 CHAIRPERSON: Let me ask a question. How 9 long was this report that you saw? 10 GENERAL MBOMBO: Mr Chair, it was not a 11 long report – 12 CHAIRPERSON: Five pages, 10 – 13 GENERAL MBOMBO: - I'm not sure whether 14 it was two pages or three. 15 CHAIRPERSON: Oh, two or three pages, I 16 see. I've done a quick calculation. It appears from the 17 dates that are set out in the letters to which Ms Lewis 18 referred you that the task team, whatever they were called, 19 appears to have sat for something like 20 days, if my 20 arithmetic is correct. Are you able to confirm that that 21 is so? 22 GENERAL MBOMBO: Mr Chair, I'm not sure 23 if they were there for the duration of all those days, but 24 I saw them the first day and I saw them again at Roots. 25 I'm not sure if they were there continuously.</p>
<p style="text-align: right;">Page 22149</p> <p>1 GENERAL MBOMBO: I am not sure, Mr Chair, 2 but I believe they spoke to other officers as well. 3 CHAIRPERSON: I take it they must have 4 done so because they sat over quite an extended period of 5 time, and in addition to that, from what you tell us, they 6 also spoke to people at Roots. Do I understand correctly? 7 GENERAL MBOMBO: On a day when I was at 8 Roots I saw them with the officers who were there at Roots. 9 They appeared to be helping each other compiling the 10 report. 11 CHAIRPERSON: Thank you. Sorry, Ms 12 Lewis. 13 MS LEWIS: General, can you tell us when 14 you saw the report? The report that the group produced, 15 when did you see that report? 16 GENERAL MBOMBO: I'm not sure, Mr Chair, 17 but it was some time last year. 18 MS LEWIS: And do you recall what the 19 conclusions were, just briefly and in general? 20 GENERAL MBOMBO: I don't have certainty 21 about their conclusions. 22 MS LEWIS: Did they highlight what they 23 saw as problematic aspects of the operation? 24 GENERAL MBOMBO: I think there are things 25 that they highlighted, but I do not remember the contents</p>	<p style="text-align: right;">Page 22151</p> <p>1 CHAIRPERSON: But if one goes through the 2 dates set out in the call-up letters it's 20 days, as far 3 as I can see, and when you were there, was there a 4 secretary present when you saw them on the first day? 5 GENERAL MBOMBO: At the time when they 6 called General Mpembe I do not remember seeing a secretary, 7 Mr Chair. 8 CHAIRPERSON: Was what he said recorded? 9 GENERAL MBOMBO: I cannot remember, Mr 10 Chair, whether they had means to record what was happening. 11 CHAIRPERSON: Yes, Ms Lewis. 12 MS LEWIS: And so, General, would you 13 know then whether minutes were kept? 14 GENERAL MBOMBO: I'm not sure, Mr Chair. 15 As I said, I'm not even sure whether there was anybody 16 taking notes or minutes. 17 CHAIRPERSON: If they saw people for 20 18 days the probabilities are that either the proceedings were 19 recorded, or they themselves would have kept notes as to 20 what they were told by the various officers that they 21 interviewed. You're not able to throw any light on that? 22 GENERAL MBOMBO: Not at all, Mr Chair. 23 MS LEWIS: And General, do you know what 24 role they performed at Roots? 25 GENERAL MBOMBO: From what I saw it</p>

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1 appeared they were helping, assisting in correcting the
2 terminology that was used in the operation.
3 CHAIRPERSON: Was it just a question of
4 terminology? Or I understood you to say earlier that they
5 wanted to know what happened and then they were going to
6 check it against the standards and policies and so forth of
7 the Police Services Act. That's what you said, isn't it?
8 GENERAL MBOMBO: I did not hear the last
9 part, Mr Chair.
10 CHAIRPERSON: I understood you to say –
11 if I misunderstood you I'd be grateful if you'd correct me
12 – that their task was to find out what happened and then to
13 see to what extent what happened or was done by the members
14 of service complied with the policies and prescripts and
15 orders, Standing Orders, of the police service. Is that
16 correct?
17 GENERAL MBOMBO: That is so, Mr Chair.
18 That's how they explained it.
19 CHAIRPERSON: So that includes whether
20 the policies on Public Order Policing were complied with,
21 whether the doctrine of minimum force was complied with,
22 whether the doctrine of situational appropriateness was
23 complied with, all matters of that kind would be within the
24 terms of their remit. Is that right?
25 GENERAL MBOMBO: I think so, Mr Chair,

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1 because what they told me was that they came there to see
2 if the operation went according to the prescripts of the
3 public order.
4 MS LEWIS: Thank you. Can I ask for
5 exhibit S to be put up again, please? Paragraph 3.5.
6 General, you'll recall that we looked at this particular
7 provision on Tuesday when I began this line of cross-
8 examination. If we look at the wording again, "Every time
9 minimum force is used a review of the action taken must
10 always be done by an officer holding the rank of Captain
11 and above, who is not part of the action and who was also
12 not on the scene." Now General, surely what this, be it
13 the exercise or the review that this group performed
14 accords with what is required under paragraph 3.5.
15 Wouldn't you agree?
16 GENERAL MBOMBO: I totally do not agree,
17 Mr Chair.
18 MS LEWIS: Chair, that concludes our
19 cross-examination.
20 CHAIRPERSON: Thank you, Ms Lewis. Mr
21 Gumbi, I think you're next. Mr Gumbi, you're next? Are
22 you ready to commence with your cross-examination? Mr
23 Mpfu will be after that. I understood he was being cross-
24 examined in the East London Magistrate's Court yesterday in
25 the case in which he's a complainant. I don't see him

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1 here. Is he on his way?
2 SPEAKER: He is indeed, Mr Chair. He's
3 unfortunately held up, but he will be coming.
4 CHAIRPERSON: Held up by whom?
5 SPEAKER: He got a slight challenge. He
6 is coming indeed.
7 CHAIRPERSON: I see.
8 SPEAKER: Thank you.
9 CHAIRPERSON: Mr Gumbi, you can cross-
10 examine. If Mr Mpfu hasn't arrived yet that doesn't mean
11 you must ask extra questions just to fill in the time.
12 Just ask the questions you want to ask and with a bit of
13 luck Mr Mpfu will be here before you finish.
14 MR GUMBI: Yes, Chairperson, but my
15 microphone [inaudible].
16 CHAIRPERSON: Well then Ms Lewis's
17 microphone was working, so perhaps if she doesn't mind
18 moving sideways, you can sit next to her.
19 COMMISSIONER HEMRAJ: Mr Budlender, while
20 that is taking place, do you think we might have sight of
21 this report, the one that has just been read?
22 MR BUDLENDER SC: Yes, we're arranging
23 copies now.
24 COMMISSIONER HEMRAJ: Thank you very
25 much.

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1 MR BUDLENDER SC: It's a two-page report.
2 CHAIRPERSON: And perhaps the SAPS could
3 tell us who all the people were who gave evidence before
4 that task team, whatever they were called, and whether what
5 the people said was recorded and if so, if we can have a
6 copy of it.
7 [09:30] Also ask the legal team of the SAPS, as I said,
8 firstly tell us who exactly gave evidence before this task
9 team or this work session, I think it was called, whether
10 what was said was recorded – if so, are copies available?
11 If not, whether the individual members kept notes of what
12 was said and then whether copies of those notes could be
13 made available to us. Mr Gumbi, are you now behind a
14 working microphone?
15 MR GUMBI: Yes Chairperson, my microphone
16 is working well
17 ZUKISWA MBOMBO: s.u.o.
18 CROSS-EXAMINATION BY MR GUMBI: Good
19 morning, General.
20 GENERAL MBOMBO: Good morning, Advocate.
21 MR GUMBI: Thank you very much. As you
22 know, General, that I represent the family of the late
23 Warrant Officer Lepaaku who was killed on the 13th of August
24 2012 and Lieutenant Baloyi who was injured on the same day.
25 The topic that I'm going to canvass with you is very, very

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1 briefly and I will make reference to some of the exhibits
 2 so that you will understand the proposition that I am going
 3 to put, you understand me?
 4 GENERAL MBOMBO: I hear you, sir.
 5 MR GUMBI: The topics that I'm going to
 6 discuss with you, General, is dealing with the firing of
 7 instruction, with firing without instruction near the
 8 railway line on the 13th of August 2012 and this is a topic
 9 that was briefly canvassed by my learned colleague Adv
 10 Barnes on Tuesday. When we cross-examined General Mpembe
 11 who was an operational commander on the 13th of August 2012,
 12 on behalf of the family of the late Warrant Officer Lepaaku
 13 and Lieutenant Baloyi we made a commitment to this
 14 Commission that we would assist this Commission to leave no
 15 stone unturned surrounding the death of the late Warrant
 16 Officer Lepaaku and injury of the late – and the injury of
 17 Lieutenant Baloyi. Can I refer you to the testimony of
 18 General Mpembe. General Mpembe, we cross-examined General
 19 Mpembe on behalf of the family of the late Warrant Officer
 20 Lepaaku and Lieutenant Baloyi. On the –
 21 CHAIRPERSON: Mr Gumbi, forgive me, you
 22 drop your voice a bit so I'd be grateful if you'd speak up
 23 because I'm having difficulty in hearing what you say,
 24 particularly towards the end of your sentences. Maybe the
 25 Provincial Commissioner's hearing is better than mine but I

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1 would be grateful if you'd speak up a bit.
 2 MR GUMBI: Thank you very much,
 3 Chairperson, I will do that. On the 10th of June, if I can
 4 refer you to the testimony of General Mpembe, on the 10th of
 5 June 2013 General Mpembe testified in evidence-in-chief
 6 before this Commission that on the 13th of August 2012 near
 7 the railway line he did not give an order to fire teargas
 8 and stun grenades to disperse the crowds near the railway
 9 line. And for the record the reference, that is, you will
 10 find that on page 100, page 11158 line number 2 to 4, day
 11 104. So after the incident, you testified before this
 12 Commission that General Mpembe phoned you on your way to
 13 Potchefstroom. Would I be correct, General, that when
 14 General Mpembe telephoned you on your way to Potchefstroom
 15 he did not inform you that near the railway line certain
 16 members fired without his instruction as a commander?
 17 GENERAL MBOMBO: I did not get that
 18 explanation when we were talking on the phone.
 19 MR GUMBI: According to your statement
 20 again and your testimony before this Commission, after
 21 General Mpembe informed you, in fact after he telephoned
 22 you about the incident near the railway line you testified
 23 that you returned back to Marikana and General Mpembe
 24 briefed you about what transpired near the railway line, is
 25 that correct?

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1 GENERAL MBOMBO: That is so, Mr Chair.
 2 MR GUMBI: Would I be correct again,
 3 General, that when General Mpembe briefed you when you were
 4 at Marikana about what transpired near the railway line,
 5 General Mpembe did not inform you again that certain
 6 members fired without instruction near the railway line,
 7 when he briefed you.
 8 GENERAL MBOMBO: He said he did not give
 9 any instruction.
 10 MR GUMBI: But in your statement you did
 11 not highlight that, that General Mpembe briefed you that he
 12 did not issue any instruction near the railway line.
 13 GENERAL MBOMBO: I think so, Mr Chair.
 14 MR GUMBI: Do you know the reason why you
 15 omitted this information?
 16 GENERAL MBOMBO: There is no reason I am
 17 sure about that is important, I omitted it.
 18 MR GUMBI: General Mpembe further
 19 testified before this Commission that later that evening he
 20 briefed the National Commissioner about what transpired
 21 near the railway line. Were you present in that briefing?
 22 GENERAL MBOMBO: I was present, Mr Chair.
 23 MR GUMBI: And Brigadier Calitz was also
 24 present in that meeting.
 25 GENERAL MBOMBO: Yes, he was.

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1 MR GUMBI: When we questioned Brigadier
 2 Calitz in that briefing whether General Mpembe informed the
 3 National Commissioner whether members fired without
 4 instruction and his answer was that General Mpembe in his
 5 presence, he did not remember General Mpembe informing the
 6 National Commissioner that certain members informed – I
 7 mean certain members fired without the instruction of
 8 General Mpembe. Do you confirm that in your presence when
 9 you were briefing the National Commissioner, indeed General
 10 Mpembe did not inform the National Commissioner that
 11 certain members fired without his instruction as an
 12 operational commander?
 13 GENERAL MBOMBO: I do not remember it
 14 like that, Mr Chair.
 15 MR GUMBI: When we asked General Mpembe
 16 whether he informed the National Commissioner whether,
 17 about this allegation that certain members fired without
 18 his instruction as an operational commander near the
 19 railway line, his answer was – and for the record the
 20 reference, I will refer to day 121, if you can put it up?
 21 That's the evidence of General Mpembe, day 121.
 22 CHAIRPERSON: What page?
 23 MR GUMBI: 121, from line 12 to 23.
 24 CHAIRPERSON: Line 12?
 25 MR GUMBI: To 23.

<p style="text-align: right;">Page 22160</p> <p>1 CHAIRPERSON: 12 to 23? 2 MR GUMBI: Yes – 3 CHAIRPERSON: I'll read it. "Mr Gumbi: 4 Yes, let me do that, Chairperson. When you briefed the 5 National Commissioner, General, did you inform the National 6 Commissioner that on that day you as the operational 7 commander, members under your command fired teargas, stun 8 grenade, without your instruction? Did you inform the 9 National Commissioner?" "Major-General Mpembe: 10 Chairperson, what I informed the National Commissioner is 11 that the teargas was used by Warrant Officer Kuhn, who said 12 that he heard an instruction, and I did indicate that he 13 does not know which instruction, who gave the instruction, 14 but I did not give him the instruction." Is that the 15 passage you – 16 MR GUMBI: Yes, Chairperson, indeed. 17 Thank you very much, Chairperson. Do you have any 18 knowledge of this allegation, General? Yes, on the 13th - 19 GENERAL MBOMBO: Are you referring to the 20 day when he was explaining to the National Commissioner? 21 MR GUMBI: Yes, on the 13th. 22 GENERAL MBOMBO: I do not remember him 23 mentioning someone's name but he said he did not give the 24 instruction for teargas to be fired. 25 MR GUMBI: When you had the briefing with</p>	<p style="text-align: right;">Page 22162</p> <p>1 before this Commission that he can't remember General 2 Mpembe informing the National Commissioner about this 3 allegation. What is your comment on that? 4 GENERAL MBOMBO: Repeat the question 5 please? 6 MR GUMBI: I'm saying Brigadier Calitz 7 testified before this Commission and he said he can't 8 remember General Mpembe informing the National Commissioner 9 about this allegation I've quoted. 10 GENERAL MBOMBO: Is it now about the 11 allegation of the firing of the stun grenades and the 12 teargas or the mentioning of the person's name? 13 MR GUMBI: The firing without 14 instruction. 15 GENERAL MBOMBO: I wouldn't be sure 16 there, Mr Chair, but I remember him explaining that teargas 17 and stun grenades were fired without his instruction but I 18 do not remember him mentioning anyone's name. 19 MR GUMBI: Right. Briefing the Lonmin on 20 that day, the 13th, later on, would I be correct again, 21 General, that in that briefing there was not any allegation 22 of certain members firing without instruction when you were 23 briefing the Lonmin. Was it discussed there? 24 GENERAL MBOMBO: I don't understand which 25 briefing are you talking about with Lonmin?</p>
<p style="text-align: right;">Page 22161</p> <p>1 Lonmin – 2 CHAIRPERSON: I'm sorry, were you present 3 when General Mpembe said to the National Commissioner what 4 he's repeated here in the passage that was put to you by Mr 5 Gumbi? Did you hear him say that to the National 6 Commissioner? 7 GENERAL MBOMBO: I was present, Mr Chair. 8 I was present, Mr Chair, but as I say I do not remember him 9 mentioning anybody's name but he did explain that teargas 10 and stun grenades were fired without him giving that 11 instruction. 12 MR GUMBI: Okay. When General Mpembe 13 conveyed this information to the National Commissioner, 14 would I be correct, General, that Brigadier Calitz was 15 present? 16 GENERAL MBOMBO: He was present, Mr 17 Chair, if I remember correctly. 18 CHAIRPERSON: Brigadier who? 19 MR GUMBI: Brigadier Calitz. 20 CHAIRPERSON: Brigadier Calitz. 21 MR GUMBI: And it's possible that 22 Brigadier Calitz heard General Mpembe informing the 23 National Commissioner about this. 24 GENERAL MBOMBO: That is possible. 25 MR GUMBI: And Brigadier Calitz testified</p>	<p style="text-align: right;">Page 22163</p> <p>1 MR GUMBI: You had, you met Lonmin senior 2 officials on the 13th of August 2012, is it not so? 3 GENERAL MBOMBO: From what I remember we 4 met them in the morning, that was before General Mpembe 5 went near the railway line. Then again the National 6 Commissioner met the Lonmin people and that had nothing to 7 do with the issue of General Mpembe itself. 8 MR GUMBI: Okay. Let's move on. On the 9 14th, the 15th and the 16th – 10 CHAIRPERSON: Sorry, before you move on. 11 MR GUMBI: Yes. 12 CHAIRPERSON: You are aware of the fact, 13 I take it, that standing order 262 says that force of any 14 kind, which includes teargas and stun grenades, may not be 15 used without the instruction of the operational commander, 16 you're aware of that? 17 GENERAL MBOMBO: That is so, Mr Chair. 18 CHAIRPERSON: And did you know who, that 19 General Mpembe was acting as operational commander at the 20 incident by the railway line on the 13th? 21 GENERAL MBOMBO: I became aware of that, 22 Mr Chair, when he was giving a report when I'd arrived at 23 Lonmin. 24 CHAIRPERSON: That means that from what 25 he told you, that he hadn't given the instruction and he</p>

<p style="text-align: right;">Page 22164</p> <p>1 was acting as operational commander, that whoever fired the 2 teargas canister or discharged the stun grenade was acting 3 contrary to the terms of standing order 262 because the 4 person who was functioning as operational commander stated 5 that he gave no such instruction. Is that correct? 6 GENERAL MBOMBO: You are correct, Mr 7 Chair. 8 CHAIRPERSON: Did you do anything to 9 cause an investigation to be made as to who it was who had 10 contravened the terms of the standing order in that 11 respect? 12 GENERAL MBOMBO: I remember, Mr Chair, 13 when we were at Roots that's the first time we heard about 14 Warrant Officer Kuhn's name. 15 CHAIRPERSON: That doesn't answer my 16 question. My question is, on the night of the 13th you 17 heard two things. One, that teargas had been fired, two, 18 that the person who was functioning as operational 19 commander had not given an instruction for it to be fired. 20 Therefore, in the light of your knowledge as to what 21 standing order 262 says, you knew that 262 had not been 22 complied with, had in fact been breached by whoever was 23 responsible for firing the teargas canister, is that 24 correct? 25 GENERAL MBOMBO: That is so, Mr Chair.</p>	<p style="text-align: right;">Page 22166</p> <p>1 GENERAL MBOMBO: Yes, Mr Chair, because 2 at that time we were gathering all the information about 3 the mistakes that were done so that the offices from which 4 they came from, the people who were responsible for the 5 mistakes should be notified. 6 CHAIRPERSON: Were any other offices 7 notified of mistakes that you had discovered had been made? 8 GENERAL MBOMBO: We have a list of 9 certain people. I'm not sure at this stage who they are 10 and where they are from. 11 CHAIRPERSON: Is this a list of people 12 who made what you call mistakes in respect of which 13 requests were sent to their Provincial Commissioners for 14 disciplinary steps to be instituted against them? Is that 15 what you're saying? 16 [09:50] GENERAL MBOMBO: Yes, Mr Chair, but only 17 after the finalisation of this Commission as I have always 18 been saying. 19 CHAIRPERSON: You say you have list. 20 Would it be possible for the list to be made available to 21 the Commission please? 22 GENERAL MBOMBO: I will do that, Mr 23 Chair. 24 CHAIRPERSON: Thank you. Yes forgive me, 25 Mr Gumbi, I think you were moving onto the 14th before I</p>
<p style="text-align: right;">Page 22165</p> <p>1 CHAIRPERSON: So what did you do about 2 it? 3 GENERAL MBOMBO: I tasked General Mpembe 4 that we should investigate this matter. That is why, when 5 we were at Roots, he came with the information that he 6 found out who had fired. 7 CHAIRPERSON: Was anything done about 8 that? Were disciplinary proceedings put in motion against 9 the person who fired? According to Mpembe that person had 10 done so without an instruction from the operational 11 commander at the time. 12 GENERAL MBOMBO: We gave an instruction 13 that we sent to the Gauteng office so that the Gauteng 14 office can take action but he was just like one of the 15 other people who were involved who also had to be 16 counselled – or disciplined, sorry. 17 CHAIRPERSON: When was that request sent 18 through to the Gauteng – I take it it was the Gauteng 19 Provincial Commissioner's office to which that request was 20 sent, is that correct? 21 GENERAL MBOMBO: That is so, Mr Chair, 22 especially when General Mpembe was testifying, I do not 23 remember when it was. 24 CHAIRPERSON: So it wasn't done 25 immediately, it wasn't done in August 2012?</p>	<p style="text-align: right;">Page 22167</p> <p>1 interrupted you. 2 MR GUMBI: Yes, Chairperson, but you have 3 covered quite a number of points. I will try and re-adjust 4 my cross-examination. You testify also again, General, 5 that General Mpembe reports to you. In his quarterly 6 report did he include this allegation that on the 13th of 7 August certain members fired without instruction? 8 GENERAL MBOMBO: I did not get the 9 question, Mr Chair. 10 MR GUMBI: I'm saying to you General 11 Mpembe reports to you, do you confirm that? 12 GENERAL MBOMBO: That is so. 13 MR GUMBI: In his quarterly report did he 14 include this information that on the 13th of August 2012 15 near the railway line certain members fired without 16 instruction? Is it included in your report? 17 CHAIRPERSON: It's not certain members is 18 it? It's one member who fired one teargas canister. 19 MR GUMBI: Yes. 20 CHAIRPERSON: And one member fired a stun 21 grenade, that's the position isn't it? 22 MR GUMBI: Yes. 23 CHAIRPERSON: Or are there others as 24 well? 25 MR GUMBI: It's Warrant Officer Kuhn and</p>

