

# 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 186

17 FEBRUARY 2014

PAGES 22388 TO 22579



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1 [PROCEEDINGS ON 17 FEBRUARY 2014]  
 2 [09:10] CHAIRPERSON: Mr Mpfu, the witness, and  
 3 I, will find it very disturbing if your cell phones go off  
 4 during the course of his cross-examination. The Commission  
 5 resumes. Provincial Commissioner, you're still under oath.  
 6 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 7 CHAIRPERSON: Mr Mpfu?  
 8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 9 Thank you very much, Chairperson. Good morning, General.  
 10 GENERAL MBOMBO: Good morning. Morning,  
 11 Counsel.  
 12 MR MPOFU: I just want to round off a few  
 13 small topics before we deal with what is going to be quite  
 14 a biggish topic and hopefully the last one. We were, or  
 15 rather on Friday we dealt a little bit with your meeting  
 16 with Mr Mokwena. I just want to recap, and you'll agree  
 17 with me, where you agree or disagree where you do, the  
 18 issue about the main topics that you wanted to raise, or  
 19 that you did raise in that meeting, you've already  
 20 indicated that one of the issues you wanted to discuss was  
 21 to ask them to communicate to the employees via some  
 22 pamphlets – well, you didn't prescribe the pamphlets, but  
 23 what you wanted to do was for them to communicate with  
 24 their employees that they should return to work or there  
 25 will be consequences, something to that effect, correct?

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1 GENERAL MBOMBO: I was just making an  
 2 example.  
 3 MR MPOFU: No, no, sorry, I don't  
 4 understand that answer. Was one of the intentions for you  
 5 to call for that meeting so that you could say to Lonmin  
 6 you must tell these people that they must come back or else  
 7 there will be consequences?  
 8 GENERAL MBOMBO: My intention,  
 9 Chairperson, as I've already stated, was that to encourage  
 10 them to talk to their people. What you have just mentioned  
 11 was just an example I was giving.  
 12 MR MPOFU: No, General, I don't want us  
 13 to go back to the issue of your failure to accept their  
 14 invitation to give them advice and so on. We've covered  
 15 that extensively. I'm asking you whether one of your  
 16 objectives was to ask them to communicate in whatever  
 17 manner the message that they should not, or rather if they  
 18 don't come back there will be consequences. It's a simple  
 19 question. Was that one of your objectives?  
 20 GENERAL MBOMBO: No, I don't agree with  
 21 that because the example I gave was that in terms of your  
 22 prescripts you will decide how to do it and then I gave the  
 23 example of what you are now mentioning.  
 24 MR MPOFU: Ja, well then it would have  
 25 been a fruitless meeting because you were saying they must

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1 decide how they do it and they were saying we will be  
 2 guided by you on what to do.  
 3 MR VAN AS: Sorry, Mr Chairperson, that's  
 4 not what was said. What was said, we won't take any steps  
 5 without discussing the matter with you and taking guidance  
 6 from you. They didn't say that they will be guided as to  
 7 what steps were going to be taken by the Provincial  
 8 Commissioner.  
 9 MR MPOFU: Chairperson, if you go to page  
 10 3 of HHH – or rather JJJ192, that's exactly the words that  
 11 is used. Mr Mokwena, "So if you ask what our plans are,  
 12 our plans are we await your team to guide us and say we can  
 13 do what [inaudible]." That's exactly what he said. So  
 14 that's why I'm saying it's a circular, it would be having a  
 15 circular meeting. The one side would be saying well our  
 16 plans are that we'll be guided by you, and you say no, our  
 17 plans are that you must tell us what you're going to do.  
 18 Do you understand that problem, General?  
 19 GENERAL MBOMBO: But Chairperson, I've  
 20 already responded to this question. I explained thoroughly  
 21 that according to me when Mr Mokwena said so he was saying  
 22 the guidance that he is expecting from me pertains to  
 23 security issues, pertaining to what their decision is what  
 24 they were going to do.  
 25 CHAIRPERSON: The question has been asked