<p style="text-align: right;">Page 22168</p> <p>1 we also have Captain Thupe who confirmed that the General 2 issued instruction – 3 CHAIRPERSON: No I know that, there's a 4 dispute as to whether the General gave the instruction, I 5 understand that. But I was merely concerned about your use 6 of the plural. 7 MR GUMBI: Yes. Let us confine ourselves 8 to Warrant Office Kuhn and Captain Thupe. Did he include 9 those allegations in his quarterly report that Warrant 10 Officer Kuhn and Captain Thupe are alleging that General 11 Mpembe issued the command to fire teargas and stun grenade 12 near the railway line? 13 GENERAL MBOMBO: I do not remember that 14 at the moment. 15 MR GUMBI: Do you have his quarterly 16 report? 17 GENERAL MBOMBO: It does send his 18 quarterly reports but I'm not sure if he had included that 19 information. 20 MR GUMBI: Is it possible to make it 21 available to this Commission, that quarterly report of 22 General Mpembe? 23 GENERAL MBOMBO: I will do so, Mr Chair. 24 MR SEMENYA SC: Chair, for the record, 25 the statement of Kuhn is that he does not remember who gave</p>	<p style="text-align: right;">Page 22170</p> <p>1 correct Mr Gumbi? This is now 27 you see, is that right? 2 This is the Sowetan article - 3 MR GUMBI: Yes. 4 CHAIRPERSON: - which contains statements 5 which National Commissioner, Phiyega says were incorrectly 6 reported. 7 MR GUMBI: Yes. 8 CHAIRPERSON: Is that what you want? 9 MR GUMBI: No, I'm saying FFF6 read with 10 FFF – 11 CHAIRPERSON: FFF6? 12 MR GUMBI: FFF6. That report by the 13 National Commissioner. 14 CHAIRPERSON: This is the tribute to the 15 funeral of Captain Lepaaku is it? 16 MR GUMBI: Yes officer Ronnie Lepaaku, 17 dated 19 August 2012. 18 CHAIRPERSON: Yes, now what passage in 19 this tribute – 20 MR GUMBI: Page 3, if you go to page 3 – 21 CHAIRPERSON: We've got page 3, what 22 paragraph on page 3? 23 MR GUMBI: Paragraph 2 to 5. 24 CHAIRPERSON: How does paragraph 2 begin? 25 MR GUMBI: When you go to paragraph 2 to</p>
<p style="text-align: right;">Page 22169</p> <p>1 the instruction. 2 CHAIRPERSON: The evidence also indicates 3 that Captain Thule – 4 MR GUMBI: Thupe. 5 CHAIRPERSON: Thupe is it? Thupe, yes 6 sorry I apologise to him for getting his name wrong, but 7 he, when pressed on the matter of Roots, did not say he 8 knew from his own knowledge that that's what General Mpembe 9 said. He seemed to indicate he'd heard it from someone 10 else, but again he wasn't able to say who it was. But that 11 matter was thrashed out in a sense at Roots already before 12 any quarterly report was filed. 13 MR GUMBI: Yes, Chairperson. Let me move 14 onto another aspect that I wanted to briefly converse with 15 you, General. Can I refer you to exhibit FFF6, that report 16 you compiled that was read at the funeral of the late 17 Warrant Officer Lepaaku? Are you in possession of that 18 report? 19 GENERAL MBOMBO: I have it. 20 MR GUMBI: Then you go to page 3, 21 paragraph 3 to 5 and that report again, General, you must 22 read it with FFF27, that's an extract from Sowetan. Are 23 you in possession of FFF27? 24 CHAIRPERSON: We're looking for FFF27, 25 that's FFF6 now being shown, you want FFF27, is that</p>	<p style="text-align: right;">Page 22171</p> <p>1 5 – 2 CHAIRPERSON: No, what does paragraph 2 – 3 3, how does paragraph 3 begin? 4 MR GUMBI: Warrant Officer Lepaaku – 5 CHAIRPERSON: Oh I see, I called him a 6 Captain. 7 MR GUMBI: Warrant Officer Lepaaku. 8 CHAIRPERSON: I'm sorry I promoted him 9 posthumously by mistake. 10 MR GUMBI: Yes. 11 CHAIRPERSON: Warrant Office Lepaaku, so 12 it starts off Warrant Officer Lepaaku was a police member 13 for 23 years. 14 MR GUMBI: Yes. 15 CHAIRPERSON: Yes I see. That's the 16 passage. We now see it on the screen. 17 MR GUMBI: Yes, when you go down there 18 you described Warrant Officer Lepaaku as a loyal member of 19 the police who would never complain, refuse command to do 20 more than what is expected from him. Do you see that? 21 GENERAL MBOMBO: That is so, Mr Chair. 22 MR GUMBI: And I'm going to put a 23 proposition, General, on behalf of the wife of the late 24 Warrant Officer Lepaaku and his entire family. They also 25 believe that indeed Warrant Officer Lepaaku was a loyal</p>

<p style="text-align: right;">Page 22172</p> <p>1 member of the SAPS and he would never complain or refuse to 2 command to do more than what is expected. And they believe 3 that on the 13th of August 2012 Warrant Officer Lepaaku was 4 killed while carrying out a lawful instruction from his 5 superiors. So will they be correct, General – 6 CHAIRPERSON: Sorry to interrupt. What 7 instruction was Warrant Officer Lepaaku carrying out? 8 MR GUMBI: They also believe that on the 9 13th of August 2012 Warrant Officer Lepaaku was killed while 10 carrying out lawful instructions – 11 CHAIRPERSON: You haven't answered my 12 question. What was the lawful instruction which they 13 believe he was carrying out when he was killed? 14 Obviously he was there in the course of his duty, 15 he was assisting in an operation to escort the strikers 16 back to the koppie. 17 MR GUMBI: Yes. 18 CHAIRPERSON: That's what he was ordered 19 to do and that's what he was doing. 20 MR GUMBI: Yes – 21 CHAIRPERSON: And then while he was 22 there, there was this incident, as a result of which he was 23 killed, but apart from that was there any other lawful 24 order you say he was carrying out at the time he was 25 killed?</p>	<p style="text-align: right;">Page 22174</p> <p>1 MR GUMBI: Yes. 2 CHAIRPERSON: That will be the factual 3 basis of your case - 4 MR GUMBI: Yes 5 CHAIRPERSON: - against the SAPS. 6 MR GUMBI: Yes, Chairperson. 7 CHAIRPERSON: Now this witness wasn't 8 there, I don't see how she can help you in regard to the 9 establishment of the facts upon which you will be relying 10 for your claim. 11 MR GUMBI: Yes, Chairperson, I do 12 understand that. 13 CHAIRPERSON: So what's the point of 14 asking her questions about it? 15 MR GUMBI: If I can establish from the 16 witness, Chairperson, when you delivered this tribute, 17 General, at the funeral of the late Warrant Officer Lepaaku 18 did you inform his wife and his family that on the 13th of 19 August 2012 certain members fired without instructions? 20 GENERAL MBOMBO: First let me correct 21 this. Actually this tribute was not given by me but by the 22 National Commissioner as she was present. Now to answer 23 your question, I do not remember the National Commissioner 24 doing that or me doing that. 25 MR GUMBI: Let's deal about you.</p>
<p style="text-align: right;">Page 22173</p> <p>1 MR GUMBI: Yes. The evidence of – a 2 statement from the police officers that were there, 3 extracts from the pocket book and the diaries indicate that 4 there was command issued by the commander who was in charge 5 of that operation, instructing members to disperse that 6 crowd. 7 CHAIRPERSON: Yes, I know about that 8 evidence and the accuracy of it will have to be considered 9 in due course, but the point is it suggested that Warrant 10 Officer Lepaaku was doing anything at the time he was 11 killed other than taking part in the operation to escort 12 the strikers back to the koppie? 13 MR GUMBI: No, Chairperson. 14 CHAIRPERSON: No, so I understand, I mean 15 your argument is this, you say that if it is correct, as 16 some people allege, that General Mpembe gave an instruction 17 to disperse the strikers. And if that instruction led to 18 reaction on the part of the strikers which in turn led to 19 the death of Warrant Officer Lepaaku, that would be the 20 basis of any claim that you would wish to bring against the 21 police services. Am I summarising it correctly? 22 MR GUMBI: Yes that's our argument, 23 Chairperson before this Commission. 24 CHAIRPERSON: There are a number of legal 25 questions that may arise, but we don't have to debate that.</p>	<p style="text-align: right;">Page 22175</p> <p>1 CHAIRPERSON: I'm sorry to interrupt you, 2 Mr Gumbi, is it suggested that what you say was said or 3 wasn't said would have been included or should have been 4 included in the tribute? Or are you suggesting that 5 something should have been said apart from the tribute 6 privately by way of a personal communication to the widow? 7 What exactly are you suggesting? 8 MR GUMBI: It's not so, Chairperson, I 9 was going to put my instruction on the behalf of the family 10 of the late Warrant Officer Lepaaku on this particular 11 aspect. 12 CHAIRPERSON: Well let's put your 13 instruction to the witness and let's see how she responds. 14 MR GUMBI: You know, General, our 15 instruction from the family of the late Warrant Officer 16 Lepaaku and including Lieutenant Baloyi they were not told 17 that on the 13th of August 2012, near the railway line 18 certain members fired without instruction. They only 19 learnt that when General Mpembe testified before this 20 Commission. What is your comment on that? 21 GENERAL MBOMBO: I didn't hear the last 22 part of the question. 23 MR GUMBI: I'm saying that our 24 instruction on this particular aspect is that the wife of 25 the late Warrant Officer Lepaaku and her entire family and</p>

<p style="text-align: right;">Page 22176</p> <p>1 including Lieutenant Baloyi who was injured on the 13th of 2 August 2012 they were never told that on the 13th of August 3 certain members fired without instruction near the railway 4 line. They only learnt that when General Mpembe was 5 testifying before this Commission on the 10th of June 2013. 6 What is your comment on that? 7 GENERAL MBOMBO: It's possible it could 8 be the case, Mr Chair. 9 MR GUMBI: Would it be correct, General, 10 that if indeed, as you allege that certain members fired 11 without instruction that information would – 12 MR SEMENYA SC: No, no, no – 13 CHAIRPERSON: You're not putting it 14 correctly, that's not what she alleges. I think her 15 attitude is she doesn't know. She says General Mpembe made 16 that report to her - 17 MR GUMBI: Yes. 18 CHAIRPERSON: - on the assumption that 19 what General Mpembe said was correct certain things follow. 20 But she can't take it further than saying that's what 21 General Mpembe told me. She doesn't know whether he's 22 correct or not. There is a counter-allegation, as you say, 23 one of the things we've got to investigate at the end of 24 the hearing is what the true facts are in respect of that. 25 But this witness can only tell you, as I understand her</p>	<p style="text-align: right;">Page 22178</p> <p>1 incident of the 13th of August 2012 what transpired before 2 the killing of the late Warrant Officer Lepaaku and Monene 3 and the injury of Lieutenant Baloyi. 4 GENERAL MBOMBO: That is so, Mr Chair. 5 MR GUMBI: Paragraph 3, are you there? 6 GENERAL MBOMBO: Yes. 7 MR GUMBI: It reads as follows. "Major- 8 General Mpembe issued a command for stun grenades and 9 teargas after which Warrant Officer Kuhn fired a shotgun CS 10 grenade. Do you see that? 11 GENERAL MBOMBO: I see it, Mr Chair. 12 MR GUMBI: Would it be correct, General, 13 that that was the police version of what transpired on the 14 13th of August near the railway line? Do you confirm that? 15 CHAIRPERSON: How can you ask that 16 question? The evidence is that that was an early draft of 17 the narrative as it was prepared at an early stage of 18 evidence, it was subsequently altered. And the final 19 version is the version we have in exhibit L. Now no 20 allegation is made in exhibit L which is the final version 21 of the police presentation to the effect that Major-General 22 Mpembe issued a command. So all you can put to the witness 23 surely is that this was – 24 MR GUMBI: Yes, Chairperson. 25 CHAIRPERSON: You can't say that it was</p>
<p style="text-align: right;">Page 22177</p> <p>1 evidence, what General Mpembe told her. 2 MR GUMBI: Thanks, Chairperson. I can 3 move to another aspect. Let's move on, General. I wanted 4 to deal with this aspect of the police version of the 5 incident of the 13th of August 2012 and in that respect I 6 would like to refer you to exhibit HHH28. Are you in 7 possession of that document, General? 8 GENERAL MBOMBO: HHH, yes. 9 MR GUMBI: Can you go to page 35 of that 10 document? 11 GENERAL MBOMBO: Page 35? 12 MR GUMBI: 35. Then you go to paragraph 13 3. Are you on page 35, paragraph 3. General? Are you 14 there, General? 15 GENERAL MBOMBO: Yes. 16 MR GUMBI: Would it be correct, General, 17 that you read this report after Potchefstroom meeting? 18 GENERAL MBOMBO: That is so, Mr Chair. 19 MR GUMBI: And about the incident of the 20 13th of August 2012 you read what transpired before the 21 killing of Warrant Officer Lepaaku and Monene and injury of 22 Lieutenant Baloyi. Is that so? 23 GENERAL MBOMBO: Repeat the question 24 please. 25 MR GUMBI: You read the report about the</p>	<p style="text-align: right;">Page 22179</p> <p>1 the police version. It was an earlier edition as it were 2 of the police presentation, but you can't put it higher 3 than that can you? 4 MR GUMBI: Yes, Chairperson, that's where 5 I'm heading in my – 6 CHAIRPERSON: No well you haven't put it 7 that way that's why I've had to intervene. So I suggest 8 you reformulate your question – 9 MR GUMBI: Yes, Chairperson. 10 CHAIRPERSON: - put it correctly so the 11 witness can then deal with it. 12 MR GUMBI: Yes. General, that was a 13 police version on the 5th of September 2012, exhibit HHH28, 14 do you agree with me? 15 GENERAL MBOMBO: Yes from what I know it 16 was a draft of the details. MR GUMBI: When you go 17 to exhibit L, we have exhibit L which was presented before 18 this Commission on about October or November 2012. When 19 you go slide 47, paragraph 223, are you in possession of 20 that flag, General? 21 GENERAL MBOMBO: I can see it on the 22 screen. 23 MR GUMBI: The allegation that is 24 contained in there, this allegation that General Mpembe 25 issued instruction to fire teargas and stun grenades is not</p>

<p style="text-align: right;">Page 22180</p> <p>1 included in slide 47. Agree with me, it's not there. 2 CHAIRPERSON: That's correct. The second 3 bullet doesn't contain that. That was in an earlier 4 version that's been removed by the time the final version 5 was prepared. That's correct, isn't it? 6 GENERAL MBOMBO: I see it, Mr Chair. 7 CHAIRPERSON: Now what do you want to ask 8 the witness about that? 9 MR GUMBI: My question is do you have any 10 knowledge why this allegation is not included in this 11 presentation, slide 47? That is a SAPS final product 12 presented before this Commission. 13 GENERAL MBOMBO: Although I'm not 14 entirely sure, but I think General Mpembe explained that 15 it's not supposed to appear as it appears in the draft 16 because he did not give an instruction. 17 MR GUMBI: So General Mpembe has 18 knowledge of why this information is not included, it's 19 what you are telling us. 20 GENERAL MBOMBO: I think it is like that. 21 I'm not sure why it's not included but General Mpembe 22 explained it is not supposed to appear as it appears in the 23 draft. 24 [10:10] MR GUMBI: Before you testified before 25 this Commission, you've read the statement of General</p>	<p style="text-align: right;">Page 22182</p> <p>1 assume, General, that you are aware that in terms of 2 section 34(1) of the Police Service Act of 1995, as 3 amended, the National Commissioner is empowered to initiate 4 inquiry on the death or injury of any members on duty. Are 5 you aware of that? 6 GENERAL MBOMBO: I understand it, Mr 7 Chair. 8 MR GUMBI: And General Mpembe when he 9 testified before this Commission, he made an undertaking 10 that indeed the inquiry will be carried out surrounding 11 this allegation that certain members fired without 12 instruction near the railway line. What we wanted to know, 13 what is the status of that investigation? 14 GENERAL MBOMBO: As I've already 15 explained, Mr Chair, that all those people who were found 16 to have made some mistakes, we are corresponding with their 17 stations and we have a list as to their identity. I will 18 then not be able to answer your question about the status 19 of the investigation, but I know this is being followed up. 20 Just like all the other things that I've told the 21 Commission would be looked at as soon as the Commission 22 finishes its job. 23 MR GUMBI: The outcome of that inquiry, 24 are you going to present it before this Commission before 25 it can conclude its investigation, after the Commission?</p>
<p style="text-align: right;">Page 22181</p> <p>1 Mpembe, did you? 2 GENERAL MBOMBO: That is so, Mr Chair. 3 MR GUMBI: And you read his testimony 4 before this Commission? 5 GENERAL MBOMBO: That is so. 6 MR GUMBI: In his statement presented 7 before this Commission he didn't make this allegation that 8 certain members fired without instruction. 9 GENERAL MBOMBO: As you say, Mr Chair. 10 MR GUMBI: And you don't know why he 11 omitted that, this crucial information. Would I be 12 correct? 13 GENERAL MBOMBO: I wouldn't know, Mr 14 Chair. 15 MR GUMBI: Okay, when we cross-examined 16 General Mpembe here we presented a statement, extracts from 17 the pocketbook and from the diaries. Some of that 18 information statement and the pocketbook, point at General 19 Mpembe as the person who issued instruction to fire 20 teargas. When did you become aware of the existence of 21 this statement and a pocketbook we presented before this 22 Commission? 23 GENERAL MBOMBO: I became aware of them 24 when they were discovered by the Commission. 25 MR GUMBI: And I hope we are also – I</p>	<p style="text-align: right;">Page 22183</p> <p>1 GENERAL MBOMBO: Mr Chair, I think I 2 mentioned that all these enquiries should be followed up 3 but we were thinking that the right time would be after the 4 Commission has finished its task. 5 MR GUMBI: Thanks very much, Chairperson, 6 I don't have any further cross-examination. 7 CHAIRPERSON: Thank you. I see, Mr 8 Mpofo, you've survived your cross-examination as a witness 9 in the East London Magistrate's Court. 10 MR MPOFU: I survived. 11 CHAIRPERSON: We're pleased to see that. 12 MR MPOFU: I survived. Thank you very 13 much, Chairperson. It was traumatic, but I survived. 14 CHAIRPERSON: Now you know what people 15 like the present witness have to go through. 16 MR MPOFU: Yes. 17 CHAIRPERSON: I think we'll take a 18 comfort break now before you start your – Mr Budlender – 19 MR BUDLENDER SC: After the comfort 20 break – 21 CHAIRPERSON: Sorry? 22 MR MPOFU: I'll appreciate it, 23 Chairperson. 24 CHAIRPERSON: We'll take a comfort break 25 now and then when we resume Mr Budlender will say something</p>

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1 and then you'll get an opportunity to cross-examine the
2 witness.

3 MR MPOFU: Thank you very much,
4 Chairperson.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]
6 [10:30] CHAIRPERSON: The Commission resumes.
7 Provincial Commissioner, you're still under oath.

8 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
9 CHAIRPERSON: Mr Mpofo. Sorry, Mr Mpofo,
10 before you start, we've been handed copies of what's
11 describe with a fair degree of contradiction as being the
12 final interim report. This is the report of the – I don't
13 quite understand that, but anyway – of this task team, work
14 session, whatever they call themselves. So you would like
15 that to be an exhibit, I take it.

16 MR BUDLENDER SC: Yes, Chair, exhibit
17 LLL11.

18 CHAIRPERSON: Sorry? LLL11?
19 MR BUDLENDER SC: LLL11. Chair, could a
20 copy be given to the witness and perhaps she can just
21 identify and answer some short questions about the document
22 after Mr Mpofo has completed, and give her the opportunity
23 to read it in the meantime? But this is the document which
24 we received from the SAPS legal team as the report produced
25 by the task team or work session, to which reference was

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1 made this morning.

2 CHAIRPERSON: LLL11, yes thank you, I've
3 marked it. The witness has a copy. Can you confirm,
4 Provincial Commissioner, that this is indeed the final
5 interim report of the work session which was discussed
6 earlier?

7 GENERAL MBOMBO: This is the one I've
8 seen, Mr Chair.

9 CHAIRPERSON: Now I see it's called
10 "Final interim report." Do you know whether a final-final
11 report was ever produced?

12 GENERAL MBOMBO: I have never seen the
13 final report, Mr Chair.

14 CHAIRPERSON: So you don't know whether
15 one has been produced?

16 GENERAL MBOMBO: No, I'm not sure, Mr
17 Chair.

18 CHAIRPERSON: Perhaps Mr Semenya and his
19 attorney can make investigations on our behalf to see
20 whether this is really the final report or whether merely
21 the final interim report and there is another report
22 subsequently produced.

23 MR SEMENYA SC: Indeed, Chair.
24 CHAIRPERSON: Thank you. Now Mr Gumbi,
25 we've just been handed a number of documents which we, it's

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1 what we are told which, for us to look at. It's HHH27,
2 HHH29, and another document which is also marked HHH27 but
3 can't be, that must be wrong. Were you responsible for
4 having our attention drawn to these documents?

5 MR GUMBI: Yes, Chairperson. Those are
6 the documents I was going to refer to during my cross-
7 examination –

8 CHAIRPERSON: But you didn't refer to
9 them and –

10 MR GUMBI: Yes.
11 CHAIRPERSON: But if you wish to refer to
12 them, I know you stopped your cross-examination and I
13 wasn't aware of the fact that you were intending referring
14 to these documents, but if you wish to refer to them you
15 must please do so, feel free to do so. It's your cross-
16 examination and obviously – I know counsel sometimes decide
17 as they proceed with the cross-examination not to go in
18 certain directions and go to others, so it's your
19 prerogative to decide, but if you want to refer to these
20 documents I'll obviously afford you the opportunity to do
21 so.

22 MR GUMBI: No, I'm fine, Chairperson. It
23 was for the witness to know my line of cross-examination.
24 I'm not going to refer to them again.
25 CHAIRPERSON: Commendable restraint on

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1 your part. Thank you. Yes, Mr Mpofo, having seen the
2 example that Mr Gumbi set, I don't know whether you see
3 your way clear to follow it.

4 MR MPOFU: Chairperson, yes, with my
5 usual brevity I'll deal with one or two questions.

6 CHAIRPERSON: [Microphone off, inaudible]
7 the issues which I gave you permission on.

8 MR MPOFU: Yes, yes.
9 CHAIRPERSON: And in respect of topics 1
10 and 2, the way I suggested that that be dealt with at the
11 same time.

12 CROSS-EXAMINATION BY MR MPOFU: Yes,
13 thank you, Chairperson. Good morning, Ma'am.

14 GENERAL MBOMBO: Morning, Counsellor.
15 MR MPOFU: How are you, Ma'am?
16 GENERAL MBOMBO: I am well, and you?
17 MR MPOFU: I'm well. General, I'm going
18 to deal – well, whenever I deal with the police witnesses I
19 just outline what the thrust of the case for the injured
20 and arrested is, which does not mean that I'm going to ask
21 you about all those things, but just for you to situate
22 where we are coming from. Do you understand that?
23 GENERAL MBOMBO: I understand, Mr Chair.
24 MR MPOFU: We say that some of the key
25 things that influenced these events are firstly the terrain

<p style="text-align: right;">Page 22188</p> <p>1 where the killings happened, and we say that that was 2 informed by the fact that the people, by whatever made the 3 people to be at the mountain, or the koppie, in the first 4 place. Would you accept that? That then dictated what 5 terrain the police would be operating in. 6 GENERAL MBOMBO: Yes, as you say so, Sir. 7 MR MPOFU: Secondly we say that the 8 events were also influenced by, very much influenced by the 9 events of the 13th insofar as those events influenced the 10 mood and the emotional state, possibly influenced the mood 11 and the emotional state of the members who had to perform 12 the operation. Would you agree with that? 13 GENERAL MBOMBO: Not entirely, Mr Chair. 14 MR MPOFU: Yes, none of these things are 15 entirely responsible. I'm saying each one of them has had 16 a contributory effect on the events. So would you agree 17 that the emotional state of the people who participated on 18 the 13th had an effect on the operation? 19 GENERAL MBOMBO: Maybe, Mr Chair. 20 MR MPOFU: So you're saying it's 21 possible? 22 GENERAL MBOMBO: It could be the case, 23 but I'm not certain. 24 MR MPOFU: Yes, that's good enough. 25 Thirdly we say that some of the considerations that were</p>	<p style="text-align: right;">Page 22190</p> <p>1 the people – or let's bring it into twofold; the 2 instruction to carry out the operation in the first place, 3 which had the result of killing the people. We have put 4 that as an issue that the Commission must make a finding on 5 and which we will assist the Commission to make a finding 6 on. Do you understand that? 7 GENERAL MBOMBO: I understand what you're 8 saying. 9 MR MPOFU: And we've listed some of those 10 considerations and one of them is that the killings 11 amounted to premeditated murder, more particularly those at 12 scene 2. You understand that? I'm sure you disagree with 13 it, but you understand that that's what our case is? 14 GENERAL MBOMBO: I hear what you say. 15 MR MPOFU: Right, now let's start with 16 your role as the Provincial Commissioner. Am I correct 17 that you yourself, you don't pretend to have any experience 18 in crowd management? 19 GENERAL MBOMBO: That is so, Mr Chair. 20 MR MPOFU: And therefore you placed your 21 reliance on what needed to be done almost entirely on your 22 operational commanders, correct? 23 GENERAL MBOMBO: That is so. 24 MR MPOFU: And if one looks at the 25 applicable prescripts, it's quite clear that the</p>
<p style="text-align: right;">Page 22189</p> <p>1 taken into account in determining both the timing of the 2 operation and – mainly the timing, were political 3 considerations. Would you go along with that? 4 GENERAL MBOMBO: I do not agree with 5 that, Mr Chair. 6 MR MPOFU: Okay, so your evidence is that 7 political considerations played no part whatsoever in 8 influencing these events? 9 GENERAL MBOMBO: Not in influencing the 10 operation, Mr Chair. 11 MR MPOFU: But in influencing the actions 12 of the police? 13 GENERAL MBOMBO: When I'm talking about 14 the operation I think I'm referring to the actions of the 15 police. 16 MR MPOFU: Good, so your case then, your 17 evidence is that none of the actions of the police were 18 influenced whatsoever by any political considerations? 19 GENERAL MBOMBO: From my side I'm sure of 20 that, Mr Chair. 21 MR MPOFU: Alright, we will then deal 22 with some of those topics. The other thing that I think I 23 should explain to you in terms of our opening statement is 24 that some of the issues that we have raised with the 25 Commission include the origins of the instruction to shoot</p>	<p style="text-align: right;">Page 22191</p> <p>1 responsibility for an operation lies with the operational 2 commander and the overall commander, that you yourself have 3 no direct role to play in the operation itself, correct? 4 GENERAL MBOMBO: That is correct. 5 MR MPOFU: And that at best your role 6 could be described as that of being the chief executive. 7 You're the person who's overall in charge. It's a 8 management role, but it's not an operational role, correct? 9 GENERAL MBOMBO: As you explain it, yes. 10 MR MPOFU: And I think the way you've 11 articulated that in your statement is to say that the legal 12 authority of the province rests with you, correct? 13 GENERAL MBOMBO: That is so, Mr Chair. 14 MR MPOFU: So if that is indeed the case, 15 would you agree that it was inappropriate for you to be the 16 person who determined when the operation should take place 17 - I'm now talking about the operation of the 16th - when it 18 is not, according to your evidence it is not your role to 19 make those operational decisions, but yours is a more 20 general leadership and managerial role? 21 GENERAL MBOMBO: I would not entirely 22 agree with you there, Mr Chair. 23 MR MPOFU: Okay, to the extent that you 24 partly agree with me, would you then say that it was 25 inappropriate for you to be the deciding factor?</p>

<p style="text-align: right;">Page 22192</p> <p>1 GENERAL MBOMBO: Even there I do not 2 agree that I was not supposed to give such decisions, or 3 make such decisions. 4 MR MPOFU: General, I think maybe let me 5 try it like this. You and I have now agreed that your 6 role, you have no role in the operational sphere. That 7 role is at best confined to the operational and overall 8 commander, and that has to be so because that's what it 9 says even in the prescripts, and that is not to take away 10 your leadership role as the person who's overall in charge 11 of everything in the province. Whether it's criminal 12 investigations, whether it is forensics, you are the person 13 who is in the leadership position, but that doesn't mean 14 that you yourself must go and take the samples of blood. 15 Do you understand that? 16 GENERAL MBOMBO: I understand you 17 clearly. 18 MR MPOFU: Now if we agree on that then 19 what I'm putting to you is a simple proposition that says a 20 person whose role is supposed to be at that overall level 21 and not at the hands-on level should not be the person who 22 made the most important decision as to when the operation 23 must take place, (1); (2), especially if that person has 24 agreed, as you and I have agreed, that they have no 25 operational experience in crowd management. It might have</p>	<p style="text-align: right;">Page 22194</p> <p>1 have to do something about this situation, correct? 2 GENERAL MBOMBO: Maybe you could be 3 right, but I do not entirely agree with you. 4 MR MPOFU: Okay, you only partly agree 5 with that proposition? 6 GENERAL MBOMBO: Yes. 7 MR MPOFU: So can we at least agree then 8 that to the extent that you made the decision on D-day – or 9 I'm not saying that those words came from your mouth – on 10 the day on which the operation must happen, that was partly 11 a deviation from what should be expected in terms of the 12 prescripts, correct? 13 GENERAL MBOMBO: You must remember, Mr 14 Chair, how it happened that it, how it came about that it 15 happened in that way. 16 MR MPOFU: Yes, General, I don't want us 17 to waste much time. There might well be an explanation and 18 I will allow you a chance to give that explanation, and if 19 I don't, Mr Semenya will. But all I'm saying to you is 20 that at face value the fact that someone who is not 21 supposed to be operationally involved happens to be the one 22 who determines such an important thing as the date on which 23 an operation must happen is, to use your language, partly 24 something that deviates from the norm of what is in the 25 prescripts, correct?</p>
<p style="text-align: right;">Page 22193</p> <p>1 happened that if it was something to do with finance where 2 you are an expert, you might have dabbled a little bit, but 3 this one was something foreign to you. 4 GENERAL MBOMBO: I'm not sure if I 5 understand you correctly. Are you maybe referring to when 6 the operation should take it, or whether it should take 7 place? 8 MR MPOFU: I'm referring to both. As it 9 happens, you took a decision in respect of both. You 10 decided that it must happen and you also decided that it 11 must happen on the 16th. 12 GENERAL MBOMBO: As to the question that 13 it should happen, that is something I think as a 14 Commissioner there I was supposed to do. As you have made 15 an example about forensics, I was not going to go into 16 details of how it should be done and when. 17 MR MPOFU: Yes, well firstly I don't 18 agree with you, but that's a matter for argument. Let's 19 assume that I concede that the mere fact that something has 20 to be done, or an operation has to be carried out, is 21 something that is within your province. Sorry, I'm using 22 that word in small letters – within your area of concern. 23 But you would agree with me that the question as to on what 24 day it must happen now gets to be an operational decision. 25 It's now longer the overall managerial decision about we</p>	<p style="text-align: right;">Page 22195</p> <p>1 GENERAL MBOMBO: That is what I'm saying, 2 Mr Chair. Maybe if I'm given a chance to explain I will 3 explain. 4 MR MPOFU: Okay, no as long as we agree 5 on the proposition, now you can explain. 6 GENERAL MBOMBO: Mr Chair, if something 7 happens in the province and I'm aware of it, it's reported 8 to me, then I send people to go and work on it. It is 9 still my responsibility to see to it how it is dealt with 10 and when, especially if it's something that causes fear 11 amongst the people. 12 [10:50] I am then able to give an instruction to the 13 person who is in charge of the operation that the situation 14 is tense, if you see an opportunity to do the work, let us 15 work but in this case, particular case, there was an 16 important reason that caused me to act as I acted. 17 Firstly, it was a promise I'd heard about Mr Mathunjwa. I 18 then had to think, if this does not materialise, if this 19 promise of Mr Mathunjwa does not materialise as we had 20 hoped for, that could change the attitude of the people 21 there, causing more tension. 22 MR SEMENYA SC: Chair, can we state in 23 fairness, in relation to whether the witness can be 24 involved operationally so that at least standing order 262 25 references, amongst others, the witness as a person who is</p>

<p style="text-align: right;">Page 22196</p> <p>1 designated to do certain things in relation to these 2 operations.</p> <p>3 MR MPOFU: Yes, that's correct, Chair, 4 and one of those certain things, General, is the 5 appointment of the people that I mentioned, the overall 6 commander and the operational commander to do the actual 7 operation and to make decisions in relation thereto, 8 correct?</p> <p>9 GENERAL MBOMBO: That is so, Mr Chair.</p> <p>10 MR MPOFU: The 262 does not enjoin you 11 yourself to play an operational role, correct?</p> <p>12 GENERAL MBOMBO: As it is written, yes, 13 but it does not exclude me from giving advice.</p> <p>14 MR MPOFU: Yes. No, that's –</p> <p>15 CHAIRPERSON: It surely goes further than 16 that. You are ultimately responsible for what happens in 17 the province. So that must mean that at any time you can 18 interfere. Whether it's sensible for you to interfere in a 19 particular instance, regard being had to your lack of 20 expertise in a particular area is another matter but it 21 must flow from the fact that you are responsible, that you 22 have the power to intervene at any stage when you consider 23 it appropriate, regard being had to the fact that you would 24 ultimately be responsible for what happens. That's right, 25 isn't it?</p>	<p style="text-align: right;">Page 22198</p> <p>1 responsibility to make sure that the people doing that job 2 do it correctly and quickly because at times it happens 3 that I have to give them advice in certain cases.</p> <p>4 MR MPOFU: Yes, that's exactly and I've 5 distinguished again very clearly between advice and giving 6 a particular instruction that has a bearing on the outcome 7 of an operation such as the current one because what you 8 did here was not to give advice, you gave an instruction. 9 Do you understand the difference?</p> <p>10 GENERAL MBOMBO: I hear you, Mr Chair.</p> <p>11 MR MPOFU: We'll come back to that but I 12 just want to ask you, you would agree with me that the 13 instruction that you gave or the decision to undertake this 14 particular operation on a particular day was one of the 15 most important decisions you made in your career.</p> <p>16 GENERAL MBOMBO: I'm not sure if you are 17 saying this because of the results or what.</p> <p>18 MR MPOFU: Well, was it for any reason 19 whatsoever, one of the most important decisions in your 20 career?</p> <p>21 GENERAL MBOMBO: Yes, that is so.</p> <p>22 MR MPOFU: And you are aware that – you 23 have testified or written in your statement that you have 24 been involved, once again at the overall level in some 25 criminal investigations, correct?</p>
<p style="text-align: right;">Page 22197</p> <p>1 GENERAL MBOMBO: That is what I was 2 trying to explain, Mr Chair.</p> <p>3 MR MPOFU: Ja, well, that's exactly why I 4 raised this question to do with your leadership 5 responsibilities and your expertise. I was distinguishing 6 you from somebody who might have that responsibility but 7 also have a particular expertise in something that is being 8 done. That is why I granted you that – if it was finance, 9 for example, which we all know you have expertise in, but 10 you and I when I started this cross-examination established 11 that you have no expertise whatsoever in crowd management 12 and that's the reason I asked you that question. Do you 13 understand that?</p> <p>14 GENERAL MBOMBO: I hear you clearly.</p> <p>15 MR MPOFU: And that's why I was then 16 distinguishing the situation where here, although you are 17 the ultimate legal authority and I think you put it nicely 18 in your statement, but it doesn't mean that you must make 19 the crucial decisions in relation to the carrying out, for 20 example, of a murder investigation just simply because the 21 criminal investigation department ultimately reports to 22 you. Do you accept that?</p> <p>23 GENERAL MBOMBO: Mr Chair, you are making 24 another example. Even in a criminal case I do not have the 25 expertise needed in an investigation but it is my</p>	<p style="text-align: right;">Page 22199</p> <p>1 GENERAL MBOMBO: That is correct, Mr 2 Chair.</p> <p>3 MR MPOFU: So if we accept that you have 4 some expertise in that area then can you, you'll help me 5 with the following questions. Firstly, I think you've 6 testified, I think either in chief or when Mr Budlender was 7 asking you questions, that you approved of the opening 8 statement of the police, correct?</p> <p>9 GENERAL MBOMBO: I was part of the people 10 responsible for that approval.</p> <p>11 MR MPOFU: Yes, I'm sorry, I asked the 12 question badly. It's that you approved the statement, you 13 are one of the people who approved it, correct?</p> <p>14 GENERAL MBOMBO: That is so.</p> <p>15 MR MPOFU: And you also approve of it in 16 the sense that you agree with it, correct?</p> <p>17 GENERAL MBOMBO: That is so, Mr Chair.</p> <p>18 MR MPOFU: And also you made some input 19 in its development, correct?</p> <p>20 GENERAL MBOMBO: That is correct.</p> <p>21 MR MPOFU: And nothing so far that you 22 have heard in this Commission diminishes your approval of 23 the statement, correct?</p> <p>24 GENERAL MBOMBO: I would not be entirely 25 sure about that, Mr Chair.</p>

<p style="text-align: right;">Page 22200</p> <p>1 MR MPOFU: Now, with your admitted or 2 admittedly limited experience and limit in criminal 3 investigations but as a police officer of considerable 4 experience, you understand that what we are dealing with 5 here is a situation where, if someone has been killed then 6 usually or most, in most instances there would be a murder 7 investigation, correct? 8 GENERAL MBOMBO: That is correct, Mr 9 Chair. 10 MR MPOFU: And if you find me holding a 11 gun next to a dead body oozing blood, in most circumstances 12 you would arrest me and charge me with murder, correct? 13 The fact that I might have an explanation that this person 14 was attacking me is another matter but you would arrest me, 15 correct? 16 GENERAL MBOMBO: That would depend on the 17 explanation you will be giving, Mr Chair. 18 MR MPOFU: Okay, so let's take two 19 situations. The first one is, I don't give an explanation. 20 The second one is, I give an explanation and I say 21 whatever, this person owed me money or [speaking Xhosa] as 22 we would say in East London. In other words they were just 23 taking me for granted or they stole my car or whatever, 24 you'd still arrest me for murder, correct? 25 GENERAL MBOMBO: If the investigations</p>	<p style="text-align: right;">Page 22202</p> <p>1 not assist me. You would arrest me, correct? 2 GENERAL MBOMBO: If all the other means 3 of investigation lead to you, point to you that you are 4 responsible for that act, yes, you would be arrested. 5 MR MPOFU: Yes, so let's make it even 6 better. You ask me now, you say did you shoot this person 7 and I say yes, you don't need an investigation, then you'd 8 arrest me. 9 GENERAL MBOMBO: It does not work like 10 that, Mr Chair. I must be sure, through my investigations, 11 that you are indeed the person who did that. 12 MR MPOFU: Yes and – that's what I'm 13 trying to say. Now once you are sure that I am the person 14 who shot the person, would you arrest me? 15 GENERAL MBOMBO: Yes, I would. 16 MR MPOFU: Right. Now, in this case, in 17 this particular case we have a situation where the police 18 in their opening statement have said that they don't have 19 an explanation for the deaths of at least 13 people of the 20 people who died and we are sure, to use your language, that 21 they shot those people. So under those circumstances, they 22 shot the people, there's no explanation, would you agree 23 that those people should be charged with murder? 24 GENERAL MBOMBO: Firstly, Mr Chair, can 25 you show me in the opening statement where the number of</p>
<p style="text-align: right;">Page 22201</p> <p>1 lead us to arrest you for murder, yes. 2 MR MPOFU: Yes. No, what I'm trying to 3 say, General, is simply that that explanation that I give 4 may or may not succeed in court at a later stage but that's 5 not a matter for the police. The police would arrest me 6 for murder and whether I succeed or not succeed in the 7 court is my business, do you accept that? 8 GENERAL MBOMBO: The police would first 9 have to investigate your explanation. 10 MR MPOFU: Yes and if I give an 11 explanation such as the one that I've given and I say, 12 well, this person took my girlfriend, will you then not 13 arrest me? 14 GENERAL MBOMBO: If the investigations 15 allow us, yes, we will arrest. 16 MR MPOFU: Thank you. Where I am getting 17 at is that you would agree with me that if there is a 18 murder scene and there are people who are murder suspects 19 and there is no explanation, this is now - as you said, it 20 depends on the explanation – let us now say there's no 21 explanation as to, you ask me why did you shoot this person 22 and I just keep quiet or I say I am not sure, it might be 23 because it was Thursday or it might be because they looked 24 suspicious or it might be – and if I don't give an 25 explanation or give you a wishy-washy one then that would</p>	<p style="text-align: right;">Page 22203</p> <p>1 those people is 13? 2 MR MPOFU: Yes, I will show you but for 3 now let's, don't worry. 13, 12, 11, 9, 7, if there are 4 deaths in respect of which we know that the police killed 5 and they have no explanation, they should be charged with 6 murder. Yes, we'll come to the number just now. 7 GENERAL MBOMBO: I'm not sure again 8 whether there was no explanation that explains the whole 9 thing. 10 MR MPOFU: But General, please, I'm 11 telling you assume that there is no – if there was no 12 explanation and we know who killed the people, would you 13 agree that they should be charged with murder? I will now 14 then show you whether those ifs are correct or not and the 15 number of 13 or whatever, okay? 16 CHAIRPERSON: Mr Mpofo, I don't know that 17 this is a topic in respect of which you've got leave to 18 cross-examine. 19 MR MPOFU: Murder? 20 CHAIRPERSON: No – 21 MR MPOFU: Well, that's what we're here 22 for. 23 CHAIRPERSON: Where is it in the grounds? 24 MR MPOFU: I thought that's what has been 25 detaining us for 18 months is the murder of the people but</p>

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1 –

2 CHAIRPERSON: No – no, it's not an

3 adequate reply. You applied for leave to cross-examine on

4 certain topics. I gave you leave on certain topics. I'm

5 asking you, the point that you're, the issue that you're

6 now busy with, where is that covered by the topics in

7 respect of which I gave you leave?

8 MR MPOFU: Two, which I don't want to

9 read out because it will show where I'm going.

10 CHAIRPERSON: I have difficulty in seeing

11 that that's covered but in the – but I won't press you for

12 the reason that you've alluded to. I'll allow you to

13 continue for a while.

14 MR MPOFU: I won't belabour the point,

15 Chairperson.

16 CHAIRPERSON: Please don't.

17 MR MPOFU: Yes. Thank you very much,

18 Chairperson.

19 CHAIRPERSON: Don't belabour any points.

20 MR MPOFU: Yes. If I may, ja. Sorry,

21 I'm sure you've forgotten the question. The question was,

22 if I can show you that in respect of 13 or whatever number

23 of people, those people were killed by the police and

24 there's no explanation for those killings, would you agree

25 that they should be charged with murder?

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1 GENERAL MBOMBO: If there is hard

2 evidence that they could have been killed by the police.

3 MR MPOFU: Yes, there's more than

4 evidence, they've admitted that they killed the people. So

5 we're agreed now.

6 GENERAL MBOMBO: If you want me to assume

7 then yes, if there is evidence pointing to that, my

8 assumption would be to agree with you.

9 MR SEMENYA SC: But Chair –

10 CHAIRPERSON: Sorry, carry on.

11 MR SEMENYA SC: I'm the one who is

12 seeking audience, Chair.

13 CHAIRPERSON: No, I understood that the

14 interpreter was still interpreting her answer. So if he's

15 still interpreting her answer we must hear the answer

16 before I hear you but I want to raise a problem of my own

17 but perhaps I should allow you to raise yours first. Yes,

18 please finish. Is there more of the answer that you were

19 interpreting?

20 MR MAHLANGU: No, I was finished, Mr

21 Chair.

22 CHAIRPERSON: Yes, Mr Semenya?

23 MR SEMENYA SC: In the opening statement

24 paragraph 45.5, it is not correct that we have given no

25 account in relation to the death of the 13.

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1 CHAIRPERSON: Alright, well, that point

2 you will deal with, Mr Mpofu, but there's another point as

3 well. You were asking her questions on the basis of

4 whether she would have you arrested if there was a

5 reasonable ground to suspect that you were guilty of

6 murder, but I'm not sure whether it's as simple as that

7 where you're dealing with a crime allegedly committed by a

8 member of the police service. I'd like to ask a question

9 about that first. We know that the killings at Marikana

10 were reported to IPID by Brigadier Pretorius shortly after

11 4 o'clock, in fact two minutes past four on the 16th. So

12 IPID were seized with the matter thereafter and IPID still

13 is. Now, I know that you would order that Mr Mpofu be

14 arrested if you had a reasonable ground for suspecting he

15 was guilty of some or other crime in your area of

16 jurisdiction, but what is the position where the allegation

17 of an alleged crime relates to the alleged commission

18 thereof by a member of the police service? In those

19 circumstances do you say the person must be arrested or is

20 that a matter for IPID to deal with?

21 [11:10] GENERAL MBOMBO: Thank you, Mr Chair, for

22 explaining it. If our officers, police officers, appear to

23 have been involved in such criminality, we call the IPID

24 people. They will then take over that task from the scene

25 stage and they would then also investigate that case.

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1 MR MPOFU: Ja, well, I'm afraid that's

2 not going to assist matters. You understand that this

3 Commission will possibly make its findings before, or is

4 permitted to make its findings before IPID finishes its

5 work, that those are two independent processes? You are

6 aware of that?

7 GENERAL MBOMBO: I understand that.

8 MR MPOFU: Okay, so let's forget about

9 IPID. I am saying to you that forget about IPID and what I

10 am putting to you is that if – let's forget all these

11 examples now because I think they are confusing either you

12 or me. If there are 13 deaths perpetrated by the police

13 for which there is no explanation offered, I am going to

14 argue that those deaths must – we don't even have to go

15 into the nitty-gritties because those people were killed,

16 they are human beings, by the police and there is no

17 reasonable explanation as to why they were killed and for

18 those deaths, before we go anywhere, there is a case for

19 criminal charges of murder against the police. That's the

20 point I'm making to you.

21 MR SEMENYA SC: Chair, Mr Mpofu has not

22 responded to the point we raised.

23 MR MPOFU: Oh yes, the first point. Yes,

24 okay thank you, yes. Do you agree with what I'm saying,

25 firstly?

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1 COMMISSIONER HEMRAJ: But Mr Mpofo,
2 before she answers, are you suggesting that there should be
3 no investigation simply on the facts that you have
4 sketched?
5 MR MPOFU: No, please Commissioner, I am
6 obviously not, I am not suggesting that. I'm saying that
7 if you have the situation, if anybody has to investigate, I
8 don't know, the theft of fruit from a room and we know that
9 the only person who was in that room was me and the fruit
10 is gone and I have no explanation as to why it was gone
11 when I was there for 24 hours, then I'm saying unless if
12 something else – I'm not saying you don't have to, if you
13 want to you can still investigate what time did I take it
14 and so on but the point of the matter is that as far as
15 that is concerned, absent an explanation, we have the
16 situation where there's prima facie – remember we are
17 talking charging, remember we are not talking conviction,
18 we are talking charging –
19 CHAIRPERSON: I'm sorry, we're still busy
20 with the IPID point. Assuming Constable Mpofo is in a room
21 for 24 hours and when he went in there was a whole sack of
22 potatoes and when he came out the sack of potatoes was
23 empty. The only inference was that he'd eaten them, stolen
24 them. Would you charge him with theft or would you report
25 it to IPID?

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1 GENERAL MBOMBO: I will report it, Mr
2 Chair, to IPID but surely IPID will also investigate before
3 they charge him.
4 MR MPOFU: Yes. No, that's fine, that's
5 fine. You would report it to IPID and good luck to them
6 but if you were the station commander charged with
7 investigating that theft, irrespective of what IPID might
8 or might not find, would you agree that – and if your
9 findings will come long after or before IPID may or may not
10 finish its work, that you would be able to at least
11 conclude that there was this one person, constable with a
12 gun in a cell and one of the inmates died and he has
13 admitted that he shot the inmate. Would you agree that it
14 means that the person has been killed by that person and at
15 a prima facie, which means charging, not convicting, prima
16 facie level, that person should be charged with murder?
17 CHAIRPERSON: The question is, if that
18 person is a policeman then has this witness the right to
19 interfere with an IPID investigation and say, I know you
20 people investigate but never mind, I've investigated it and
21 I'm satisfied that Constable Mpofo should be charged and
22 I'm arresting him? There would be serious problems, as I
23 understand it, in regard to the independence of IPID, the
24 way IPID operates, its relations with the police – anyway,
25 so perhaps we can get the witness –

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1 MR MPOFU: No, Chairperson, let me –
2 CHAIRPERSON: Perhaps we can get the
3 witness's views on that before you carry on.
4 MR MPOFU: No, Chair –
5 CHAIRPERSON: May I suggest – yes, I'm in
6 charge here – we'll now take the tea adjournment, she will
7 answer my question and then you can raise your –
8 MR MPOFU: Yes, but can I just clarify –
9 CHAIRPERSON: No, no –
10 MR MPOFU: To you.
11 CHAIRPERSON: I'm running this
12 Commission, Mr Mpofo. We're taking the tea adjournment.
13 [COMMISSION ADJOURNS COMMISSION RESUMES]
14 [11:49] CHAIRPERSON: The Commission resumes.
15 Provincial Commissioner, you're still under oath.
16 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
17 CHAIRPERSON: Can you perhaps answer the
18 question first that I asked you and then Mr Mpofo will
19 continue with his cross-examination.
20 GENERAL MBOMBO: If you could just remind
21 me what the question was, Chairperson?
22 CHAIRPERSON: The question was, dealing
23 with the hypothetical case that Mr Mpofo put, if you had a
24 strong prima facie case against a policeman in respect of
25 some crime, the matter was being investigated by IPID,

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1 would you then interfere, as it were, and arrest that
2 person or would you leave it to IPID?
3 GENERAL MBOMBO: Chairperson, matters
4 pertaining to police with criminal acts, these are sent
5 directly to the IPID and we do not interfere with the job
6 of IPID.
7 CHAIRPERSON: Thank you. Yes, Mr Mpofo.
8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
9 Thank you, Chairperson. General, just to allay any further
10 confusion; I agree with what you've just said, but it has
11 nothing to do with what I'm investigating to you. I'm
12 going to stay away from making any examples because I think
13 it's a source of confusion. I'm concerned about this
14 Commission, the Marikana Farlam Commission, whatever you
15 call it. Do you understand? Not whatever IPID or – now
16 that we've established who's in charge of this Commission,
17 do you understand that this Commission can make its
18 findings, but firstly do you understand that this
19 Commission is compelled among other things to make
20 recommendations for prosecutions? Do you know that?
21 GENERAL MBOMBO: That's how I know it,
22 Chairperson.
23 MR MPOFU: Right, do you know also that
24 this Commission in terms of the terms of reference drawn by
25 the President of South Africa is also enjoined to find out

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1 whether use of force and killings by the police were
2 justified, or justifiable, correct?
3 GENERAL MBOMBO: I think it is so, yes.
4 MR MPOFU: Right, and do you understand
5 that this Commission, which originally it was meant to be
6 for four months or whatever, can conclude its job and do
7 those two things irrespective of what IPID is doing? Do
8 you understand that?
9 GENERAL MBOMBO: I think so, yes.
10 MR MPOFU: Right, okay. Now that we've
11 cleared any confusion in that regard, I'm going to take you
12 to – well, just to end the confusion even further, the
13 questions I'm asking you have something to do with what I'm
14 going to put to you at the end is going to be our argument
15 as to what this Commission should conclude. You understand
16 that?
17 GENERAL MBOMBO: I understand that, Sir.
18 MR MPOFU: Thank you. Alright, now we
19 have this situation; I've said to you if you go to – let's
20 start with FFF9, which is the police opening statement.
21 Right, go to paragraph –
22 GENERAL MBOMBO: FFF9?
23 MR MPOFU: FFF9, yes, Ma'am. It's the
24 police –
25 CHAIRPERSON: It's now the one on the

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1 screen. It's the opening statement –
2 MR MPOFU: Of the police.
3 CHAIRPERSON: I think the heading is
4 wrong, but it's the opening statement –
5 MR MPOFU: Yes.
6 CHAIRPERSON: - by the South African
7 Police Service. It wasn't on your list that you received.
8 I don't know –
9 GENERAL MBOMBO: I did not have it.
10 CHAIRPERSON: So that may be why you
11 haven't got a copy of it, but it's on the screen and I
12 think there's a relatively short paragraph that Mr Mpofu
13 wants to put to you. Perhaps we could look at that. If
14 you want to have it in front of you I'm sure a copy can be
15 made available to you by the police service.
16 MR MPOFU: It's in her bundle.
17 CHAIRPERSON: But you also – yes, I'm
18 reminded that though Mr Mpofu didn't draw your attention to
19 it, one of the other cross-examiners, Mr Bizos did. So
20 you've already had it and – sorry? Mr Budlender. Mr
21 Budlender did, so you've already had it for the purpose of
22 cross-examination. You've already read it for the purpose
23 of cross-examination. So if you've got your copy of the
24 documents that Mr Budlender referred you to for his cross-
25 examination, you'll find it there. Have you got that here?