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1 and answered, Mr Van As, so I don't have to rule on your  
 2 objection.  
 3 MR VAN AS: Thank you, Mr Chairperson.  
 4 CHAIRPERSON: Proceed, Mr Mpfu.  
 5 MR MPOFU: Thank you. And you even  
 6 mentioned to say that they must communicate the no-work-no-  
 7 pay rule to the workers, correct?  
 8 GENERAL MBOMBO: It was some of the  
 9 examples I was giving.  
 10 MR MPOFU: You would concede that all  
 11 those issues, well the no-work-no-pay rule in particular,  
 12 those are labour issues between an employer and an  
 13 employee, correct? They're not necessarily policing  
 14 issues.  
 15 GENERAL MBOMBO: I thought those are some  
 16 of the things that they could do because there were in  
 17 terms of their policies.  
 18 MR MPOFU: How did you know their labour  
 19 policies?  
 20 GENERAL MBOMBO: As people that have  
 21 employees.  
 22 MR MPOFU: Okay.  
 23 CHAIRPERSON: It normally applies in a  
 24 strike. An employer doesn't normally pay his employees to  
 25 strike. So –

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1 MR MPOFU: Yes, that's true, Chairperson,  
 2 but it's not the point. The point I'm making is that she,  
 3 a policeman, was advising Lonmin –  
 4 CHAIRPERSON: A policewoman.  
 5 MR MPOFU: - about those issues.  
 6 CHAIRPERSON: Policewoman.  
 7 MR MPOFU: Yes.  
 8 CHAIRPERSON: Well, I'm not sure that she  
 9 advised them about no-work-no-pay, but anyway, carry on  
 10 with your cross-examination.  
 11 MR MPOFU: Well, she has just accepted –  
 12 maybe the Chairperson wants to contest the witness's  
 13 answer. Did you advise them about no-work-no-pay?  
 14 GENERAL MBOMBO: Not that way,  
 15 Chairperson. I was giving an example –  
 16 MR MPOFU: Ja, in making that example did  
 17 you say they must apply the no-work-no-pay rule?  
 18 GENERAL MBOMBO: It would have been for  
 19 them to decide to do that.  
 20 MR MPOFU: No, General, please answer my  
 21 question. You're just wasting my time now. Did you – I  
 22 know it was going to be their decision –  
 23 MR SEMENYA SC: No, Chair –  
 24 MR MPOFU: Did you advice them to apply  
 25 the no-work-no-pay in respect of which they were going to

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1 make a decision, yes or no?  
 2 MR SEMENYA SC: We need to protect the  
 3 witness. Mr Mpofo can't say the witness is wasting his  
 4 time.  
 5 CHAIRPERSON: [Microphone off, inaudible]  
 6 MR SEMENYA SC: Mr Mpofo cannot say that  
 7 the witness is wasting his time. That's not courteous –  
 8 CHAIRPERSON: I think that may be a two-  
 9 edged sword. I would avoid that sort of point if I were  
 10 you, but carry on with your cross-examination and don't  
 11 make comments of that sort again.  
 12 MR MPOFU: Yes, alright. Okay,  
 13 Chairperson. General, okay, don't waste the time of the  
 14 Commission then. Can you just answer a simple question –  
 15 CHAIRPERSON: Mr Mpofo, I said you  
 16 mustn't make comments of that kind at all. Would you  
 17 kindly desist in future? Don't make comments. Just ask  
 18 your questions.  
 19 MR MPOFU: Okay, well don't –  
 20 CHAIRPERSON: We'll get through the  
 21 cross-examination sooner.  
 22 MR MPOFU: General, you are evading my  
 23 question, okay?  
 24 CHAIRPERSON: That's another comment.  
 25 It's for me to decide whether there's evasion. Just ask