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1 Perhaps those assisting you can find it.
2 GENERAL MBOMBO: I think I have it, Sir.
3 CHAIRPERSON: Look, I don't want you to
4 be at a disadvantage, so get it. Where is it in Mr
5 Budlender's bundle?
6 MR MPOFU: I think it's the fourth
7 document – third, the third document. It's the third
8 document.
9 CHAIRPERSON: It's the third document, so
10 I suggest get Mr Budlender's bundle, put it on the desk in
11 front of you. Look at the third document in it. Mr Mpofu
12 will then tell you what paragraph he wants you to look at,
13 and then we'll carry on. Mr Pretorius, can you or one of
14 your assistants perhaps help the witness, speed things up?
15 It seems the way Mr Mpofu is approaching the matter he
16 regards it as an important point, so we don't want the
17 witness to be at a disadvantage.
18 MR MPOFU: Thank you, Chairperson.
19 CHAIRPERSON: You've now got the
20 document. Mr Mpofu will tell us what paragraph you must
21 look at.
22 MR MPOFU: The first one is 45.5.
23 CHAIRPERSON: 45.5. Can we get that on
24 the –
25 MR MPOFU: It's on page 18 –

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1 CHAIRPERSON: We're getting that on the
2 screen. If you turn to page 18, you'll find it.
3 MR MPOFU: Page 19 of 30.
4 CHAIRPERSON: 19?
5 MR MPOFU: Yes, correct. Have you got
6 it? And I know you –
7 CHAIRPERSON: Let's read it aloud just so
8 that everyone can follow –
9 MR MPOFU: That's correct.
10 CHAIRPERSON: - everyone in the
11 auditorium, because it's, obviously the way you're present
12 it, it's an important point.
13 MR MPOFU: Yes, Chairperson.
14 CHAIRPERSON: 45.5 reads as follows, "The
15 evidence will be that some of the 13 protesters who were
16 shot and killed at koppie 3 had charged the police officers
17 with dangerous sharp weapons and had been shot in self-
18 defence. These are accounted for below. Others could have
19 been killed when police officers returned sharp fire,
20 believing shots to have been fired from the bushes and
21 crevices in the koppie by protesters. The police officers
22 are prepared to accept that they may have been responding
23 to 'friendly fire,' believing it to be fire from the
24 protesters. Without forensic evidence we are unable to
25 give an unqualified account explaining the death of some of

<p style="text-align: right;">Page 22216</p> <p>1 the persons inside koppie 3." That's the paragraph upon 2 which Mr Mpfu is relying.</p> <p>3 MR MPOFU: Yes, thank you, Chairperson, 4 and for the sake of saving time I'll ask you questions in 5 respect of each of the passages. The next one is 45.8.3, 6 Chairperson.</p> <p>7 CHAIRPERSON: Then for the benefit of 8 those in the auditorium who may not understand the English 9 on the screen I'll read it and it will be interpreted as I 10 read it. 45.8.3, "The bodies mark D, E, G, H, J, K, L, M, 11 were among the large group of armed protesters who were 12 inside the koppie. Gunshots were fired at the police from 13 inside the koppie. The police fired shots in the direction 14 of the firing group, killing at least eight persons. The 15 police service does not yet have ballistic reports relating 16 to these deaths and is at this stage unable to speak more 17 specifically to each of the deaths. The evidence may 18 reveal that the response of some police officers may have 19 been disproportionate to the danger they faced from the 20 group of more than 200 armed protesters."</p> <p>21 MR MPOFU: Thank you. There are other 22 examples, but we'll just stick with those two. Now what 23 I'm saying to you, Commissioner, firstly you see that – 24 because you did say, I suppose correctly, it would depend 25 if the person, if there's evidence that the person was</p>	<p style="text-align: right;">Page 22218</p> <p>1 whatever number of deaths the situation is that there is no 2 justification which may be considered by the Commission? 3 MR SEMENYA SC: Chair, that proposition 4 is not correct. The Commission may very well find at the 5 end that it's unable to make any finding because the 6 investigation, or whatever proposition Mr Mpfu is putting, 7 is not there. It don't conclude that the killings are 8 unjustified, or the defence is unjustified.</p> <p>9 MR MPOFU: May I respond, Chairperson? 10 Yes, Chairperson, ja, the nuances of what Mr Semenya is 11 proposing now will no doubt be argued at the end. Suffice 12 at this stage to say this; that the position which is 13 postulated by the terms of reference is that the police, 14 whoever admitted to having shot dead people, must show the 15 Commission whether or not there is a justification for 16 doing so. If that justification is not forthcoming, and it 17 may well be forthcoming if they find the ballistics that 18 they are talking about, but if it is not forthcoming then 19 at the very least, the minimum, Chairperson, must be that, 20 not that the people who killed those people are guilty of 21 murder as such, but at least that they must be prosecuted, 22 which is one of the functions of the Commission. Whether 23 at that subsequent trial they succeed or fail is no concern 24 of the Commission. The point of the matter is that absent 25 a justification – and we know who killed the human beings –</p>
<p style="text-align: right;">Page 22217</p> <p>1 killed by the suspect – you do see the part that the 2 Chairperson has just read which says the police fired shots 3 in the direction of the firing group, killing these eight 4 persons. So there's no doubt about that. You understand 5 that?</p> <p>6 GENERAL MBOMBO: I see it, yes.</p> <p>7 MR MPOFU: Right, now the simple point 8 I'm making to you is this; that from the point of view of 9 the Marikana Commission, unless when it finishes there have 10 been these where the police say they are unable, they don't 11 know why and how these people were killed, unless those 12 explanations are forthcoming then it must be concluded that 13 there's no justification which has been presented to the 14 Commission in respect of those deaths at least. Let's say 15 eight, let's start with the eight.</p> <p>16 GENERAL MBOMBO: I think it is clear from 17 the statement, Chairperson, that it is mentioned there that 18 unless the investigation is completed, there is no 19 conclusion that can be made.</p> <p>20 MR MPOFU: Yes. No, that I accept. I'm 21 postulating to you, I'm saying if the Commission finishes 22 before those possible justification from ballistics or 23 whatever are presented, if the situation that is postulated 24 here remains until the end of the Commission, you would 25 accept that in respect of at least those eight or 13 or</p>	<p style="text-align: right;">Page 22219</p> <p>1 then the only consequence for the Commission as explained 2 in the terms of reference is a referral to prosecution.</p> <p>3 CHAIRPERSON: Mr Mpfu, I don't want to 4 deal at this stage with issues that arise at the end, but 5 it's not quite as simple as that. My information at the 6 moment is that the ballistic evidence is inconclusive. 7 Because R5 bullets disintegrate inside a body it's 8 impossible, as I understand it – there may be one or two 9 exceptions, but it's impossible to link any dead striker 10 with any shottists. So that's the first problem.</p> <p>11 The second point is of course it may well be, you 12 know and obviously one must keep an open mind on this; 13 there are various possibilities as you say and Mr Semenya 14 says, but it may be that we will find that there was, we 15 may find that there is a prima facie case against people, 16 that we refer it to the DPP to investigate further and 17 consider charging these people concerned, not necessarily 18 with murder because if you can't link a shottist to a 19 deceased, absent of finding common purpose you'll have 20 difficulty in charging the shottist with murder, but if the 21 shottist was shooting in circumstances where if he had 22 killed somebody he would have been guilty of murder, then – 23 but you don't know if he did actually hit anybody – then a 24 charge of attempted murder would obviously be one which 25 would be available to the prosecution.</p>

<p style="text-align: right;">Page 22220</p> <p>1 But these are all matters which are still very 2 much in the melting pot. They presumably will be the 3 subject of detailed analysis in argument before us, and 4 obviously we can't at this stage indicate with any degree 5 of certainty, or even probability, what findings we'll make 6 at the end.</p> <p>7 MR MPOFU: Yes.</p> <p>8 CHAIRPERSON: But I think I can 9 understand the thrust of your question, so perhaps you can 10 adjust it to deal with the points I've put to you and then 11 put it to the witness.</p> <p>12 MR MPOFU: Fair enough, Chairperson. 13 Thank you very much. Maybe just to, let's simplify it by 14 dealing with just one case, one. You know that at least 15 one of the killings at koppie 3 was performed by somebody 16 who took out a gun and shot at somebody and when asked to 17 explain said, "These people deserve to die"? You know 18 that?</p> <p>19 GENERAL MBOMBO: I remember such a 20 statement –</p> <p>21 MR MPOFU: I think there's an objection 22 from Mr Budlender.</p> <p>23 COMMISSIONER HEMRAJ: Actually, Mr Mpofo, 24 what are you referring to –</p> <p>25 MR BUDLENDER SC: It wasn't an objection,</p>	<p style="text-align: right;">Page 22222</p> <p>1 issues –</p> <p>2 MR MPOFU: Okay, let's assume we meet, 3 then the –</p> <p>4 CHAIRPERSON: There are a number of – 5 yes, yes, there are a number of issues hanging in the air 6 in that regard, but I think what Mr Mpofo is putting to 7 you, if I may venture to try to rephrase his question, is 8 that you know what Warrant Officer Myburgh said. You've 9 dealt with that I think in your evidence.</p> <p>10 GENERAL MBOMBO: It is so, Chairperson.</p> <p>11 CHAIRPERSON: If he is correct, or if he 12 may well be correct, what he says amounts to an accusation 13 certainly against another member of the service, that that 14 person is guilty at the very least, I take it, of attempted 15 murder. That's his point. Now what do you want the 16 witness to say in relation to that?</p> <p>17 MR MPOFU: Yes, well Mr Madlanga when he 18 was still with us, he narrowed that to about two people. 19 Are you aware of that evidence? I don't want to take you 20 through the whole thing.</p> <p>21 GENERAL MBOMBO: I don't remember that 22 quite so clearly.</p> <p>23 MR MPOFU: Okay, I'll just tell you 24 blandly, by a process of elimination and because Warrant 25 Officer Myburgh had said the person was an NIU member, Mr</p>
<p style="text-align: right;">Page 22221</p> <p>1 but we don't actually know that. There's a dispute as to 2 whether that happened.</p> <p>3 MR MPOFU: Well, the witness seems to 4 know it.</p> <p>5 MR BUDLENDER SC: Well, the witness knows 6 what the witness so far knows.</p> <p>7 MR MPOFU: Well, to –</p> <p>8 CHAIRPERSON: Is this a reference to 9 Warrant Officer Myburgh?</p> <p>10 MR MPOFU: Yes, I'm going to –</p> <p>11 CHAIRPERSON: Of course there is another 12 statement which is, I don't know whether you've seen it 13 yet, it's been filed by the police which, if correct – and 14 obviously I don't know if it is, but if correct puts a 15 totally different complexion on that whole incident.</p> <p>16 MR MPOFU: Ja –</p> <p>17 CHAIRPERSON: And so we don't know 18 anything about it at this stage at all. All we do know is 19 that what Warrant Officer Myburgh said inter alia I think 20 to this witness, I'm not even sure that it's clear from 21 what Warrant Officer Myburgh said that the person that he 22 is referring to actually killed the person in respect of 23 the shots that were fired. Now there are a number of –</p> <p>24 MR MPOFU: Ja, well let's assume –</p> <p>25 CHAIRPERSON: There are a number of</p>	<p style="text-align: right;">Page 22223</p> <p>1 Madlanga very meticulously narrowed the possibilities of 2 who that is to two people. I don't want us to go through 3 that. Just accept that as something that happened in the 4 Commission and which was accepted by the witness then. I 5 can't remember, I think it was the National Commissioner.</p> <p>6 [12:08] GENERAL MBOMBO: I hear what you say, 7 Sir.</p> <p>8 MR MPOFU: Now I want to use that example 9 to illustrate the point that I was making. So now what I'm 10 saying is that if at the end what Warrant Officer Myburgh 11 said happened and it can be narrowed down to those two 12 people, and - which is the thrust of my question – there is 13 no justification which is presented in relation to that, 14 and if I argue at the end that just in respect of that one 15 case the Commission should recommend the prosecution of 16 that person, or, you know, or one of them –</p> <p>17 CHAIRPERSON: No, no, no, it's not as 18 simple as that, Mr Mpofo. As you say, there were two 19 potential suspects.</p> <p>20 MR MPOFU: Ja.</p> <p>21 CHAIRPERSON: And obviously if the case 22 were investigated further one assumes that Warrant Officer 23 Myburgh might be asked –</p> <p>24 MR MPOFU: Ja, if we narrow it to one.</p> <p>25 CHAIRPERSON: - might be asked to attend</p>

<p style="text-align: right;">Page 22224</p> <p>1 an identification parade in which –</p> <p>2 MR MPOFU: Correct.</p> <p>3 CHAIRPERSON: - some of those, those two</p> <p>4 people were there with others, and he might well identify</p> <p>5 one of them. So it's conceivable that investigation may be</p> <p>6 done to eliminate – sorry, to eliminate one of the two.</p> <p>7 MR MPOFU: Yes.</p> <p>8 CHAIRPERSON: So that then there would be</p> <p>9 a prima facie case against the other –</p> <p>10 MR MPOFU: Yes.</p> <p>11 CHAIRPERSON: - at least on a charge of</p> <p>12 attempted murder.</p> <p>13 MR MPOFU: That's correct.</p> <p>14 CHAIRPERSON: Based on the evidence that</p> <p>15 he would give and the inferences there from. That's your</p> <p>16 point, isn't it?</p> <p>17 MR MPOFU: That's correct, Chairperson,</p> <p>18 yes. Ja, or let's say Warrant Officer Myburgh came here to</p> <p>19 the Commission and testified and we showed him the two</p> <p>20 pictures of the Madlanga suspects and he said no, it's not</p> <p>21 this one, it's this one. Okay, ja.</p> <p>22 CHAIRPERSON: Ms Hemraj, who's a former</p> <p>23 public prosecutor and now does a fair amount of defence</p> <p>24 work, is horrified at the suggestion that a witness could</p> <p>25 be called to the witness box and shown two photographs and</p>	<p style="text-align: right;">Page 22226</p> <p>1 absence of justification from the police, either because</p> <p>2 the ballistics is inconclusive or whatever, then that the</p> <p>3 Commission should recommend that the Warrant Officer A</p> <p>4 should be charged, would you be able to comment as to</p> <p>5 whether I can make that proposition successfully?</p> <p>6 GENERAL MBOMBO: I think also that even</p> <p>7 there, Mr Chairperson, that would need thorough</p> <p>8 investigation to support what you are saying.</p> <p>9 MR MPOFU: Okay, alright.</p> <p>10 CHAIRPERSON: I must tell you, Mr Mpofo,</p> <p>11 I don't see this in the list of topics I allowed you to</p> <p>12 cross-examine on, but anyway, you've done it now so the</p> <p>13 water is under the bridge. But please try to adhere to the</p> <p>14 topics in respect of which I gave you permission.</p> <p>15 MR MPOFU: Well, I'm still on topic 2,</p> <p>16 Chairperson. But anyway, maybe to make that even clearer,</p> <p>17 let's do this –</p> <p>18 CHAIRPERSON: I won't read the opening</p> <p>19 part of 2 because that's something you asked me not to do</p> <p>20 because you don't want the witness to know where you're</p> <p>21 coming from –</p> <p>22 MR MPOFU: Yes, I'm moving up –</p> <p>23 CHAIRPERSON: But anyway, but you will</p> <p>24 also remember what I said in paragraph 4 of the permission</p> <p>25 I granted you.</p>
<p style="text-align: right;">Page 22225</p> <p>1 asked to identify one of them as the accused. That would</p> <p>2 almost certainly lead to the acquittal of whatever trial,</p> <p>3 but anyway, we won't assume that the – and if that scenario</p> <p>4 were to play itself out –</p> <p>5 MR MPOFU: If it happened here, not at a</p> <p>6 trial.</p> <p>7 CHAIRPERSON: Ja, it wouldn't help</p> <p>8 because the evidence given here, I'm not sure it could be</p> <p>9 used elsewhere. But anyway, we would assume that the way I</p> <p>10 suggest it is done, which would be more scientific, an</p> <p>11 identification parade and so on. So let's leave your</p> <p>12 photographs out of it. Take my advice; don't go down that</p> <p>13 avenue. It will only lead you to trouble.</p> <p>14 MR MPOFU: Okay.</p> <p>15 CHAIRPERSON: Proceed the other way.</p> <p>16 MR MPOFU: Yes. Once again I think I'm</p> <p>17 compelled to remind you that I'm not talking about any</p> <p>18 other proceedings; I'm talking about this Commission,</p> <p>19 anything that would have happened here. But be that as it</p> <p>20 may, if we knew somehow by some method – legitimate – that</p> <p>21 it was Warrant Officer X and not Warrant Officer Y –</p> <p>22 CHAIRPERSON: [Microphone off, inaudible]</p> <p>23 X out of it. That letter has been used already. Y or Z.</p> <p>24 MR MPOFU: Oh yes, yes. A and not</p> <p>25 Warrant Officer B, and if I then argued that given the</p>	<p style="text-align: right;">Page 22227</p> <p>1 MR MPOFU: Yes, Chairperson. Yes, I'm</p> <p>2 indebted to the Chairperson for not reading out. I'm quite</p> <p>3 aware of the deal, yes. You see, General, the reason why</p> <p>4 I'm doing all this is because I'm going to make some</p> <p>5 serious propositions about your position, so I want to give</p> <p>6 you an opportunity to deal with those serious allegations.</p> <p>7 From JJJ192 and from the questions I think that</p> <p>8 were put to you by various people it would be fair to say</p> <p>9 that for various reasons you foresaw that there might be</p> <p>10 bloodshed and death in the operation of the 16th, correct?</p> <p>11 GENERAL MBOMBO: As I've already</p> <p>12 indicated, Chairperson, whenever such an operation is being</p> <p>13 conducted all the angles that could pose risk are being</p> <p>14 looked into.</p> <p>15 MR MPOFU: Yes. No, that's part of the</p> <p>16 answer, certainly. In other words you foresaw the</p> <p>17 eventuation of death and injury because of the type of</p> <p>18 operation that was in the offing, correct?</p> <p>19 GENERAL MBOMBO: As I've already said,</p> <p>20 Chairperson, that such angles had been conceded, but</p> <p>21 everything possible would be done to avoid any spill of,</p> <p>22 blood spillage.</p> <p>23 MR MPOFU: No, I'm sorry, I think the</p> <p>24 witness said "Yes, that was done," but I'll assist you by</p> <p>25 asking it like this. Because of the reasons that you've</p>

<p style="text-align: right;">Page 22228</p> <p>1 stated, it was foreseen that there might be death or 2 injury, yes? 3 GENERAL MBOMBO: As being amongst the 4 risks that were being looked into, Mr Chairperson. 5 MR MPOFU: Yes. Now you foresaw the risk 6 of death more particularly being heightened in this 7 particular operation, among other things because of what 8 you termed the emotions being high in respect of what had 9 happened on the 13th, correct? 10 GENERAL MBOMBO: Not in that way, Mr 11 Chairperson. 12 MR MPOFU: JJJ192, page 6 thereof – 13 GENERAL MBOMBO: I have it, Chairperson. 14 MR MPOFU: This is the discussion that 15 you are having with Mr Mokwena, which we've established was 16 on the 14th, correct? Of August. 17 GENERAL MBOMBO: It is correct, Sir. 18 MR MPOFU: If you can read against the 19 letter, or rather line, let's start from line 15, "So I 20 said," I'll read it out to you, "So I said to them if once 21 again the other thing why I delayed them, remember what was 22 happening yesterday; it was annoying to the cops." Let's 23 start with that one. So if you're saying "what happened 24 yesterday," you are referring to the incident of the 13th of 25 August, correct?</p>	<p style="text-align: right;">Page 22230</p> <p>1 and those who had been seen by our EHW department not to be 2 good to be involved. 3 MR MPOFU: Yes, and the reason you're 4 taking all those steps of sending them away or whatever was 5 because you foresaw that the risk of them killing 20 people 6 – and I know you were using that loosely – killing many 7 people, let's say, was additionally heightened by what they 8 had experienced on the 13th, correct? 9 GENERAL MBOMBO: You can say so, yes. 10 MR MPOFU: Yes, thank you. Now let's 11 just go along with what you're saying. So the people who 12 would be removed would be those who admitted to having been 13 emotionally affected, correct? 14 GENERAL MBOMBO: Firstly according to 15 General Mpmembe he was releasing all the people who were 16 involved in the operation of the 13th. But he mentioned, he 17 said because the people are already being counselled by the 18 social workers and the psychologists, he then said those 19 that would be found not to be suitable in terms of the 20 report would then be released, and those that had no 21 problems and would go on with the work would then be 22 allowed to go on. 23 MR MPOFU: Yes, so in other words 24 consideration had been given to releasing all the people 25 who had been involved in the operation of the 13th because</p>
<p style="text-align: right;">Page 22229</p> <p>1 GENERAL MBOMBO: That's correct, 2 Chairperson. 3 MR MPOFU: "If you could have sent them 4 there, emotions are high," Mr Mokwena says, "Emotions are 5 high." You say, "Emotions are very high. Whatever 6 instructions you will have given, but because of the 7 emotions," Mr Mokwena says, "They would have forgotten 8 about the instructions," and you say – this is the 9 important part – "They will have forgotten about the 10 instruction and I do not want a situation where 20 people 11 will be dead." Now I'm putting to you a very simple 12 proposition. I'm saying you foresaw, apart from the 13 general foresight which you have admitted to because of the 14 nature of the operation, you foresaw further that in this 15 particular operation, because of what had happened the 13th, 16 the risk of death was more heightened because of that 17 reason, as evidenced by what I've just read to you, 18 correct? 19 GENERAL MBOMBO: Remembering, Mr 20 Chairperson, that I'm talking about the Tuesday, I was 21 referring to the policemen who were involved in the 22 operation on Monday. That is why I spoke of the delay, 23 that we had delayed them because we had requested 24 additional police, so that we could release these people, 25 particularly those that had admitted to have been affected,</p>	<p style="text-align: right;">Page 22231</p> <p>1 they might cause a situation where many people are killed, 2 but after what you've discussed, that was abandoned and it 3 was decided to retain some of them. Is that what you're 4 saying? 5 GENERAL MBOMBO: I'm not saying it was 6 just abandoned, Chairperson. What I'm trying to explain is 7 that the members were given a chance themselves to say 8 whether they are fit to be deployed, and our EHW department 9 which was there would also have said what do they see wrong 10 with this and that one. 11 MR MPOFU: General, you've just testified 12 a few minutes ago that – I accept that you're saying now 13 subsequently, but your evidence is that initially General 14 Mpmembe wanted to release all the people who were involved 15 in the operation of the 13th, correct? 16 GENERAL MBOMBO: Possibly we did not 17 understand one another there. General Mpmembe's intention 18 was the following, Mr Chairperson, that the people who were 19 involved in the operation of the 13th and who themselves 20 felt that they would not be able to go on, those would be 21 released. He also then also used the assistance of the 22 people that helps us in the healing of the police. 23 MR MPOFU: General, I'm afraid you're 24 busy changing your evidence now. The record will show that 25 before I asked you further questions and it was clear where</p>

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1 I'm going with this, your evidence was that Mpembe, I think
 2 you said he was releasing all of them and later it was
 3 decided that, everything that you said, those who admitted
 4 to having been affected and those that EHW had assessed as
 5 unsuitable, only those should be released. Am I right or
 6 am I wrong?