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1 questions and let's carry on –  
 2 MR MPOFU: Well, Chairperson, I –  
 3 CHAIRPERSON: We'll get to the end much –  
 4 yes, Mr Mpofo, to say to the witness you're evading my  
 5 question is a comment, it's not a question. To say to the  
 6 witness you're wasting the Commission's time is a comment,  
 7 not a question. You're here to ask questions, not to make  
 8 comments. Please proceed appropriately.  
 9 MR MPOFU: General Mbombo, did you or did  
 10 you not mention the word "no-work-no-pay" to Mr Mokwena?  
 11 GENERAL MBOMBO: I mentioned such word,  
 12 Chairperson.  
 13 MR MPOFU: Okay, thank you. I just  
 14 wanted to clarify that. And you accept that that topic  
 15 deals with a labour issue between an employer and employee?  
 16 GENERAL MBOMBO: I think so. I think so,  
 17 Chairperson.  
 18 MR MPOFU: Thank you. Now apart from the  
 19 no-work-no-pay, another topic that you covered in that  
 20 meeting was to try and do away with the perception that  
 21 management was colluding with AMCU, correct? That was  
 22 another topic which you discussed.  
 23 GENERAL MBOMBO: I think we did speak  
 24 about that, yes.  
 25 MR MPOFU: Yes, and would you agree that

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1 that also is not a policing matter, whether or not the  
 2 management is siding with AMCU or whatever? Would you  
 3 agree?  
 4 GENERAL MBOMBO: Remembering, Mr  
 5 Chairperson, that this was not a formal meeting. This was  
 6 just a discussion.  
 7 MR MPOFU: General, please, I know I'm  
 8 not allowed to make comments, but did you – or rather, do  
 9 you accept that whether it was a meeting or whatever  
 10 discussion you were having, that the – well, you've already  
 11 accepted that one of the topics that you wanted to cover  
 12 was this perception. The question I'm asking you now is do  
 13 you accept that the question of whether or not management  
 14 was siding with AMCU or not, or colluding with AMCU, was  
 15 not a policing matter? Yes or no?  
 16 GENERAL MBOMBO: It is so.  
 17 MR MPOFU: Thank you. A third topic that  
 18 was raised in that meeting was the issue of political  
 19 pressure which had been put on the Minister and  
 20 communicated downwards to the National Commissioner and  
 21 yourself, agreed?  
 22 GENERAL MBOMBO: I'm not sure of the  
 23 pressure that you refer to, but I do know that there were  
 24 concerns raised.  
 25 MR MPOFU: Okay, once again did you –

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1 CHAIRPERSON: The word "pressure" was  
 2 used. I mean I know you say it doesn't mean pressure, but  
 3 the word "pressurised" was used. You've said that you  
 4 understood that the, from the National Commissioner, that  
 5 Mr Ramaphosa had pressurised the Minister and you also  
 6 mentioned that Mr Ramaphosa was a high political  
 7 personality and so on. So you obviously dealt with the  
 8 topic, so I don't think it helps just to get away from  
 9 that. So Mr Mpofo is quite right in putting to you that  
 10 the question of political pressure being brought to bear on  
 11 the Minister and that being communicated, not necessarily  
 12 the pressure communicated but the fact that it had  
 13 allegedly happened was communicated, the National  
 14 Commissioner communicated it to you. That question as an  
 15 introductory question is obviously correct.

16 MR MPOFU: That's correct, Chairperson.

17 GENERAL MBOMBO: As I'm saying,  
 18 Chairperson, that it's true that the Minister mentioned  
 19 that Mr Ramaphosa phoned him, but I mentioned before this  
 20 Commission, Chairperson, that it was not the Minister who  
 21 used the word "pressure." I used the word "pressure"  
 22 because this is just my ordinary way of talking, my usual  
 23 way of saying things when people tell me about concerns  
 24 they have.