7 GENERAL MBOMBO: I don't know how to
 8 clarify, to explain this clearly. If there is an operation
 9 the operational commander will ask the police whilst the
 10 operation is still going on, particularly if there has been
 11 something that happened, a problem, he would ask them if
 12 they are still fit enough to go on. At the time General
 13 Mpembe was conducting this job, the EHW people were there
 14 already; he would also have asked for their advices. His
 15 intentions was even if all of them wanted to leave he would
 16 have done so.

17 MR MPOFU: Okay, I'm going to move on,
 18 but I just want to ask you, because you're evading the
 19 question now; did General Mpembe at some stage consider
 20 releasing all the people or not?

21 GENERAL MBOMBO: That was his intention,
 22 Chairperson.

23 MR MPOFU: Yes, thank you. And
 24 subsequently that plan was changed to what you've now
 25 described, correct?

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1 GENERAL MBOMBO: I don't understand this
 2 was changed that you use.

3 MR MPOFU: Okay, let me put it this way;
 4 in the end some of the people who were involved in the
 5 operation of the 13th were involved in the operation of the
 6 16th where 34 people were killed, correct?

7 GENERAL MBOMBO: Now I understand you.
 8 Yes, it is so.

9 MR MPOFU: And all I'm saying is that the
 10 mere fact that you or General Mpembe or whoever in SAPS had
 11 considered the possibility of releasing all those people
 12 was because it was foreseen and foreseeable at that stage
 13 that they might act in a manner where many people would be
 14 killed, as you indicate in your discussion with Mr Mokwena
 15 on JJJ192. Comment?

16 GENERAL MBOMBO: I think what General
 17 Mpembe was doing was what he was supposed to do as an
 18 overall commander.

19 MR MPOFU: And I'm going to argue
 20 therefore that you yourself clearly foresaw the bloodshed,
 21 including the death, and you were reckless as to its
 22 eventuation.

23 [12:28] In the sense that knowing that these people might
 24 have murderous tendencies due to their emotions you
 25 nevertheless unleashed them onto the protestors.

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1 GENERAL MBOMBO: I do not understand
 2 really why you say so.

3 MR MPOFU: I'm saying so because you and
 4 I have established that you foresaw this and you and I and
 5 everyone knows that in any event those people were, or some
 6 of them, were present when the 34 people were killed on the
 7 16th.

8 GENERAL MBOMBO: I don't think that could
 9 be a sufficient reason, Mr Chairperson. The job of the
 10 police takes many different ways.

11 MR MPOFU: And one of those ways is not
 12 to deploy people who might have motives of revenge and high
 13 emotions into a volatile situation. I'm sure that's not
 14 one of the ways that the police use.

15 MR MBOMBO: In our prescript,
 16 Chairperson, fortunately we don't have anything stating
 17 that. But because we know the manner in which we work we
 18 sometimes do allow that. But this does not necessarily
 19 mean, Chairperson, that if police have been to a scene of
 20 an accident where 10 people have died that those policemen
 21 could not be sent to do some other jobs.

22 MR MPOFU: No, General, that can't be
 23 correct. Remember the prescripts can't foresee every
 24 situation under the sun, but what we know the prescripts do
 25 say is that success or failure of an operation is judged

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1 among things by the number of people who lose their lives
 2 and who are injured. So surely that must mean that the
 3 reverse side of that, that people like you must see to it
 4 that there is minimum loss of life. And if - the other
 5 side of that is that if you then unleash people that in
 6 your own contemplation might have murderous tendencies onto
 7 members of the public then you are not likely to adhere to
 8 the prescript that says you must minimise that.

9 MR SEMENYA SC: The witness, Chair, did
 10 not say she held a view that some of these members were
 11 murderous, that was not the evidence of the witness.

12 MR MPOFU: Okay.

13 CHAIRPERSON: I think that question goes
 14 beyond the facts before us.

15 MR MPOFU: Sure.

16 CHAIRPERSON: What she said was there
 17 were people who were in a very high emotional state, whose
 18 emotions were very high and persons who on the Tuesday,
 19 would have forgotten about an instruction to behave
 20 properly and not to go beyond what is - I think that's
 21 effectively what she said. Your point is, of course, is
 22 that how could you be sure if there was this danger on
 23 Tuesday how could you be sure that that danger wasn't
 24 present, at least in some degree, still on Thursday. I
 25 think that's your point isn't it?

<p style="text-align: right;">Page 22236</p> <p>1 MR MPOFU: Yes, Chair. 2 CHAIRPERSON: If you put it directly to 3 her then she might follow it. 4 MR MPOFU: Yes that's the point. Surely 5 at the stage when it was contemplated to remove these 6 people because of what they had done on – or of what they 7 had experienced on the 13th, it was not contemplated that 8 they'll be removed for one day and they'll come back on the 9 15th. It was proposed that they will be removed from that 10 situation, correct? 11 GENERAL MBOMBO: It is correct, 12 Chairperson. 13 MR MPOFU: Ja so let's come back to the 14 question. I'm saying to you that on your own say so this 15 issues of the emotional state of three people was 16 foreseeably likely to result in the death of many people. 17 I'm running away from the two because I'm sure you were 18 using that just as an example. Let's use the neutral term, 19 many people. 20 GENERAL MBOMBO: Not that I'm saying 21 there would be many in that emotion because our EHW was 22 already doing work on those people. 23 MR MPOFU: All right I'll leave that for 24 argument. Suffice to say that I'm going to use that as one 25 of the basis on which the people who ad such foresight,</p>	<p style="text-align: right;">Page 22238</p> <p>1 she was told by the commanders that, that the plan that was 2 being considered and I think the plan was actually on the 3 table for it to be implemented on the Tuesday. And that 4 she approved of it is what I can understand from her 5 evidence. But she didn't suggest it. But I think you've 6 gone a bit further than the evidence justifies. And you 7 say you didn't know the details, but the details suggested 8 to you by Mr Mpofu that they would encircle the koppie and 9 then say to the people inside the encirclement look here if 10 you want to leave your weapons behind. That would have 11 been a practical way of dealing with the matter. I take it 12 you'll agree with that. 13 GENERAL MBOMBO: As she says, yes, 14 Chairperson, but I'm saying I did not have those details at 15 the time. 16 MR MPOFU: Yes okay, but I'll just show 17 you that the Chairperson is making a mistake. Go to 18 JJJ192, sorry page 5 again. Page 5 ja, we were at page 6, 19 just the page before that. Start from the middle, 20 Chairperson, about, I think it's line 17 or so. You 21 understand – I'll read it out for the sake of everybody 22 "You understand whilst you know, now what we have just 23 decided because when I was up I wanted to view and see what 24 is going on" just to that far, when you say when you are up 25 you mean when you were in the helicopter, correct?</p>
<p style="text-align: right;">Page 22237</p> <p>1 including you should be prosecuted for murder. 2 GENERAL MBOMBO: I have no comment, 3 Chairperson. 4 MR MPOFU: You also - at some stage you 5 also foresaw, or rather contemplated I think is a better 6 term in this regard, that the most feasible option which 7 might result in minimising injury or death would be 8 encircling the people at the koppie, at some stage, 9 correct? 10 GENERAL MBOMBO: I said so, Chairperson, 11 yes that was contemplated at one stage. 12 MR MPOFU: And I assume that would have 13 entailed and you can correct me if I'm wrong, the 14 encirclement of a group at the koppie and then 15 communicating to them that look if you want to leave here 16 you're going to have to abandon your dangerous weapons. 17 Otherwise we won't let you go, something of that nature, it 18 might not be exactly that, but that kind of thing, correct? 19 GENERAL MBOMBO: I do not have complete 20 details as to what and how it was going to be conducted. 21 MR MPOFU: Well since you suggested that 22 how did you see it panning out, what would then happen 23 after the encirclement? 24 CHAIRPERSON: I don't think the evidence 25 is that she suggested it. I think the evidence says that</p>	<p style="text-align: right;">Page 22239</p> <p>1 GENERAL MBOMBO: That's correct, 2 Chairperson. 3 MR MPOFU: "So when I was on there I told 4 these guys, I said," and you are quoting yourself now "Look 5 these people, they are less than 1 000. With the number of 6 officers we have let us circle these people, let us not do 7 anything, let us settle them. Let us talk to them and say 8 listen bring your firearms and you'll leave it here one by 9 one we'll give you enough time to do that." You are 10 quoting yourself. Is that what you said to Mr Mokwena? 11 GENERAL MBOMBO: This is how I thought, 12 yes. That is correct. 13 MR MPOFU: So not only did you suggest 14 the encirclement as I proposed to you which I think you 15 denied, but you even went further to answer my second 16 question which is what would then happen once they are 17 encircled and you say you will say to them listen here you 18 can leave one by one, blah, blah, blah. So that is what 19 you, yourself as General Mbombo had contemplated might be 20 the solution, correct? 21 GENERAL MBOMBO: That's how I thought, 22 yes. 23 MR MPOFU: Thank you. Now again, we now 24 know today that that plan – or let me start by saying this, 25 had that plan that you envisaged there been carried out you</p>

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1 would agree that death might have been avoided, correct?
 2 GENERAL MBOMBO: I wouldn't be sure of
 3 that, Chairperson, but I think, as you say –
 4 MR MPOFU: I don't understand what you
 5 mean you think as I say, do you agree with me or don't you
 6 agree with me?
 7 CHAIRPERSON: - finished her answer. I
 8 think she's saying she's not sure it would have happened,
 9 but I got the impression she was going to say – then go
 10 further and say something more. So let's –
 11 MR MPOFU: No –
 12 GENERAL MBOMBO: I wouldn't be sure of
 13 that, Chairperson.
 14 MR MPOFU: Oh it was said that that's not
 15 your complete answer. So from that answer then are you
 16 saying that we have two options now on the table. One is
 17 and settle the people say to them listen here you come out
 18 one by one and leave your arms there, that's the one
 19 option. Let's call it option 1. The second option is what
 20 happened, you go there you put the TRT, you shoot them, 34
 21 of them died. Do you agree that option 1 is better than
 22 option 2?
 23 MR SEMENYA SC: Chair, I don't know where
 24 this takes us, there were no such options. Like we put
 25 them there then the TRT shoots them.

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1 MR MPOFU: Okay well I'll put it nicer.
 2 Option 1 is you encircle them and tell them to abandon
 3 their arms and go. The other option, whatever it is,
 4 involves the risk which eventuated that 34 people would die
 5 and they did die. That's option 2. Which one do you think
 6 is better, option 1 or option 2?
 7 GENERAL MBOMBO: Chairperson, all the
 8 options that you're referring to now had their own risks.
 9 MR MPOFU: General, I might even accept
 10 that, ja. Maybe those people might have decided to stay
 11 there and starve themselves to death. So I'm prepared –
 12 I'm just saying that given these two options, which you
 13 had, to say to the people come out one by one and leave
 14 your arms. If you had those two options and the one that
 15 had higher risk of death which eventuated which one was
 16 riskier? Let's assume that they both had their risks,
 17 which one do you think was riskier?
 18 GENERAL MBOMBO: I wouldn't be sure of
 19 that, Mr Chairperson.
 20 MR MPOFU: Well I put it to you that you
 21 are lying now, General.
 22 CHAIRPERSON: No, no, no, we've had this
 23 before. As I reminded your colleague, Mr Ngalwana, while
 24 he was still here, good counsel don't accuse witnesses
 25 directly of lying. They say what you say isn't correct,

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1 it's not acceptable, you're making a mistake, it's not
 2 true, but good counsel don't accuse people of lying like
 3 that. Please bear that in mind and I'm sure the other
 4 advocates here will also have to bear it in mind because
 5 I'm not going to allow it. I haven't allowed it up to now,
 6 I'm not going to let you do it. But anyway I know what you
 7 want to put, put it in a more restrained fashion. You'll
 8 get as effective an answer for your purposes as you would
 9 if you put the way you have.
 10 MR MPOFU: Yes, yes fine. I'm prepared
 11 to use a euphemism. I put it that what you are saying now,
 12 that you don't know which one is riskier between my option
 13 1 and option 2 is a blatant untruth. That's as friendly as
 14 I can put it.
 15 GENERAL MBOMBO: I think, Chairperson,
 16 that is how you see it.
 17 MR MPOFU: Thank you. And I put it to
 18 you further that because you clearly foresaw that there was
 19 an option which would result in less deaths and you
 20 nevertheless proceeded to give an instruction for an option
 21 which was much riskier and which did eventuate in death.
 22 For that reason alone you and those people who are in that
 23 position should be charged with murder.
 24 GENERAL MBOMBO: I do not have a comment
 25 there, Chairperson.

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1 MR MPOFU: Finally in that regard I also
 2 want to put to you that even in terms of the numbers, once
 3 again if there was, I'll give you again two options. This
 4 time let's go option C and option D. If there was an
 5 option, let's now forget about the encirclement, let's say
 6 now the only thing that you can do is the razor wire and
 7 all that. Even if you eliminate there is possibility of
 8 encirclement, if there was an option between carrying out
 9 the operation, tactical stage 3, when there were the least
 10 number of people at the koppie and carrying it out, that's
 11 option C. And carrying it out under option D when there
 12 was the maximum number of people that the riskier option in
 13 terms of resulting in death would be option D. The one
 14 where there are much more people, would you go along with
 15 that?
 16 GENERAL MBOMBO: Any operation, Mr
 17 Chairperson, any one depends very much on the person who is
 18 there where the operation is taking place, who is in charge
 19 of that operation. Your options, the two options that
 20 you're referring to it would have depending on the person
 21 who was there who would make a decision as to how he goes
 22 about it.
 23 MR MPOFU: Yes, General, that may well be
 24 so, but that doesn't answer my question. I'm saying to
 25 you, you, General Mbombo, if you are faced with two options

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1 which we've all accepted now that there were inherent risk
 2 of deaths and so on and so on, we've gone past that. I'm
 3 saying if given all that you are now faced with, two
 4 options of mounting that operation when there are a few
 5 people and mounting it when there are three or four times
 6 the number of people. Would you agree that of those
 7 options the one that is likeliest to result in more deaths
 8 is the one where there are more people at the place? Do
 9 you agree?

10 GENERAL MBOMBO: I wouldn't say totally
 11 so, but according to your hypotheses it possibly could be
 12 so.

13 [12:48] MR MPOFU: Okay, that's enough. Now, I'm
 14 saying that, armed with that knowledge, you and the other
 15 decision makers elected to mount the operation at a time
 16 when there was probably the highest number of people on
 17 that mountain, which was the afternoon of the 16th and for
 18 that reason you ought to have foreseen and you did foresee
 19 that there was a higher risk of people dying and to the
 20 extent that they did die, you are responsible for their
 21 deaths and you should, for that reason alone, be arraigned
 22 for murder.

23 GENERAL MBOMBO: I have already said, Mr
 24 Chairperson, that to what is being put to me, I would not
 25 have a comment or an explanation.

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1 MR MPOFU: You do accept, don't you, that
 2 had you not given the instruction for the operation to be
 3 carried out on the 16th, on D-day, the 34 people who died
 4 might still be alive?

5 GENERAL MBOMBO: I don't really
 6 understand how you say this. I'm not sure about it.

7 MR MPOFU: Okay, once again I think you
 8 know exactly what I'm saying. You are evading the question
 9 but I'll ask it again. Do you accept, General Mbombo, or
 10 do you not accept that had you not given the instruction
 11 for the operation to be carried out on the 16th as you did,
 12 that there is a high possibility that those 34 people would
 13 be alive today?

14 GENERAL MBOMBO: My instruction, Mr
 15 Chairperson, depended on the people who were responsible
 16 for the operation as to how they were going to go about it.

17 MR MPOFU: Yes. No – sorry.

18 GENERAL MBOMBO: My instruction, Mr
 19 Chairperson, was not that people should, that they should
 20 go there to kill people.

21 MR MPOFU: Thank you, I accept both of
 22 those statements but I'm asking you something different,
 23 whether you agree or accept that had you not given that
 24 instruction for the operation to be carried out on the 16th
 25 – in other words if you take it out of the equation, let's

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1 say you were off sick or whatever, had you not given that
 2 instruction, those people might possibly and there's a
 3 great possibility that those 34 people who died would still
 4 be alive today.

5 GENERAL MBOMBO: There is no evidence
 6 that shows, Mr Chairperson, that had I not been there or
 7 that the operation would have gone on, would not have been
 8 conducted.

9 MR MPOFU: Fine, even that I'm prepared
 10 to accept for the purposes of progress, that somebody else
 11 might have just rocked up and given the instruction but I'm
 12 now talking about what we know happened from the minutes,
 13 from your evidence and so on. I'm saying, not
 14 hypothetically, if you on the 16th of August had not issued
 15 that instruction, from everything that you know do you
 16 accept that the 34 people would be alive today?

17 GENERAL MBOMBO: Maybe, Chairperson, it
 18 becomes necessary that I explain the following. Even if
 19 I'd given that instruction, if the people were involved in
 20 the operation would have had the reasons not to go on with
 21 that operation, would have been able to do so, not to go on
 22 with it.

23 MR MPOFU: Yes, but you're evading the
 24 question, I'm afraid, General. I'm saying let's assume you
 25 are correct once again that even if you gave the

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1 instruction, someone might have had a discretion to deviate
 2 from it. I questioned Brigadier Calitz a lot about that
 3 discretion so for now let's assume you are correct, but I'm
 4 saying in respect of what actually happened, knowing that
 5 they did not exercise that discretion, do you accept that
 6 if you had not given the instruction the situation in which
 7 they would exercise that discretion would not have even
 8 arisen. Do you understand that?

9 GENERAL MBOMBO: I do not agree with
 10 that, Mr Chairperson.

11 MR MPOFU: So you are saying that the
 12 fact that you gave the instruction irrelevant, it didn't
 13 lead to the operation being carried out on the 16th?

14 GENERAL MBOMBO: I did not say that,
 15 Chair.

16 MR MPOFU: Did your giving of that
 17 instruction lead to the operation being carried out on the
 18 16th?

19 GENERAL MBOMBO: Partly yes, but it
 20 would, it could not have been forced onto the people.

21 MR MPOFU: That's fine. So you admit
 22 that partly the reason why that operation was carried out
 23 on the 16th was your instructions?

24 GENERAL MBOMBO: It was an instruction,
 25 Chairperson, that the person in charge of the operation saw

<p style="text-align: right;">Page 22248</p> <p>1 fit that he could go on with the operation. 2 MR MPOFU: And you accept at the very 3 least that when you gave the instruction according to 4 exhibit EE and according to the evidence of Major-General 5 Annandale, you did not give all these qualifications that 6 you are giving now. You did not say listen here, General 7 Annandale, I'm instructing you to move to stage 3 if you 8 and the other people see it fit, blah-blah-blah. You 9 simply said I'm giving you an instruction to move to stage 10 3 now, correct? 11 GENERAL MBOMBO: As far as I know, 12 Chairperson - Chairperson we do not prescribe the 13 instruction, the police know that they have got to work 14 there in accordance to what the prescript allowed. 15 MR MPOFU: And because of that, you did 16 not qualify the instruction, you simply said they must move 17 on to stage 3, correct? 18 GENERAL MBOMBO: I was talking to 19 generals, Chairperson. 20 MR MPOFU: Yes, I know. 21 CHAIRPERSON: It's not as simple as that, 22 Provincial Commissioner, because if you look at the last 23 page of exhibit EE you will see that you are reported – 24 perhaps we could see that on the screen. Exhibit EE, last 25 page, heading "Closing remarks" second paragraph.</p>	<p style="text-align: right;">Page 22250</p> <p>1 held. He was asked, there were all these, about the risks, 2 why didn't you say well, it's not sensible to proceed at 3 this stage, we must rather wait until tomorrow morning or 4 words to that effect. And his answer was, it wasn't open 5 to me, I couldn't do that. In fact, if I hadn't done it 6 and something serious had happened that night, I would have 7 been in trouble because I would have disobeyed the 8 instruction given by the Provincial Commissioner. That was 9 his evidence, as I recall it. Now in the light of that I 10 want you to think about what's been put to you by Mr Mpofu, 11 that you gave an unequivocal instruction. We'll take the 12 lunch adjournment and when we resume at about quarter to 2, 13 I hope that you'll be in a position to give the answer to 14 Mr Mpofu. 15 MR MPOFU: Thank you, Chairperson. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [13:53] CHAIRPERSON: The Commission resumes. 18 You're still under oath, Provincial Commissioner. 19 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 20 CHAIRPERSON: Before we adjourned I 21 reformulated the question Mr Mpofu had put to you. Are you 22 in a position to answer it? 23 GENERAL MBOMBO: That is so, Mr Chair. 24 Can I please explain this, Mr Chair? In all the instances 25 when I give instructions to the police I've never given</p>
<p style="text-align: right;">Page 22249</p> <p>1 "Provincial Commissioner indicated that she had already 2 communicated with the National Commissioner informing her 3 of the current situation and that a deadlock was reached 4 with negotiations and also that phase 3 of the operational 5 plan will be executed. She also indicated that the 6 National Commissioner indicated that she will inform the 7 Minister of Police on the current situation and actions 8 that will be taken." So in the circumstances this doesn't 9 say anything about you said to the National Commissioner, 10 well, depending on the circumstances and how the 11 operational commanders sort of sense the situation, they 12 may or may not go on to execute phase 3 and the National 13 Commissioner didn't then say, well, I'll tell the Minister 14 of Police that that's what may happen if the operational 15 commanders think it appropriate. And the way it's recorded 16 at the beginning of the minutes on the first page, if we 17 could see that please, what there appears is – second 18 paragraph, "The Provincial Commissioner instructed Major- 19 General Annandale to proceed with the implementation of 20 stage 3 of the operational plan." No question of if he 21 feels like it or thought it was appropriate or thought it 22 was wise. And before you answer let me tell you something 23 that Brigadier Calitz told us. Brigadier Calitz was asked, 24 was it a sensible thing to do? He wasn't involved in this 25 discussion, he was out in the field when this meeting was</p>	<p style="text-align: right;">Page 22251</p> <p>1 instructions where I had to explain what exactly an officer 2 had to do because I take it for granted I'm giving 3 instructions to people who know what we're talking about. 4 In this statement what was mentioned by Brigadier Calitz 5 here, Brigadier Calitz was the one who was in a position to 6 give a better advice in order as to shape up this 7 instruction, how it should be done. That is the way, Mr 8 Chair, I always function. 9 CHAIRPERSON: Is that your answer? 10 GENERAL MBOMBO: That is so. 11 CHAIRPERSON: Thank you. Mr Mpofu. 12 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 13 Thank you, Chairperson. Let me just, I'll try, just as the 14 Chairperson did before lunch, to paraphrase without quoting 15 directly what Brigadier Calitz's evidence was in this 16 regard. I questioned him quite extensively as to the 17 extent of his discretion in the large scheme of things. He 18 certainly indicated that he couldn't have changed – when 19 somebody like you had said that the operation must happen 20 today and somebody like Annandale had said it must happen 21 at half past 3, that to that extent there would have had to 22 be a very big reason for him to deviate because when the 23 two seniors have declared, one you and the other one 24 Annandale, you dictated the day, as it were, and Annandale 25 dictated the time, 15:30, that unless if there were serious</p>

<p style="text-align: right;">Page 22252</p> <p>1 reasons he wouldn't be able to deviate from those. Do you 2 accept that as a general state of affairs? 3 GENERAL MBOMBO: I agree with that if he 4 has reasons, but another thing that is important, whoever 5 gave instructions in that operation was dependent on him 6 whether it was possible to carry out that instruction. 7 MR MPOFU: Yes, General, I really want us 8 to be clear on this. For the purposes of this discussion 9 I'm accepting that there was some level of discretion among 10 many people going down the line. The only point I wanted 11 to make is that all that was triggered by your instruction 12 – that's all, I'm just saying the whole episode, if you can 13 just accept that the whole episode was triggered by your 14 instruction, add to the fact that in it carrying out your 15 instruction people may have exercised discretion here and 16 there, I'm prepared to accept that. I don't think that you 17 could have said, you know, drive the Nyala to the right and 18 then when this happens – you couldn't, I'm not saying that. 19 All I'm saying is that given those limited amounts of 20 discretion that people had down the line, but nevertheless 21 that the unleashing of the operation was triggered by your 22 instruction. Do you accept that much? 23 GENERAL MBOMBO: I already said, Mr 24 Chair, I agree with that to a certain extent. 25 MR MPOFU: Okay, that's good enough. And</p>	<p style="text-align: right;">Page 22254</p> <p>1 GENERAL MBOMBO: Those were some of the 2 reasons, Mr Chair, that these two people come and talk to 3 the workers and the police and we should all find a way in 4 solving this problem. 5 MR MPOFU: Thank you. And was another 6 reason the fact that some of the personnel, or as you call 7 them resources had not yet sufficiently arrived? 8 GENERAL MBOMBO: They also mentioned 9 that, Mr Chair. 10 MR MPOFU: Yes, and there may well have 11 been other reasons, but at least those two reasons were 12 paramount. Now the point that I simply wanted to make is 13 that the discussion, or rather when they saw a reason or 14 reasons – which we have now gone into – for not carrying 15 out that instruction, they reverted back to you to convince 16 you to alter that instruction, to which you agreed. Is 17 that correct? 18 GENERAL MBOMBO: That is what General 19 Mpmembe did, Mr Chair. 20 MR MPOFU: Yes, and that's the point I'm 21 making, that they couldn't have just willy-nilly decided 22 well, you know, we don't know what's wrong with this 23 Provincial Commissioner, we're just going to do it on 24 Thursday. Once you had given that instruction they had a 25 duty to come back to you as to its alteration.</p>
<p style="text-align: right;">Page 22253</p> <p>1 do you also accept, just to give an example that at some 2 stage you were minded to give an instruction for the 3 operation to be done on the 15th. Remember that? 4 GENERAL MBOMBO: Already on the 14th, Mr 5 Chair, I indicated that I would have loved for it to happen 6 on the 15th. 7 MR MPOFU: And for some good reason or 8 another you did not issue that instruction, correct? 9 GENERAL MBOMBO: I issued it on the 14th 10 in the afternoon. 11 MR MPOFU: That the operation must happen 12 on the 15th? 13 GENERAL MBOMBO: I testified, Mr Chair, 14 here that on the 14th, the afternoon of the 14th after I've 15 learned of the body that was found on the koppie, when I 16 was on the way to a meeting in Midrand I phoned Generals 17 Mpmembe and Annandale and I told them that we're supposed to 18 proceed with the operation the next day, tomorrow. But 19 because of certain reasons that they had, or that they saw, 20 it did not proceed. They told me about it and I agreed 21 with them. 22 CHAIRPERSON: Wasn't the reason that 23 arrangements had been made in the meanwhile for the 24 presidents of the two trade unions to come and address the 25 strikers and try to persuade them to lay down their arms?</p>	<p style="text-align: right;">Page 22255</p> <p>1 GENERAL MBOMBO: They could have done 2 that on the 16th as well, Mr Chair. 3 MR MPOFU: Yes, well, but we know that on 4 the 16th – well, let's pursue one of the reasons why you 5 didn't proceed on the 15th. It was because there was a 6 possibility that the union leaders might avert the problem 7 through negotiation, correct? 8 GENERAL MBOMBO: That is so, Mr Chair. 9 MR MPOFU: And we now know that on the 10 16th when you gave that instruction, that possibility was 11 still there, correct? 12 GENERAL MBOMBO: That is not how I knew 13 it at that time. 14 MR MPOFU: No, General, you knew it very 15 well. Mr Mathunjwa said to you – you asked Mr Mathunjwa, 16 "Why have you not honoured your undertaking to persuade the 17 people," or words to that effect, correct? 18 GENERAL MBOMBO: That is so, Mr Chair. 19 MR MPOFU: And he said to you very 20 clearly that he has been trying. The only missing link is 21 that management is not prepared to cooperate with him and 22 to engage in negotiations with the strikers. He told you 23 that. 24 GENERAL MBOMBO: He mentioned that, but 25 the way I knew it and the way I was told, I did not know</p>

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1 that his promise depended on the management.
 2 MR MPOFU: Ja, let's assume you did not
 3 know it up to that stage, but now he's telling you, he
 4 says, "The reason that I have not delivered on my side is
 5 because management has failed to play along, as it were, or
 6 to do its part." So now you know.
 7 GENERAL MBOMBO: I understand it, Mr
 8 Chair.
 9 MR MPOFU: And despite that knowledge,
 10 firstly that should have told you one of two things, or
 11 both - that the effort has not been yet finally aborted,
 12 (1); the second thing that it should have told you is that
 13 should management be persuaded to do its part, then the
 14 danger might be averted, correct?
 15 GENERAL MBOMBO: I will not be sure about
 16 those details, Mr Chair, because I did not know what his
 17 discussions were with the management.
 18 MR MPOFU: No, but General, I've just
 19 told you he reported their discussions with you, so you
 20 knew now. He told you that they are refusing, so what do
 21 you mean you didn't know?
 22 GENERAL MBOMBO: No, according to me he
 23 said they delayed him, the managers of Lonmin delayed him.
 24 He did not say they were refusing.
 25 CHAIRPERSON: While Mr Mpofo is looking

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1 at his notes to see what his next point is, I want to put
 2 something to you. What would you say to the proposition
 3 that the commander's ability to say we're not going to
 4 proceed with the operation today for various reasons would
 5 have been made more difficult to sustain in view of the
 6 fact that you had announced to the world at 9:30 that
 7 morning that the matter was going to be dealt with that
 8 day?
 9 GENERAL MBOMBO: Mr Chair, I don't think
 10 that would have been a reason for them to think that we
 11 would not proceed because if I later had to tell the world
 12 again that because of these reasons we did not proceed, I
 13 would have done that.
 14 MR MPOFU: But you must admit that the
 15 fact that the commanders, or the generals, or let's say the
 16 commanders because some of them were not generals, knew
 17 that you had taken the trouble specifically to convene a
 18 media conference to tell the world that "This matter will
 19 be ended today," must have influenced their decision as to
 20 the seriousness that today was D-day, as indeed Adriano said
 21 after your media conference.
 22 GENERAL MBOMBO: According to me it was
 23 not D-day, and my generals would have taken the opportunity
 24 to ask me questions or advise me if they thought it was not
 25 suitable to proceed.

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1 MR MPOFU: Yes, General – I'm sorry,
 2 Chairperson.
 3 CHAIRPERSON: Did you know that Captain
 4 Adriano had told the press that "Today was D-day" after your
 5 media conference?
 6 GENERAL MBOMBO: At that time of the 16th,
 7 Mr Chair, I did not know. I heard about that the 17th or
 8 later.
 9 CHAIRPERSON: If you had known on the 16th
 10 that that's what Captain Adriano would have said, had said,
 11 would you have said to him look here, you'd better change
 12 that, you'd better tell the people that it may be D-day,
 13 that we may be acting, but we may not, depending on
 14 particular circumstances? Would you have said that to him?
 15 GENERAL MBOMBO: That's exactly what I
 16 would have said, Mr Chair, that you can't put it that way,
 17 as I know the way in which we function.
 18 MR MPOFU: Well, firstly Captain Adriano
 19 was not the only one to have perceived the situation as the
 20 16th was D-day, as indicated by the notes of the meeting,
 21 the first meeting on the 16th. Would you agree with that?
 22 GENERAL MBOMBO: I see the notes, Mr
 23 Chair.
 24 MR MPOFU: Yes, and secondly, just to put
 25 the Chairperson's question in perspective, would you at

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1 least accept that had you not called the press conference
 2 and said what you said there, it's unlikely that Captain
 3 Adriano would have said to the media "Today is D-day"? In
 4 other words that statement was directly linked to your
 5 announcement.
 6 GENERAL MBOMBO: It's maybe for him to
 7 say so, Mr Chair. I'm not sure whether what he said was
 8 linked to my statement.
 9 MR MPOFU: So you're telling the
 10 Commission that Captain Adriano could have, without you
 11 having called a press conference, without you having made
 12 any announcement, just went around saying, "Today is D-
 13 day"?
 14 GENERAL MBOMBO: That is why I say he's
 15 the one to explain that. I cannot be sure that he was
 16 influenced by my statement. It's for him to say so.
 17 MR MPOFU: Okay. Now I think you've
 18 accepted that the events were at the very least triggered
 19 by your instruction, if I'm correct. I don't want to
 20 attribute to you something that you have not admitted to.
 21 Correct?
 22 GENERAL MBOMBO: I said to a certain
 23 extent, yes.
 24 MR MPOFU: That's fine. Do you also
 25 accept that the deaths on the 13th of the five people there

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1 were also traceable to the instruction that you gave on
2 that day?
3 [14:12] GENERAL MBOMBO: I agree to that because
4 I have an OB entry saying the work should be done in that
5 way but again there, Mr Chair, that depended on the person
6 who had to do the job. He will weigh the situation, see
7 what he is supposed to do.
8 MR MPOFU: Yes. Okay, I don't want us to
9 go through this again but the point is that that person
10 would not even be there to exercise that discretion if you
11 had not issued the instruction, correct?
12 GENERAL MBOMBO: We cannot be sure about
13 that, Mr Chair, if he could have been seen by someone else
14 other than me.
15 MR MPOFU: Yes, but we are not
16 speculating here, General, we are talking about things that
17 actually happened. Is it correct that what actually
18 happened is that Mr Sinclair pointed out the people to you
19 and others and you gave an instruction that Major-General
20 Mpmembe and others should go there – in actual fact, not if
21 and wherefore.
22 GENERAL MBOMBO: Mr Chair, I said so but
23 to answer the question I'm saying if I was not there for
24 instance and General Mpmembe saw that situation, he would
25 not have gone there without me telling him to.

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1 MR MPOFU: Ja, but he might have not gone
2 there as well, correct?
3 GENERAL MBOMBO: We are not sure about
4 that.
5 MR MPOFU: And in actual fact the reason
6 he went there was not necessarily because of what he saw
7 but it was because of your instruction for him to do so.
8 GENERAL MBOMBO: Firstly, my instruction
9 was not that he himself should go there personally. Anyone
10 delegated by him would have went there but to go back to
11 your question, yes, he went there according to the
12 instruction.
13 MR MPOFU: Thank you very much. And once
14 again just in relation to the question that the Chairperson
15 asked you before lunch, on that occasion as well you gave
16 an unequivocal instruction, correct?
17 GENERAL MBOMBO: I made an OB entry as I
18 made it.
19 MR MPOFU: Now, okay, I'm looking for
20 something, maybe I'll find it during the comfort break so
21 we'll come back to that point about whether or not Mr
22 Mathunjwa said to you or told you what management, that
23 management was refusing to co-operate with him, but without
24 apportioning any blame on any specific person, would you
25 accept that the miscommunication – let's call it that

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1 generously – the miscommunication as to whether or not the
2 Mathunjwa effort was completely aborted and had failed or
3 whether it was still ongoing, that miscommunication or
4 confusion, whoever is to blame for it, was directly
5 connected to the instruction to move to tactical phase 3
6 whilst that effort was ongoing.
7 GENERAL MBOMBO: I can say so, Mr Chair,
8 because I just took what I was told by General Mpmembe.
9 MR MPOFU: And that what – or let me put
10 it that way, that SAPS in general is to blame for that
11 miscommunication, correct?
12 GENERAL MBOMBO: I am not sure about
13 that, Mr Chair.
14 MR MPOFU: Come on, General. If we have
15 a situation where General Mpmembe tells you that it's all
16 over with the Mathunjwa effort and at the same time as you
17 were shown on the TV screen or rather on the screen,
18 Brigadier Calitz is saying to the media, well, we're going
19 to wait for Mathunjwa to come back and he was coy as to
20 whether in the meantime they were going to move in,
21 whatever that means, or not, now if that situation
22 obtained, a few hundred metres Mpmembe telling you the
23 Mathunjwa effort is done, a few hundred metres on the other
24 side Calitz is telling the media that he is going to wait
25 for Mathunjwa, that miscommunication must be blamed on

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1 SAPS, surely.
2 GENERAL MBOMBO: I think there could be
3 truth in the way you put it.
4 MR MPOFU: Thank you.
5 CHAIRPERSON: [Microphone off, inaudible]
6 there wasn't a causal connection, as I understand the
7 evidence, between the miscommunication as you call it and
8 the commencement of the implementation of the tactical
9 option because as a fact the tactical option wasn't
10 implemented until after Mr Mathunjwa had come back, spoke
11 to the people and then left without reporting success. In
12 fact, the implementation which was supposed to start at
13 3:30 was delayed until after Mr Mathunjwa had finished. So
14 as you say, Calitz said we're not going to do anything
15 until after Mathunjwa comes back, by implication, and they
16 didn't do anything until after Mathunjwa not only came
17 back, address the people with all the eloquence at his
18 command, endeavouring to persuade them to leave the koppie
19 and only after he left without reporting success did the
20 roll-out of the barbed wire begin. So it does seem prima
21 facie, obviously subject to what argument we may hear later
22 or evidence we may get later but prima facie it does look
23 as if there wasn't a causal connection between the
24 miscommunication and the actual implementation of the
25 tactical option, isn't that correct?

<p style="text-align: right;">Page 22264</p> <p>1 MR MPOFU: General, do you accept that 2 had what the Chairperson is saying, had it happened, then 3 the knowledge that Mr Mathunjwa's effort had failed would 4 have been gained at about quarter to four on the 16th of 5 August? 6 GENERAL MBOMBO: I do not – 7 MR MPOFU: Do you accept – we know from 8 the evidence, we know from the evidence that Mr Mathunjwa 9 departed from the koppie at about 20 to four, 15:40, that 10 is from exhibit L. Now do you accept that if the operation 11 had been withheld, as it should have been, until such time 12 that it was clear that the Mathunjwa effort was 13 unsuccessful, that knowledge would only have been gained at 14 around quarter to four on the 16th of August after his 15 second visit? 16 GENERAL MBOMBO: I think so and I think 17 that is how it was obtained. 18 MR MPOFU: And that if that had happened, 19 then even if at that time it was then accepted that the 20 Mathunjwa effort had failed, it would be humanly impossible 21 to have carried out the operation on the 16th seeing that, 22 according to Annandale, it should have been carried out at 23 about half past three. 24 GENERAL MBOMBO: I don't understand what 25 you mean it would have been impossible.</p>	<p style="text-align: right;">Page 22266</p> <p>1 question clearly, Mr Chair? 2 CHAIRPERSON: If you'd given a 3 conditional – you, according to what we can see in the 4 occurrence book and in the minutes of the meeting, the 1:30 5 meeting, you gave an unconditional instruction that the 6 tactical option should be implemented. If you had given a 7 conditional instruction, if your instruction had been 8 implement the tactical option but only if Mathunjwa fails 9 after he returns for the second, he goes back there for the 10 second time to persuade the strikers to lay down their 11 arms, then the point that Mr Mpofu has just put to you 12 would fall away. 13 GENERAL MBOMBO: I hear what you say, Mr 14 Chair, that is correct. 15 MR MPOFU: But in actual fact we know 16 that your instruction, we know that your instruction to 17 Annandale, sorry, to Major-General Annandale to proceed 18 with the operation was linked directly to the supposed 19 failure of the Mathunjwa effort, correct? 20 GENERAL MBOMBO: As it was reported to 21 me, yes Mr Chair. 22 MR MPOFU: In fact, in the meeting which 23 is on exhibit EE, that decision is premised on three 24 untruths, shall we call them. If you go to EE, the front 25 of EE. In motivating the decision or in what preceded the</p>
<p style="text-align: right;">Page 22265</p> <p>1 MR MPOFU: Alright, we'll do it bit by 2 bit. If Mathunjwa had – 3 CHAIRPERSON: I'm sorry. The evidence 4 was from General Annandale, that he fixed half past three 5 as a time because it was still winter, it was the middle of 6 August and he anticipated the sun would be going down 7 sometime round about half past four, five o'clock it would 8 be – shadows would be lengthening and so on. So if they 9 had delayed it much later than the time he fixed, it would 10 not have been practically possible to have implemented the 11 tactical option because of the lateness of the afternoon 12 and the problem with failing light and so forth. That was 13 his evidence and that's the point Mr Mpofu is putting to 14 you. 15 GENERAL MBOMBO: I think that if that was 16 the case, Mr Chair, then that would have been the case 17 really. 18 MR MPOFU: Thank you, yes. It would have 19 been too late. 20 CHAIRPERSON: There is another aspect and 21 that is that if you had given a conditional instruction, 22 implement the tactical option if Mathunjwa fails to 23 persuade them to lay down their arms, when he comes back, 24 then of course this point wouldn't apply, would it? 25 GENERAL MBOMBO: I do not get the</p>	<p style="text-align: right;">Page 22267</p> <p>1 decision is very telling. If you look under the heading 2 "Purpose of the meeting," if you look under the "Purpose of 3 the meeting" which I suppose is the most important part, 4 the first thing there is that, "The Provincial 5 Commissioner, Lieutenant-General Mbombo, informed the 6 meeting that she was involved in meetings with the 7 leadership of AMCU, namely Mr Joseph Mathunjwa, to resolve 8 the current situation for the whole morning." We now know 9 that is false, correct? 10 GENERAL MBOMBO: Yes. 11 MR MPOFU: The second one, it says "Mr 12 Mathunjwa was supposed to indicate at nine whether the 13 protesters on the koppie were prepared to lay down their 14 weapons." I'll give you the benefit of the doubt on that 15 one. The third one says, "Mr Mathunjwa failed to provide 16 feedback as agreed." That's also false. 17 GENERAL MBOMBO: As I said earlier on, Mr 18 Chair, these minutes are not recorded exactly as I said. 19 MR MPOFU: And then after those 20 falsities, then the punch line comes, "The Provincial 21 Commissioner instructed Major-General Annandale to proceed 22 with the implementation of stage 3 of the operational 23 plan." So what I'm saying to you is that from a reading of 24 these minutes that punch line which I've just read to you 25 was directly linked to the supposed, but wrong, failure of</p>

<p style="text-align: right;">Page 22268</p> <p>1 the Mathunjwa effort.</p> <p>2 GENERAL MBOMBO: That is so, Mr Chair.</p> <p>3 MR MPOFU: Thank you.</p> <p>4 CHAIRPERSON: What time did you – those</p> <p>5 minutes, we looked at them earlier when I asked you a</p> <p>6 question about them. At the end of those minutes it's said</p> <p>7 that you had stated that you had already communicated with</p> <p>8 the National Commissioner informing her of the current</p> <p>9 situation, that a deadlock was reached with negotiations</p> <p>10 and that phase 3 of the operational plan will be executed."</p> <p>11 What time was that conversation with the National</p> <p>12 Commissioner when you told her that?</p> <p>13 GENERAL MBOMBO: It's, if I'm not</p> <p>14 mistaken, after I had spoken to General Mpembe.</p> <p>15 CHAIRPERSON: What time was that? We've</p> <p>16 got your telephone records, perhaps we can identify the</p> <p>17 time of the phone call.</p> <p>18 GENERAL MBOMBO: I do not remember</p> <p>19 clearly, Mr Chair. Well, I told her round about 11, 11,</p> <p>20 that Mr Mathunjwa had left for the koppie. I do not</p> <p>21 remember exactly the time. These minutes were supposed to</p> <p>22 read, Mr Chair, that I told the National Commissioner that</p> <p>23 if Mr Mathunjwa's promise does not materialise, I said to</p> <p>24 her we will, we are ready to implement stage 3.</p> <p>25 CHAIRPERSON: Is that what you told us</p>	<p style="text-align: right;">Page 22270</p> <p>1 the National Commissioner, informing her of the current</p> <p>2 situation, that a deadlock was reached, and did you mention</p> <p>3 the execution of phase 3 of the operational plan? Did you</p> <p>4 mention all that at the meeting, at the 1:30 meeting?</p> <p>5 GENERAL MBOMBO: I think I did, Mr Chair.</p> <p>6 CHAIRPERSON: And did you indicate that</p> <p>7 the National Commissioner indicated that she would inform</p> <p>8 the Minister of Police on the current situation and the</p> <p>9 actions that will be taken?</p> <p>10 GENERAL MBOMBO: That is a part I</p> <p>11 corrected, Mr Chair, that I said I think she is talking to</p> <p>12 the Minister, telling the Minister about it.</p> <p>13 CHAIRPERSON: Yes. So you did talk</p> <p>14 about, you did mention at the 1:30 meeting that the</p> <p>15 National Commissioner would talk, or probably talk to the</p> <p>16 Minister of Police about the matter? You did mention that?</p> <p>17 GENERAL MBOMBO: I mentioned it, Mr</p> <p>18 Chair, but I want to correct this; she should be telling</p> <p>19 the Minister about the progress.</p> <p>20 CHAIRPERSON: Yes, now the point I'm</p> <p>21 making is that if those topics were discussed by you at the</p> <p>22 1:30 meeting, it may be that they are wrongly reflected in</p> <p>23 the last paragraph under closing remarks, but that would</p> <p>24 simply mean that they're in the wrong place in the minutes,</p> <p>25 but if you had said something along those lines at the</p>
<p style="text-align: right;">Page 22269</p> <p>1 previously when you spoke about these minutes and the</p> <p>2 inaccuracy of that paragraph? Did you in fact talk about</p> <p>3 the inaccuracy of that paragraph? I remember you gave</p> <p>4 evidence to the effect that this paragraph we're looking at</p> <p>5 now on the first page was incorrect, the paragraph headed</p> <p>6 "Purpose of the meeting," but I must confess I don't</p> <p>7 remember your having stated that the paragraph at the end</p> <p>8 that I just read to you was inaccurate. That's something</p> <p>9 you've just mentioned now. Have you ever raised it any</p> <p>10 stage before?</p> <p>11 GENERAL MBOMBO: Mr Chair, I indicated</p> <p>12 earlier on that the minutes are not written as I have said.</p> <p>13 [14:32] I did not specify the details where they</p> <p>14 contacted, is what I said. What I did mention was the</p> <p>15 paragraph in the closing remarks, that what is said in the</p> <p>16 closing remarks paragraph is not supposed to be there</p> <p>17 because I had already left when the meeting closed.</p> <p>18 CHAIRPERSON: You did tell the –</p> <p>19 GENERAL MBOMBO: And I –</p> <p>20 CHAIRPERSON: Sorry, sorry.</p> <p>21 GENERAL MBOMBO: - corrected that part</p> <p>22 again where I said it is possible that the National</p> <p>23 Commissioner is telling the Minister about it.</p> <p>24 CHAIRPERSON: Did you tell the meeting,</p> <p>25 the 1:30 meeting, that you had already communicated with</p>	<p style="text-align: right;">Page 22271</p> <p>1 meeting then they would be in the minutes somewhere. That</p> <p>2 must be right?</p> <p>3 GENERAL MBOMBO: I agree with you, Mr</p> <p>4 Chair.</p> <p>5 CHAIRPERSON: Alright, now in the</p> <p>6 statement that you made, either of the statements you made,</p> <p>7 did you mention that, what was wrong with this particular</p> <p>8 paragraph of the minutes? Did you mention that what the</p> <p>9 minutes should have said was that you had said to the</p> <p>10 National Commissioner that phase 3 would be executed if and</p> <p>11 only if Mr Mathunjwa was unable to persuade the strikers to</p> <p>12 lay down their arms?</p> <p>13 GENERAL MBOMBO: I do not think I said</p> <p>14 so, Mr Chair.</p> <p>15 CHAIRPERSON: So you don't think you said</p> <p>16 so?</p> <p>17 GENERAL MBOMBO: I don't think I said</p> <p>18 so –</p> <p>19 CHAIRPERSON: So why didn't you –</p> <p>20 GENERAL MBOMBO: - because my objective</p> <p>21 was for us to correct the minutes, but we did not proceed</p> <p>22 with that because there was never another meeting of this</p> <p>23 nature.</p> <p>24 CHAIRPERSON: I'm asking you something</p> <p>25 else. In the statements that you made for this Commission,</p>