25 MR MPOFU: Alright, we'll come back to

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1 that, but at least we agree that that was a topic that was  
 2 discussed. We'll come back to whether you perceived it as  
 3 pressure or not. For now all I'm asking you is that that  
 4 was one of the topics that was covered in that meeting,  
 5 correct?

6 GENERAL MBOMBO: It is correct, Sir.

7 MR MPOFU: And similarly with the others  
 8 would you agree that that is not a matter that should  
 9 concern a person whose main focus is policing, whether or  
 10 not Mr Ramaphosa "pressurised" the Minister, that that is  
 11 not strictly speaking a policing matter, correct?

12 GENERAL MBOMBO: As you say, yes,  
 13 Chairperson.

14 MR MPOFU: Thank you. And then the  
 15 fourth topic that you wanted to, that you did cover in the  
 16 meeting was, to use your words, your intention to kill this  
 17 thing because of the political pressure, among other  
 18 reasons, correct?

19 GENERAL MBOMBO: As I have already  
 20 indicated, the word "kill" that I used, Chairperson, I was  
 21 referring to that this matter should be corrected at the  
 22 place where it is.

23 CHAIRPERSON: That's not the thrust of Mr  
 24 Mpofo's question. I don't think Mr Mpofo suggests you used  
 25 the word "kill" literally, you used it metaphorically. I'm

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1 sure he accepts that, but the thrust of his question was  
 2 the desire to bring the matter to conclusion soon, quickly,  
 3 was prompted by political considerations which you  
 4 mentioned to Mr Mokwena. That's the thrust of his question  
 5 and you haven't answered that.

6 MR MPOFU: That's correct, Chairperson.

7 GENERAL MBOMBO: Chairperson, my wish was  
 8 that this matter should be solved as soon as it is possible  
 9 where it is, was because there were people that had already  
 10 died in the matter and that there were people there who  
 11 were not able to work as they wished and people who were  
 12 not, who felt unsafe.

13 MR MPOFU: General, that may well be so,  
 14 but please answer the question that I've put to you and the  
 15 Chairperson clarified. The -

16 CHAIRPERSON: Perhaps you could remind  
 17 her what she said in that regard.

18 MR MPOFU: Yes.

19 CHAIRPERSON: The comment that she made -

20 MR MPOFU: That she made -

21 CHAIRPERSON: - upon which you based the  
 22 question.

23 MR MPOFU: Yes, thank you, Chairperson.  
 24 I will do just that. Remember the question is that the -  
 25 I'm saying that your decision to move at a particular speed

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1 or time was directly linked to the political  
 2 considerations. I just want you to understand that's where  
 3 I'm going. I'm now, as the Chairperson has correctly asked  
 4 me, I'm going to read you your words to Mr Mokwena. You  
 5 say that, "But when I was," meaning yourself, "when I was  
 6 speaking to Minister Mthethwa he mentioned a name who" -

7 CHAIRPERSON: I'm sorry, Mr Mpofo -

8 MR MPOFU: Oh, I'm sorry, Chairperson -

9 CHAIRPERSON: Sorry to interrupt you. I  
 10 think you should give the page so that it can be put on the  
 11 screen.

12 MR MPOFU: Page 9, JJJ192, sorry,  
 13 Chairperson.

14 CHAIRPERSON: What's the page and the  
 15 line number?

16 MR MPOFU: The very last line on page 9,  
 17 last two lines. In fact so that we don't come back to this  
 18 again, I'll read, Chairperson, from line 22. It will cover  
 19 two points.