<p style="text-align: right;">Page 22272</p> <p>1 the first one is exhibit GGG5 and the second is exhibit 2 LLL1, did you in either of those statements mention the 3 fact that the minutes were incorrect in this respect and 4 that you had not told the Provincial Commissioner – sorry, 5 you had not told the National Commissioner as the minutes 6 indicated, that phase 3 of the operational plan would be 7 executed without the additional condition which you've now 8 said you mentioned when you spoke to her? 9 GENERAL MBOMBO: I did not include that, 10 Mr Chair. 11 CHAIRPERSON: Now we have another 12 difficulty here, and that is according to the exhibit of 13 the phone calls which has been handed in, we can't find the 14 telephone call that you made – it's exhibit KKK4. Now it 15 may be that it's somewhere there and we haven't noticed it, 16 but we can't find it. Mr Budlender, are you able to assist 17 us in this regard? 18 MR BUDLENDER SC: Sir, I've also just 19 been looking at KKK4. It's not there, but it might – I 20 just want to be sure that it's not on LLL3, which are the 21 witness's own phone calls. 22 COMMISSIONER HEMRAJ: Yes, but the two 23 text messages are reflected – 24 MR BUDLENDER SC: Yes – 25 COMMISSIONER HEMRAJ: - so it's unlikely</p>	<p style="text-align: right;">Page 22274</p> <p>1 CHAIRPERSON: You can't help me at the 2 moment, but you say you'll look at your records and you'll 3 come back, report – 4 GENERAL MBOMBO: That is correct. 5 CHAIRPERSON: Thank you very much. 6 MR MPOFU: Yes, thank you – 7 COMMISSIONER HEMRAJ: Have you found the 8 calls, Mr Budlender? 9 MR BUDLENDER SC: I've looked on LLL3 and 10 I don't find a call before the JOCCOM meeting of 1:30. 11 COMMISSIONER HEMRAJ: Yes, there are two 12 text messages at around – 13 MR BUDLENDER SC: There's a text 14 message - 15 COMMISSIONER HEMRAJ: - 32. 16 MR BUDLENDER SC: There's a text message 17 coming in and going out, as it were. In fact two text 18 messages, that's quite correct, but that's all. 19 CHAIRPERSON: Are they both messages sent 20 by the witness to General Phiyega, the National 21 Commissioner? Because you see – 22 MR BUDLENDER SC: Yes, Chair, just a few 23 seconds apart. 24 CHAIRPERSON: You see, what occurs to me 25 is that she does say, having made the communication, having</p>
<p style="text-align: right;">Page 22273</p> <p>1 that – 2 MR BUDLENDER SC: It should be there. 3 COMMISSIONER HEMRAJ: Yes. 4 MR BUDLENDER SC: But I just want to be 5 sure that it isn't before saying that it isn't. It's not 6 on the KKK4. 7 CHAIRPERSON: So it is possible that you 8 spoke on someone else's telephone, I suppose, but can you 9 explain that to us? 10 GENERAL MBOMBO: Mr Chair, that is 11 possible, but I did speak to the National Commissioner. 12 CHAIRPERSON: You see, what's important 13 is to know at what time you made that report or 14 communication to the National Commissioner, and that's why 15 I'm interested in it. Now this communication to the 16 National Commissioner that you're talking about here where 17 you say you communicated, or you are reported as having 18 said that you had already communicated with the National 19 Commissioner before going to the 1:30 meeting, informing 20 her of the current situation that a deadlock was reached 21 with negotiations and that phase 3 of the operational plan 22 would be executed, was that a telephone conversation or was 23 that an SMS you sent her? 24 GENERAL MBOMBO: I'm not sure, Mr Chair, 25 but I will look at my records.</p>	<p style="text-align: right;">Page 22275</p> <p>1 mentioned the communication with the National Commissioner, 2 which of course could have been sent by SMS, she then says 3 she also – that's the witness – also indicated according to 4 the minutes that the National Commissioner indicated she 5 would inform the Minister of the current situation and 6 actions will be taken. Now she obviously couldn't have 7 known that unless the National Commissioner had SMSd her 8 back, or telephoned her back, and said that. So if these 9 communications were effected by SMS then you need two SMSs, 10 one from the witness to the National Commissioner and the 11 other one the other way around. 12 MR BUDLENDER SC: That's one in each 13 direction. 14 CHAIRPERSON: Yes. 15 MR BUDLENDER SC: These appear to be two 16 SMSes from General Mbombo to General Phiyega, a few seconds 17 apart. 18 GENERAL MBOMBO: Mr Chair – 19 CHAIRPERSON: So anyway, she raised her 20 hand and turned her microphone on, so it may be she's got 21 some important information for us. Yes, Provincial 22 Commissioner? 23 GENERAL MBOMBO: I'm trying to correct 24 the last sentence in that paragraph, Mr Chair. I am the 25 one who said, Mr Chair, the National Commissioner is</p>

<p style="text-align: right;">Page 22276</p> <p>1 probably informing the Minister, not that she said she will 2 inform the Minister.</p> <p>3 MR SEMENYA SC: Chair, can I refer us to 4 the evidence of the witness on page, day 178, page 21379. 5 She's repeating exactly what she said around this matter, 6 from line 20.</p> <p>7 CHAIRPERSON: I'm sorry, what page? 8 MR SEMENYA SC: 21379. 9 CHAIRPERSON: 21379, what day? 10 MR SEMENYA SC: Day 178. 11 CHAIRPERSON: Alright, let's look at 12 that.</p> <p>13 MR SEMENYA SC: Line 20. 14 CHAIRPERSON: Yes, your question is from 15 line 3 onwards. What's the answer? We haven't got that on 16 the screen. So in other words what you were saying is that 17 you told the National Commissioner and you believed that 18 she would give the information to the Minister. So in 19 other words we don't have to find two SMSes, one from you 20 to the National Commissioner telling her what you say here, 21 and another one from her to you telling you she's going to 22 speak to the Minister, because that is not what you in fact 23 conveyed to the meeting. It was merely your belief, or 24 your supposition I suppose, that this would in turn be 25 conveyed by the National Commissioner to the Minister. So</p>	<p style="text-align: right;">Page 22278</p> <p>1 forgive you, but unfortunately, unlike you I'm not 2 satisfied with that answer. I'm going to argue, General, 3 that your evidence –</p> <p>4 CHAIRPERSON: Mr Mpofu, let's be careful 5 about this. The fact that I say – I'm not saying I am 6 satisfied; I'm not saying I'm not satisfied.</p> <p>7 MR MPOFU: Yes. 8 CHAIRPERSON: I try – not always with 9 success – to keep a poker face –</p> <p>10 MR MPOFU: Yes. 11 CHAIRPERSON: - so that people don't know 12 whether I'm satisfied or not.</p> <p>13 MR MPOFU: Yes. 14 CHAIRPERSON: Don't assume that merely – 15 although I may be satisfied with this answer, but don't 16 assume as a general rule it's a fact I'm like Brer Rabbit 17 and I say nothing, that I'm necessarily am satisfied with 18 everything I hear here, because I'm not always satisfied 19 with everything I hear.</p> <p>20 MR MPOFU: Yes. No, thank you, 21 Chairperson. No, I thought you said so – I was not 22 assuming – I thought you said you are satisfied. I'm happy 23 if you're not satisfied, Chairperson. And I'm not 24 satisfied, and I'm going to argue that your answers in this 25 regard are untruthful and I'll tell you now why. First of</p>
<p style="text-align: right;">Page 22277</p> <p>1 we don't need to look for a communication from the National 2 Commissioner addressed to you, indicating that the National 3 Commissioner had said she was going to inform the Minister, 4 because as you say here, you merely said you thought or 5 assumed or believed that that's what she'd do. Is that 6 right?</p> <p>7 GENERAL MBOMBO: That is correct. 8 CHAIRPERSON: Alright, that then seems to 9 solve the mystery, because that then means that we have a 10 communication, we have two communications in fact by SMS 11 from you to the National Commissioner and they were at 12 10:35 in the morning. So that was shortly after you media 13 conference when you told the world that the matter was 14 going to be dealt with that day, and long before you had 15 any feedback one way or t'other from Mr Mathunjwa. You 16 didn't even know, I mean Mr Mathunjwa had in fact not yet 17 gone to the koppie at that stage.</p> <p>18 GENERAL MBOMBO: Yes. 19 CHAIRPERSON: So I think that appears to 20 be cleared up. Would you accept that? 21 GENERAL MBOMBO: I agree, Mr Chair. 22 CHAIRPERSON: Mr Mpofu, I'm sorry I've 23 taken over some of your cross-examination. I'm sure you'll 24 forgive me. 25 MR MPOFU: No, thank you, Chairperson. I</p>	<p style="text-align: right;">Page 22279</p> <p>1 all, I asked General Annandale, I asked him specifically – 2 I can't find the reference now – Chairperson, sorry, I 3 can't find the reference now, but I'll find it. I 4 specifically asked General Annandale, who took these notes, 5 or rather who was chairing the meeting, whether that 6 paragraph reflected what you said at the meeting and he 7 said it did. Do you understand that?</p> <p>8 GENERAL MBOMBO: I hear what you say. 9 MR MPOFU: Secondly - so for that reason, 10 sorry, just to round off that point, for that reason I'm 11 going to argue that your ex post facto clarifications are 12 just meant to mislead the Commission into believing that 13 that conversation with the National Commissioner did not 14 take place as reflected in EE, when it did according to 15 Annandale.</p> <p>16 MR SEMENYA SC: Chair, in fairness, can 17 Mr Mpofu give us that reference so that the witness is – 18 MR MPOFU: I just said I would – 19 CHAIRPERSON: What he's looking for, 20 insofar as what I said indicated satisfaction, I must tell 21 you, I'd like to get back to the satisfaction issue because 22 it's important. I don't know whether I'm satisfied or not 23 because it will depend upon evidence that may come out or 24 an argument at the end. It is an answer which may be 25 correct, may not be correct. I don't know yet. But what I</p>

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1 am satisfied about prima facie at this stage is what I
 2 originally thought was the case that we had to look for
 3 two-way communication, either a telephone conversation or
 4 SMSes both ways. That problem appears to be solved on what
 5 the witness now tells us that she communicated to the
 6 National Commissioner. She may well have done so by SMS,
 7 and the National Commissioner did not come back to her and
 8 say I'm going to tell the Minister. So that is what she
 9 assumed or believed would happened. That was the bit which
 10 prima facie appears to be in accord with the telephone
 11 records that we have. Okay, now –

12 MR MPOFU: Thank you, Chairperson.
 13 CHAIRPERSON: Alright.
 14 MR MPOFU: I'm going to solve that
 15 mystery as well, but for now I'm simply saying that the
 16 fact that General Annandale – and I take Mr Semenya's
 17 point, I will have to find the –

18 CHAIRPERSON: I see that attempts are
 19 being made by those assisting you to find the –

20 MR MPOFU: Frantically, yes.
 21 CHAIRPERSON: - find the –
 22 MR MPOFU: But I'm – yes –
 23 CHAIRPERSON: You may not by the close –
 24 MR MPOFU: Somehow I think –
 25 CHAIRPERSON: - by the close of business

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1 today, so if you're still cross-examining tomorrow you'll
 2 be able to give it to Mr Semenya then.

3 MR MPOFU: No, that's highly unlikely,
 4 Chairperson. But in the unlikely event that I'm still
 5 cross-examining tomorrow, then I think even after the tea
 6 break, between my attorney and Ms Pillay we'll find it.
 7 But let's just say this; okay, so let's – the Annandale
 8 issue, let's put it on ice. We'll find the reference.
 9 Let's just resolve the Chairperson's mystery about when the
 10 communication may or may not have happened. I will show
 11 you that, that communication I will show you must have
 12 happened by telephone and just to be as broad as possible,
 13 at any time between 12 noon and 1:30 on the 16th. What do
 14 you say to that?

15 GENERAL MBOMBO: I cannot be sure as to
 16 exactly when it happened.

17 MR MPOFU: Chairperson, I've just fixed a
 18 time – I could see that you were –

19 CHAIRPERSON: Yes, I'm grateful to you.
 20 I was actually asking Adv Hemraj about another aspect of
 21 the same point.

22 MR MPOFU: Yes.
 23 CHAIRPERSON: But, which I'll share with
 24 you so you can help us too.
 25 MR MPOFU: Yes, thanks, Chairperson.

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1 CHAIRPERSON: My recollection is that the
 2 National Commissioner in her evidence dealt with having
 3 received a report from this witness, communication with
 4 this witness.

5 MR MPOFU: That's where I'm going.
 6 CHAIRPERSON: And then there was a bit of
 7 difficulty about whether she then passed it on to the
 8 Minister and there were various drafts of her statement
 9 which Mr Burger went through in great detail, and I then
 10 dealt with as well.

11 MR MPOFU: I dealt with –
 12 CHAIRPERSON: And you remember in the end
 13 she responded to what I put to her by in effect withdrawing
 14 something that she said earlier. Now those statements are
 15 FFF1 and 2, round thereabouts, so that will tell us when –
 16 we can find that – when the National Commissioner said she
 17 received the communication from this witness.

18 MR MPOFU: Exactly. But I –
 19 CHAIRPERSON: You say you've got
 20 something else that you're going to –
 21 MR MPOFU: No, that's exactly what I
 22 have, Chairperson.
 23 CHAIRPERSON: No, we were both thinking
 24 on the same point.
 25 MR MPOFU: Well, great minds,

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1 Chairperson. That's why I was saying that on what I'm
 2 going to tell you, one would fix that communication to
 3 between 12 o'clock and 1:30, and it would be telephonic.
 4 I'm just going to demonstrate that to you now. And the
 5 Chairperson is quite correct; we have to be careful on this
 6 one, because I dealt with this issue with the National
 7 Commissioner as well and the less said about that, the
 8 better. But on at least one of the versions of the
 9 National Commissioner she says at paragraph 23 of FFF –

10 [14:52] CHAIRPERSON: Which exhibit is that?
 11 MR MPOFU: FFF2, Chairperson.
 12 CHAIRPERSON: Well, there was a 2, and a
 13 3, and a 3A, and there was an interesting series of
 14 documents put before us in that part.

15 MR MPOFU: We won't go there,
 16 Chairperson, and the original notes and so on. If we can
 17 have FFF2, please? Let's go to paragraph 23. Right, I'll
 18 just read it out. National Commissioner says, "On the
 19 afternoon of August 16th, 2012, I received a call from
 20 Lieutenant General Mbombo who informed me of the decision
 21 to implement stage 3 of the plan, which information I
 22 relayed to the Minister." So putting aside as to who
 23 relayed what to the Minister or didn't relay it, that would
 24 seem to suggest that you called the National Commissioner,
 25 as I say between 12, if you say it's in the afternoon,

<p style="text-align: right;">Page 22284</p> <p>1 between 12 and 1:30 because you were reporting that at the 2 1:30 meeting, and informed her of the decision to implement 3 stage 3. 4 CHAIRPERSON: Mr Mpofo, I'm not sure 5 that's entirely right. Can we see paragraph 21, please? 6 MR MPOFU: 21, yes, Chairperson. 7 CHAIRPERSON: 21. 8 MR MPOFU: 21, yes. That's the previous 9 day, yes. 10 CHAIRPERSON: No, no, it's not. 11 MR MPOFU: Sorry. 12 CHAIRPERSON: Oh yes, it is. So 21, it's 13 clear then from what appears in 21 that what appeared in 14 22, appears in 22, was said on the evening of the 15th. 15 MR MPOFU: The 15th. So I – 16 CHAIRPERSON: The first mention of a 17 communication on the 16th is in paragraph 23 – 18 MR MPOFU: That's correct. 19 CHAIRPERSON: - when it talks about the 20 afternoon. That's your point? 21 MR MPOFU: That's correct, Chairperson. 22 CHAIRPERSON: Thank you. 23 MR MPOFU: Comment, General? I'm sorry, 24 I'll just – 25 CHAIRPERSON: Sorry, again it's not as</p>	<p style="text-align: right;">Page 22286</p> <p>1 MR MPOFU: - so I think we should be 2 generous, let's say from 1 minute past 12 to half past 1. 3 CHAIRPERSON: Well, that's on the 4 assumption that the National Commissioner's recollection of 5 the afternoon is correct. 6 MR MPOFU: Well, we'll – 7 CHAIRPERSON: It may be an assumption 8 that some people may not be prepared to make. 9 MR MPOFU: Ja, well she didn't change it 10 in the few months that she spent here. 11 COMMISSIONER HEMRAJ: General, could I 12 just ask you to assist us in tracing this phone call? If 13 for some reason you tried and could not get hold of the 14 National Commissioner, would it be possible that you would 15 have called someone else who was with her, one of her 16 assistants or one of her deputies? 17 GENERAL MBOMBO: It's possible, Mr Chair, 18 I could have tried someone else, even someone in her 19 office. 20 MR MPOFU: Yes, thank you. But you 21 sitting there now, you have no reason to doubt what the 22 National Commissioner says when she says she received a 23 call from you that day, correct? 24 GENERAL MBOMBO: I think it is so, that 25 is the case, Mr Chair.</p>
<p style="text-align: right;">Page 22285</p> <p>1 simple as that. Let's go back to 23. 23, now I know what 2 the minutes say, that this witness told National 3 Commissioner Phiyega before she went to the meeting at 4 1:30, I know she said that. 5 MR MPOFU: Must have. 6 CHAIRPERSON: But of course it's not 7 inconsistent with a subsequent call after she left the 8 meeting, while she's on the way to see Lieutenant Baloyi in 9 hospital, that she may well have contacted the National 10 Commissioner as well – 11 MR MPOFU: No – 12 CHAIRPERSON: But the problem with that 13 theory is it's not reflected in the telephone records. 14 MR MPOFU: Yes, but also the problem with 15 that theory, Chairperson, would be if that had happened, 16 that particular conversation would not be the one reflected 17 in the minutes of the meeting at 1:30. 18 CHAIRPERSON: Yes, that's obviously 19 correct. So there's obviously a communication – whether 20 it's a conversation or an SMS, there's a communication 21 prior to 1:30. That's – 22 MR MPOFU: Between 12 and 1:30. If we 23 take the, what the National Commissioner says on the 24 afternoon – 25 CHAIRPERSON: So I –</p>	<p style="text-align: right;">Page 22287</p> <p>1 MR MPOFU: Okay, I think the mystery is 2 now solved, Chairperson. While you were talking I just 3 asked the witness whether she herself has any reason to 4 doubt the National Commissioner's say-so under oath that 5 she received a call from her in that period, and she has 6 said that she has no reason. 7 CHAIRPERSON: She's satisfied to accept 8 what the National Commissioner says. 9 MR MPOFU: That's correct, Chairperson. 10 CHAIRPERSON: All that takes – 11 MR MPOFU: That's the mystery solved. 12 CHAIRPERSON: That takes it a little bit 13 further. Shall we now take the tea adjournment? 14 MR BUDLENDER SC: Can I just say, just 15 for the sake of completeness, there is a call at 14:27 from 16 General Mbombo to General Phiyega. 17 CHAIRPERSON: So that could be the 18 communication referred to in para 23. 19 MR BUDLENDER SC: That could be. There's 20 a call at 14:27. 21 CHAIRPERSON: So the mystery I'm afraid 22 is still – 23 MR BUDLENDER SC: 14:26. 24 MR MPOFU: No, Chairperson – 25 CHAIRPERSON: Whether we will ever be</p>

<p style="text-align: right;">Page 22288</p> <p>1 able to resolve it fruitfully is a matter that will have to 2 stand over for further discussion. Let's take tea now. 3 MR MPOFU: Okay, Chairperson. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [15:31] CHAIRPERSON: The Commission resumes. I am sorry 6 about the delay but we had housekeeping matters to attend 7 to during the tea adjournment. You're still under oath, 8 Provincial Commissioner. I see you're much warmer than the 9 others. There are complaints that the place is too cold 10 but there's nothing I can do about it but we'll leave it to 11 Mr Mpofo to ask a few questions and raise the temperature. 12 Mr Mpofo. 13 ZUKISWA MBOMBO: s.u.o. 14 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 15 Thank you, Chairperson, I will oblige. General, I found 16 the references that Mr Semenya was asking me for. The 17 first one is day 87, page 19193, line 23 I think. I said 18 to General Annandale, "Generally speaking that minute is a 19 fair reflection of the meeting which you chaired, correct?" 20 And then, "Dit is aanduidend van die vergadering. Dit is 21 meer notas wat geneem is, dis korrek." So he agreed with 22 me that EE was a fair reflection of the meeting. 23 CHAIRPERSON: I'm not sure that that's an 24 entirely accurate translation. I would have thought 25 "aanduidend" probably means indicative of what happened at</p>	<p style="text-align: right;">Page 22290</p> <p>1 CHAIRPERSON: Line? 2 MR MPOFU: Line 9. Okay, I say I will 3 debate it with the other witnesses and so on. Now moving 4 on, Mr Chair, I'm just going to deal with small issues that 5 I want to get out of the way and so on. I'm sure I don't 6 have to give you the exhibit by now, we've dealt with it 7 before. "In exhibit EE there is the reference that 8 Lieutenant-General 9 Mbombo reported that she had spoken to the 10 National Commissioner who indicated that she, this is now 11 the National Commissioner, or rather General Mbombo told 12 her that the stage 3 of the plan would be implemented and 13 that the National Commissioner had indicated that that 14 information had been relayed to the Minister." The 15 Chairperson then gives an explanation what I'm talking 16 about, which is closing remarks. Carry on a bit. Then I 17 agree with the Chairperson, then "She indicated that she 18 will inform the Minister of Police on the current situation 19 and actions that will be taken." The point really I want 20 to make is since you were chairing the meeting, that these 21 remarks were made in your presence and you can confirm that 22 part of the minute." "Voorsitter, dit was in my 23 teenwoordigheid gemaak." So once again he – 24 CHAIRPERSON: Well, the answer simply is, 25 Chairman, that was made in my presence.</p>
<p style="text-align: right;">Page 22289</p> <p>1 the meeting. 2 MR MPOFU: Ja. 3 CHAIRPERSON: It is more notes that were 4 taken, that's correct, that's what he said. So I'm not 5 sure that he's saying – well, he is agreeing in a way - 6 MR MPOFU: He is. 7 CHAIRPERSON: - with Mr Mpofo's question, 8 it's a fair reflection, but he's qualifying it to some 9 extent by saying that it's indicative of the meeting but 10 it's more notes that were taken, which doesn't exclude the 11 possibility of some little wrinkle somewhere, that the 12 notes weren't entirely accurate. 13 MR MPOFU: Ja, my Afrikaans is not that 14 good but I think I know what's the meaning of "Dis korrek." 15 That means, that means what I was saying was true. Even in 16 Bantu education they taught us that much. Okay, anyway 17 then later on at day 90, I think, page 9585 – 18 CHAIRPERSON: What page? 19 MR MPOFU: I'm sorry, it is day 90, 20 Chairperson. 21 CHAIRPERSON: Yes? 22 MR MPOFU: 9585. 23 CHAIRPERSON: 9585. 24 MR MPOFU: I think it starts against the 25 letter –</p>	<p style="text-align: right;">Page 22291</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: He doesn't answer the 3 second part whether he confirms that's part of the minute, 4 unless he does so further down on the page. 5 MR MPOFU: Well, he doesn't dispute it, 6 Chairperson, I'm sure – 7 CHAIRPERSON: No, no, that's correct. He 8 doesn't dispute it – 9 MR MPOFU: Ja. 10 CHAIRPERSON: He doesn't say directly 11 that he confirms it. He merely answers the first part, 12 that these remarks were made in his presence. 13 MR MPOFU: Okay. 14 CHAIRPERSON: It may be that he goes on 15 to deal with it. In any event, the point you make is that 16 presumably if he thought it was incorrect he should've said 17 so and didn't. 18 MR MPOFU: As the chairman of the 19 meeting. Did you get those, the points that I'm making? 20 Once again do you understand that's what I'm going to 21 argue? You don't have to agree with me. 22 CHAIRPERSON: What answer does he give to 23 the point you make from line 11? 24 MR MPOFU: Which is, "And well, I'm sure 25 the purpose of" – okay, it's here, yes. I go on and say,</p>

<p style="text-align: right;">Page 22292</p> <p>1 "And well, I'm sure the purpose of making the remarks I 2 will ask General Mbombo" – which I'm doing now – "but from 3 your point of view did these remarks assure you that at 4 least the operation had the blessings of the National 5 Commissioner and would probably, or rather would also be 6 communicated to the Minister?" then he says, "Nie 7 noodwendig 'blessings' of goedkeuring nie, net dat die 8 Nasionale Kommissaris" – 9 CHAIRPERSON: That does appear to answer 10 the point that you were making. 11 MR MPOFU: Ja – 12 CHAIRPERSON: He says Chairman, not 13 necessarily blessings or approval. 14 MR MPOFU: Ja. 15 CHAIRPERSON: Just that the National 16 Commissioner was – 17 MR MPOFU: Ingelig. 18 CHAIRPERSON: Informed. 19 MR MPOFU: Yes. 20 CHAIRPERSON: In that manner or – 21 MR MPOFU: That's correct. In other 22 words, although he – 23 CHAIRPERSON: Was so informed. 24 MR MPOFU: Yes, so informed, yes. So in 25 other words although he wouldn't go as far as me into</p>	<p style="text-align: right;">Page 22294</p> <p>1 piece of evidence that one day that will be cited. 2 MR SEMENYA SC: Chair would recall we 3 were going down this route at the back of Mr Mpofo saying 4 to the witness, I will demonstrate to you that your answers 5 are untruthful and that you are now giving an ex post facto 6 account because those minutes and the correctness was 7 confirmed by General Annandale. If he still persists with 8 that, he must show us where that appears, alternatively 9 withdraw the attack on the witness. 10 MR MPOFU: Well, Chairperson, there's no 11 reason for me to withdraw and I'm not about to. Major- 12 General Annandale firstly states that the minutes of a 13 meeting that he was chairing are a true reflection or, to 14 be fair, he says are a fair reflection. So if there were 15 inaccuracies in the minutes I'm sure he wouldn't have made 16 that statement. And secondly, although he's not prepared 17 to go as far as me to say that it meant that there were 18 blessings and so on, he confirms that the witness said in 19 his presence the words that appear on that paragraph. 20 CHAIRPERSON: No, only the first half. 21 He says – 22 MR MPOFU: Ja, but that's not the – 23 CHAIRPERSON: He says that, he clearly in 24 the answer given at lines 7 to 19 accepts that the witness 25 told the meeting that the National Commissioner had been so</p>
<p style="text-align: right;">Page 22293</p> <p>1 saying that therefore indicated that there were blessings, 2 but the conveyance of the information he confirmed. Do you 3 understand the point? 4 CHAIRPERSON: Of course General Annandale 5 doesn't then go on to say, doesn't go on to deal with the 6 second part about whether the National Commissioner was 7 going to communicate it to the Minister. 8 MR MPOFU: Yes. 9 CHAIRPERSON: That's still, unless 10 there's something that comes, follows further down on this 11 page, that's still in doubt. 12 MR MPOFU: Yes. No, no, I'm not there 13 either. That's why I said, even when I was quoting the 14 National Commissioner's paragraph 23, leave aside the parts 15 that he changed as to whether – that she changed, as to 16 whether she communicated to the Minister or not. 17 CHAIRPERSON: Does anybody know why this 18 page has got a heading on the screen "Fight between Dali 19 and Schalk?" 20 MS PILLAY: Chairperson, I apologise, I 21 think that's one of my references in the – 22 CHAIRPERSON: A rather free summary of 23 what happened on the page. 24 MR SEMENYA SC: Chair – 25 MR MPOFU: I think it was a prophetic</p>	<p style="text-align: right;">Page 22295</p> <p>1 informed. 2 MR MPOFU: Sure. 3 CHAIRPERSON: But the second half of it 4 that the National Commissioner indicated that she was going 5 to inform the Minister, that's the point really with which 6 the witness quarrels. The witness says she didn't say 7 that. She said what – she said in chief already that what 8 she did say or she thinks she said was that she believed 9 that the National Commissioner would communicate that to 10 the Minister and that's the point that I understand her 11 evidence at the moment, that she's busy – 12 MR MPOFU: Yes. 13 CHAIRPERSON: - disagreeing with or the 14 point she's making. Now, as Mr Semanya says, you rather 15 confidently asserted that her evidence on this point was 16 untrue and you would demonstrate it. Well, Mr Semanya says 17 you haven't demonstrated it yet as far as the second half 18 is concerned and if you're not going to demonstrate it, 19 then he says the allegation that you made to her that she's 20 being untruthful must be withdrawn at least insofar as it 21 relates to the bit about the communication to the Minister. 22 MR MPOFU: No, Chairperson, I heard him 23 properly but I'm not going to withdraw. That's what I'm 24 saying, simply because if – you must remember these 25 extracts must be read together. I'm saying the first one</p>

<p style="text-align: right;">Page 22296</p> <p>1 he says these minutes, the whole EE is a fair reflection of 2 what happened. If that is not enough to show that every 3 word that is in EE is covered by the statement of whether 4 or not it's a fair reflection then nothing ever will be. I 5 say in addition to that and as far as the second piece of 6 evidence or support for my statement, I concede, 7 Chairperson, that the second piece of my supporting 8 evidence does not go as far as to cover the whole EE but 9 the first one covers the entire EE.</p> <p>10 CHAIRPERSON: Well, except that that is 11 to some extent qualified by what happens when you 12 pertinently put to him both halves, what she said that she 13 told the National Commissioner and the statement that she 14 said the National Commissioner would communicate to the 15 Minister. When that's pertinently put to him –</p> <p>16 MR MPOFU: No.</p> <p>17 CHAIRPERSON: - he says not necessarily 18 blessings or approval, just that the National Commissioner 19 was so informed and he specifically does not deal with the 20 second half.</p> <p>21 MR MPOFU: Thank you. At least he does 22 not deal, but let's not elevate it to that he disputes it 23 and it's clear what he's dealing with there is my imputing 24 to him that there was a blessing and I've already conceded 25 that he disputes the issue of the blessing, but insofar as</p>	<p style="text-align: right;">Page 22298</p> <p>1 I'll donate the 50%. I'll rely on the fact that he says it 2 was a fair reflection of the minute only. Okay, for now – 3 but go to page 8626.</p> <p>4 CHAIRPERSON: This is day 86, is it, and 5 what page?</p> <p>6 MR MPOFU: Day 82, I'm sorry, Chair.</p> <p>7 CHAIRPERSON: Day 82, yes?</p> <p>8 MR MPOFU: Day 82.</p> <p>9 CHAIRPERSON: What page?</p> <p>10 MR MPOFU: 8626 from line 14. Ja, from 11 line 14 onwards, cross-examination by Mr Budlender. "Thank 12 you, Chair. General Annandale, on Friday you received 13 certain homework to look at, some minutes, to check that 14 you were satisfied with them. Have you been able to do 15 that?"</p> <p>16 CHAIRPERSON: You don't have to read his 17 reply because it –</p> <p>18 MR MPOFU: Yes, I won't read his reply.</p> <p>19 CHAIRPERSON: We carry on line, it's line 20 25. Mr Budlender then deals with, says, "General, you 21 explained" – let's see the next page – "on Thursday that 22 these are not the minutes of an annual general meeting of 23 an association or the minutes of the board of directors of 24 a company, so they aren't formal and they aren't detailed. 25 I can understand that they will not be comprehensive." And</p>
<p style="text-align: right;">Page 22297</p> <p>1 the –</p> <p>2 CHAIRPERSON: I'm sorry to interrupt you, 3 and what – your question said that these remarks tell you 4 that at least the operation had the blessings of the 5 National Commissioner and would probably or rather would 6 also be communication to the Minister and in dealing with 7 that, he only deals with the first half.</p> <p>8 MR MPOFU: Yes, so 50/50. I'm saying the 9 second one is 50/50, first one is 100% and then forget the 10 50/50, let's deal only with only the first one that he says 11 the minutes are a fair reflection. I'm happy to just rely 12 on that alone so that we eliminate this discussion.</p> <p>13 CHAIRPERSON: I don't think within the 14 report of the Commission at the end of the hearings we will 15 make a specific finding upon this particular point, so it 16 may well be appropriate to move on.</p> <p>17 MR MPOFU: Yes, Chairperson –</p> <p>18 CHAIRPERSON: Subject to the clear 19 understanding that at least on the second half there is 20 what you call 50/50, so that the witness knows that we know 21 that when the point was put pertinently to General 22 Annandale, he only dealt with the first half and not the 23 second.</p> <p>24 MR MPOFU: Yes, fair enough and I'm now 25 abandoning even the 50, I'm just relying on the first.</p>	<p style="text-align: right;">Page 22299</p> <p>1 he says that's correct and then Mr Budlender says, "Can we 2 accept that what is stated in those minutes is correct?" 3 And he says, with the exception of grammar and spelling 4 mistakes –</p> <p>5 MR MPOFU: Ja.</p> <p>6 CHAIRPERSON: And then certain, and then 7 a few other aspects, it is in general correct or they are 8 in general correct, I suppose would be correct English. I 9 say, "Before we move on, what are the few other aspects 10 apart from spelling and grammar?" What does he say to 11 that, line 18 onwards.</p> <p>12 MR MPOFU: Yes, can you move it up?</p> <p>13 CHAIRPERSON: Then he says he'd have to 14 work through the notes to be able to show the Commission 15 about that and then Mr Budlender says he's not particularly 16 interested in –</p> <p>17 MR MPOFU: He moves on to something else.</p> <p>18 Anyway, okay look, all I'm going to say, General, is that 19 at no stage – would you accept that at no stage in this 20 Commission did General Annandale, the Chairperson of the 21 meeting who had described the minutes as a fair reflection 22 of what has happened –</p> <p>23 CHAIRPERSON: I'm sorry to interrupt you.</p> <p>24 Then in line 2, 3 on page 8628 he says, "How many matters 25 are there that are problematic in the minutes?" And he</p>

<p style="text-align: right;">Page 22300</p> <p>1 says, "I can't count them quickly but there are a lot." 2 And then Mr Budlender says, well, he doesn't want to spend 3 a lot of time on this, he's prepared to take his chances 4 and then he moves on, but anyway so we've got the statement 5 that the minutes are a fair reflection which have to be 6 read in conjunction with the later statement that there are 7 a whole lot of matters that are problematic. So I'm not 8 sure how conclusive your demonstration on the point is but 9 is the time being spent on this really likely to produce 10 any dividends? 11 MR MPOFU: Ja, well, okay again I'm 12 donating that one away because it was, it's my fault, the 13 discussion had to do with TT4. The point I really want to 14 make, I don't want us to spend much time on this, would you 15 accept that General Annandale was the chair of the meeting 16 who had remarked that the minutes were a fair reflection of 17 what had happened, has never said that you indicated – 18 whatever he said – that you thought maybe the National 19 Commissioner will relay this to the Minister. Do you 20 accept that? 21 GENERAL MBOMBO: I do not agree with you, 22 firstly because I knew what I had said in that meeting. If 23 there was any other meeting to be held where this was to be 24 corrected then I would have done so. 25 MR MPOFU: Please listen to the question</p>	<p style="text-align: right;">Page 22302</p> <p>1 MR MPOFU: The second bullet, it says, 2 "Lieutenant-General Mbombo phoned Mr Mathunjwa concerning 3 his failure to address the protesters. He reported at the 4 JOC in person where Lieutenant-General Mbombo entered into 5 dialogue with him. She enquired as to why he had gone back 6 on his word. She reminded him of the importance of his 7 commitment and how critical it was that he convinced the 8 protesters to lay down their arms." That's a separate 9 point which Mr Budlender dealt with. The point that I want 10 to deal with is the next point. "Mr Mathunjwa responded by 11 saying that he had been at Lonmin management's offices from 12 the early morning and that they did not want to commit to 13 continued negotiations and that was the reason for him not 14 addressing the protesters." So do you persist with your 15 answer that he had merely said I was waiting there and not 16 told you that actually they had refused to negotiate with 17 him? 18 GENERAL MBOMBO: According to me, he said 19 to me he has been in that office from seven o'clock, he 20 waited for management to talk to him. It was that which 21 delayed him. Yes, I remember now that he said something 22 about negotiations, she contained in negotiations. 23 MR MPOFU: Okay, alright. I won't accuse 24 you of anything more than the fact that you must have made 25 a mistake, so in the end you and I agree that Mr Mathunjwa</p>
<p style="text-align: right;">Page 22301</p> <p>1 carefully. I'm not saying, I'm not saying that what – I'm 2 not here saying that, yes, that what you're saying is true 3 or false or indifferent. I'm asking you a simple question. 4 Do you accept that General Annandale, not you, that General 5 Annandale who chaired the meeting and who had remarked that 6 the minutes reflected the meeting, did not anywhere say 7 that you had indicated that perhaps the National 8 Commissioner would relay the information to the Minister. 9 Yes? 10 GENERAL MBOMBO: Yes, in the way in which 11 you put it. 12 MR MPOFU: Thank you very much. Now, I 13 had promised you to come back to the issue of whether or 14 not you knew that Mr Mathunjwa had been frustrated by 15 management and you said he only said he had been waiting, 16 he never told you that they would not talk to him. Do you 17 remember, and then I couldn't find the reference, I said 18 I'll come back to that. 19 GENERAL MBOMBO: Yes, I do remember that. 20 [15:51] MR MPOFU: Now, if you go to exhibit 21 L158. 22 GENERAL MBOMBO: Page 158? 23 MR MPOFU: L158 yes, exhibit L slide 158. 24 CHAIRPERSON: Slide 158, ja. 25 GENERAL MBOMBO: I get it.</p>	<p style="text-align: right;">Page 22303</p> <p>1 indicated to you that the reason for his, the failure of 2 his mission at least at that stage was the refusal of 3 Lonmin to co-operate with him, which was really the point I 4 was putting to you, correct? 5 MR VAN AS: No, sorry Mr Chairman, that's 6 put far too wide. It's a quantum leap from Lonmin refusing 7 to negotiate with Mr Mathunjwa to his mission being 8 successful and him getting the strikers off the koppie. 9 MR MPOFU: Okay, okay, I'll put it 10 verbatim as it is put in L158. You and I would agree that 11 the reason that Mr Mathunjwa told you for the failure of 12 his mission up to that stage was that Lonmin did not want 13 to commit to continued negotiations, correct? 14 GENERAL MBOMBO: According to me, 15 Chairperson, what he said to me was that he had been long, 16 they arrived at Lonmin offices from seven. What delayed 17 him was Lonmin's management which did not want to talk to 18 them. The negotiations I refer to here, Mr Chairperson, is 19 that Lonmin did not want to negotiate with him and not that 20 Lonmin was not willing to negotiate with the workers. 21 MR MPOFU: So now from a situation where 22 you had forgotten this, you now remember it in that kind of 23 detail, that he was referring to his own negotiations as 24 opposed to what is reflected in the police version. Where 25 do you think this police version came from? It must have</p>

Page 22304

1 come from you, you are the person who was speaking to
 2 Mathunjwa, isn't that so?
 3 GENERAL MBOMBO: I remember very well, it
 4 was me.
 5 MR MPOFU: Yes. So whoever was at Roots
 6 could not have dreamt up what your conversation was with Mr
 7 Mathunjwa. You are the person who had that conversation,
 8 so you are the person who must have said that Mr Mathunjwa
 9 told you that the reason was that Lonmin did not want to
 10 commit to continued negotiations. Is there anyone else
 11 from whom that information might have come apart from you?
 12 GENERAL MBOMBO: Remembering,
 13 Chairperson, that I did not ask him as to what the contents
 14 of the negotiations were. I am saying I, according to me
 15 that was negotiations between him and Lonmin. That is why
 16 I said to him, please go to your people, talk to them as
 17 you had promised.
 18 MR MPOFU: Ja, but General, he told you
 19 that they refused or actually he told you that they ignored
 20 him.
 21 GENERAL MBOMBO: He said so yes, that he
 22 was ignored.
 23 MR MPOFU: Yes and therefore you knew
 24 that the reason or reasons that Mr Mathunjwa had up to that
 25 point been unsuccessful was that Lonmin had ignored him and

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1 that they had refused to commit to negotiation. That you
 2 knew, and that you are the only person who must have told
 3 the Roots crowd that stuff, correct?
 4 GENERAL MBOMBO: Remembering,
 5 Chairperson, that when he spoke to me I wasn't alone there
 6 at the time but to respond to your question, when he spoke
 7 to me about this I did not know as to exactly what he was
 8 referring to and I was not interested in that.
 9 MR MPOFU: Yes, I think now we're getting
 10 closer to the truth. That's the point, you were not
 11 interested, as you are saying now and I am saying to you
 12 that if the Mathunjwa effort was so pivotal as to whether a
 13 deadly operation is going to be carried on or not, it was
 14 very irresponsible of you not to be interested as to why
 15 that effort might or might not be succeeding.
 16 GENERAL MBOMBO: Possibly if I knew at
 17 that time that the promise he was making was still
 18 dependent on negotiations he was to conduct with Lonmin,
 19 that was my problem, I did not know that.
 20 MR MPOFU: Yes, well, we've gone through
 21 that. I'm not going to go through that with you again. I
 22 can accept that you did not know before but now he was
 23 telling you that that is the only stumbling block, so
 24 obviously it was connected. Why would it be a stumbling
 25 block if it was not connected?

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1 GENERAL MBOMBO: He did not say to me, he
 2 did not put it to me as that having been the stumbling
 3 block. He said it was delayed by him, that he could not
 4 have gone to the mountain up to that time.
 5 MR MPOFU: No. I think, Mr Interpreter,
 6 what she said is that he said that he was delayed by them.
 7 MR MAHLANGU: Yes, he was delayed –
 8 MR MPOFU: By them, not by him. Okay.
 9 MR MAHLANGU: Oh no, yes, by them, not
 10 him.
 11 MR MPOFU: Yes and that he gave to you as
 12 the reason, General, why he had not addressed the strikers,
 13 correct?
 14 GENERAL MBOMBO: It is so, but as a
 15 person who did not have those details and what I kept on
 16 saying to him was that you had promised that you would talk
 17 to the workers there at nine o'clock.
 18 MR MPOFU: Well, I don't want to go, to
 19 do a merry-go-round with you. I put it to you that a
 20 responsible person in your position being given that
 21 crucial information about what could possibly avert
 22 violence and being told that Mathunjwa says yes, I wanted
 23 to deliver on my promise to convince the people but the
 24 only reason I have not done so is the lack of co-operation,
 25 or whatever is acceptable to Mr Van As, from Lonmin, that a

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1 reasonable person in your position should have and ought to
 2 have intervened and called your friend Barnard Makwena with
 3 whom you were plotting the previous day –
 4 CHAIRPERSON: No, no, Mr Mpofo, I'm
 5 sorry.
 6 MR MPOFU: Well –
 7 CHAIRPERSON: I'm sorry, I'm not going to
 8 allow you to say that. I know it's late in the afternoon
 9 but –
 10 MR MPOFU: Well, I'll demonstrate it, Mr
 11 Chair. I will demonstrate that on the 14th Mr Makwena and
 12 this witness were conniving about how the people might be
 13 arrested, how they –
 14 CHAIRPERSON: That's a different word,
 15 that's a different word now.
 16 MR MPOFU: Pardon?
 17 CHAIRPERSON: That's a different word
 18 now. Anyway –
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: Let's not go down side
 21 alleys that just –
 22 MR MPOFU: Fair enough.
 23 CHAIRPERSON: - slow things down.
 24 MR MPOFU: Fair enough, okay.
 25 CHAIRPERSON: Concentrate on the main

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1 point.
 2 MR MPOFU: Okay. Thank you, Chairperson,
 3 alright. Without that qualification, that given your
 4 relationship – I'll put it like that – with Mr, given your
 5 relationship with Mr Makwena and the conversation, I think
 6 let's call it that to be neutral, given the contents of the
 7 conversation that you had had with him, what you should
 8 have done was to say, well, if this is the only thing now
 9 that's standing in the way of this possible aversion of
 10 violence, I'm going to call Mr Makwena or anyone else to
 11 stop this nonsense of not, of ignoring Mr Mathunjwa when he
 12 is our last hope to save lives.

13 GENERAL MBOMBO: If I knew for certain as
 14 you are saying now, I would have tried that one as well but
 15 Mr Mathunjwa himself, he could have easily said to me, I'm
 16 not prepared to go to the koppie there unless, until I've
 17 spoken to these people. I wouldn't have forced him to.

18 MR MPOFU: No, you couldn't have. Mr
 19 Mathunjwa's evidence is that you said, which you have now
 20 confirmed a few minutes ago, that you were not interested
 21 in that.

22 GENERAL MBOMBO: If he wanted me to know,
 23 Chairperson, that his going up to the mountain depended on
 24 the management, he would have made me understand that. He
 25 could have easily said I'm not prepared to go there until

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1 they talk to me.
 2 MR MPOFU: No General, please, really.
 3 You have a person who says to you, you say to him, you're
 4 the one who raises the issue, why did you not go and
 5 address the strikers. He says to you, because I was
 6 ignored and the people refused to negotiate. And you say
 7 I'm not interested in that, on his evidence and yours. Now
 8 please, just – how can you say that that conversation did
 9 not indicate that the only reason why – he didn't give you
 10 any other reasons, the only reason why he has not addressed
 11 the protesters is because of what he told you. Please,
 12 let's not –

13 GENERAL MBOMBO: There will not be any
 14 other thing, Mr Chairperson, more than, Mr Chairperson,
 15 that I knew, if I'd known that his promise to go up there
 16 depended on what, on Lonmin.

17 CHAIRPERSON: You see the difficulty with
 18 that answer is if one reads the last sentence of the second
 19 bullet in slide 158 in exhibit L and then the third bullet,
 20 one sees what happened according to what you obviously told
 21 the people at Roots. Let's read it together. "Mr
 22 Mathunjwa responded" – this is when you reminded him,
 23 sorry, I should have read the previous paragraph. You
 24 asked why he'd gone back on his word. You reminded him of
 25 the importance of his commitment and how critical it was

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1 that he convinces the protesters to lay down their arms. I
 2 take it all this is correct this is what's in the slide.
 3 It's what you told Roots, the people at Roots.

4 GENERAL MBOMBO: It is so, Chairperson.

5 CHAIRPERSON: Right, so then Mr Mathunjwa
 6 responds. You say to him your commitment is important,
 7 it's very critical you convince the protesters to lay down
 8 their arms. So his answer is that he'd been at the Lonmin
 9 management's office from the early morning and they didn't
 10 want to commit to continued negotiation and that that was
 11 the reason for him not addressing the protesters. So he's
 12 saying to you expressly, I'm not going because, the reason
 13 I'm not going is because they won't commit to continued
 14 negotiations. And then the next bullet says, "The
 15 Provincial Commissioner reminded him her concern was with
 16 his commitment to finding a peaceful solution, that he had
 17 to honour his commitment to convince the group to disarm."
 18 So that is saying that, is telling us that what you said
 19 was I'm not interested in the fact that they don't want to
 20 commit to continued negotiations, I'm not interested that
 21 that's the reason that you're not addressing the
 22 protesters, I say you must go, you're committed to go,
 23 that's my concern and you've got to honour your commitment.
 24 Now surely, without saying it in as many words expressly,
 25 he was conveying to you unmistakably that he wasn't going

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1 because there wasn't a commitment to continued negotiations
 2 from the side of Lonmin, that was why he wasn't going to
 3 speak to the protesters and you were saying to him, well,
 4 that's what you say but my concern is your commitment to
 5 finding a peaceful solution and you must go. That's why he
 6 hadn't gone and clearly if you wanted him to go and it was
 7 clearly important for you that he should go because it was
 8 important that the protesters be convinced to lay down
 9 their arms, surely you then should've said to him, well,
 10 hang on a second, let's go together to Lonmin or I will go
 11 to Lonmin by myself, I'll speak to them and tell how
 12 important it is that this commitment be given so that the
 13 very thing we all want to achieve, namely the laying down
 14 of their arms, can happen. What do you say to that?

15 GENERAL MBOMBO: Chairperson, if he had
 16 said to me clearly that he would not go up to the koppie,
 17 he would first have to talk to these people, I would not
 18 have forced him to go up there, Mr Chairperson, because
 19 then I would have known that his commit - his going up
 20 there would have depended on what the Lonmin people say.
 21 According to me, Mr Chairperson, the time I spoke to him I
 22 was convinced that he would be the person able to talk to
 23 those people according to my understanding.

24 CHAIRPERSON: - answer to my question.
 25 Mr Mpofo, it's after four o'clock, would you like to

1 continue the discussion with the witness on this point?
2 MR MPOFU: Not on this point,
3 Chairperson. I'll simply argue at the end that that is
4 another blatant and deliberate untruth.
5 CHAIRPERSON: Well, you don't have to say
6 that. In other words what you, you're moving on to the
7 next point which you'll do tomorrow at nine o'clock. I
8 want to announce that for reasons that are not necessary
9 for me mention, we will be adjourning at 12:30 tomorrow but
10 we will try to start promptly at nine o'clock tomorrow
11 morning. The Commission now adjourns.
12 [COMMISSION ADJOURNED]
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