20 CHAIRPERSON: Yes, yes, I think that's  
 21 sensible.

22 MR MPOFU: Yes, thank you. This is you  
 23 now, Commissioner, "You will clear yourself by ensuring  
 24 that you defuse, you give out information that is related  
 25 to this thing and we are able to actually act on that

<p style="text-align: right;">Page 22400</p> <p>1 information" - this is the important part – "because I 2 think even when we were trying to talk about it last night 3 she," and that "she" is the National Commissioner, "she 4 asked me a question that says, 'You know, well, this one 5 I'm not sure because the Lonmin shareholders, I do not know 6 much about them.'" Mr Mokwena says, "Yes." Then you say, 7 "But when I was speaking to the Minister Mthethwa he 8 mentioned a name to me that is also calling him, that is 9 pressurising him. Unfortunately it's a politically high," 10 I suppose you wanted to say politically high-placed 11 individual, or words to that effect, correct? 12 GENERAL MBOMBO: It should be, yes. 13 MR MPOFU: And then Mr Mokwena says, "It 14 is Cyril?" and then you say, "Cyril Ramaphosa, yes. Now 15 remember now when I was talking to the National 16 Commissioner last night she said to me, 'Look General, who 17 are the shareholders here?' So I said I do not know the 18 shareholders, but I know that when I spoke to the Minister 19 he mentioned Cyril." 20 [09:29] And then she says, "Now I got it," and we'll come 21 back – that's the part that I said we'll come back to. 22 "You know why she say she got it?" This is you now, 23 "Remember, Cyril was in the Appeal Committee of Malema, 24 remember?" "Yes," says Mokwena, and then you say, "And he 25 was very strong in terms of the decision that was made."</p>	<p style="text-align: right;">Page 22402</p> <p>1 being attributed directly to the political considerations 2 which you said you needed to take into account? Do you 3 accept that? 4 GENERAL MBOMBO: I hear you, Sir - 5 MR MPOFU: No, I know you hear me - 6 GENERAL MBOMBO: - as it is written 7 there. 8 MR MPOFU: Yes, but do you accept, do you 9 agree with what I'm saying? 10 GENERAL MBOMBO: I do not want to agree 11 totally to this, Chairperson. 12 MR MPOFU: Okay, the part that you agree 13 with me, does it involve the fact that the "hence" connects 14 the intention to kill this thing, with what you just said 15 in the previous breath, which is that you have to take into 16 account political considerations? 17 GENERAL MBOMBO: I am not sure of that. 18 CHAIRPERSON: Mr Mpofu, are you now 19 leaving the quotation, or are you going on? 20 MR MPOFU: I'm carrying on, Chairperson. 21 CHAIRPERSON: Alright. 22 MR MPOFU: Right, so you say, "We need to 23 kill this thing." "Hence we need to kill this thing." 24 "Immediately, yes," says Mr Mokwena, and then you say – and 25 listen again carefully because again there's a connection –</p>
<p style="text-align: right;">Page 22401</p> <p>1 Mr Mokwena, "Yes." "And remember that in Impala Malema 2 came out with our Premier and spoke to those people about 3 that day should make their demands but in a way that, and 4 after that we, ourselves as the police, we managed, you 5 know, managed the situation after Malema came. Now our 6 discussion with the National Commissioner," that means you 7 and the National Commissioner, "was around this thing that 8 say is this thing now happening such that again Malema come 9 and defuse this thing, so that it becomes as if Malema has 10 taken charge of the mining, the mine." Mr Mokwena says, 11 "Yes." Then you say, "Once again remember Malema's view 12 that the mines should be," Mr Mokwena, "Nationalised," and 13 then you say, "Nationalised and all that. So it has got a 14 serious political connotation that we need to take into 15 account." Underline those words. Alright. "So it has got 16 a serious political connotation that we need to take into 17 account, but," you go on, "which we need to find a way of 18 defusing, hence" – and the word "hence" is what causes the 19 connection – "hence I just told these guys that we need to 20 act such that we kill this thing." Do you see the 21 connection? "Hence," so you say we have to take into 22 account the political thing and defuse, "hence I told these 23 guys that we need to act such that we kill this thing." Do 24 you understand that that is a direct connection of the 25 intention to kill this thing metaphorically or otherwise,</p>	<p style="text-align: right;">Page 22403</p> <p>1 "When tomorrow we have to move in, if today we do not find 2 cooperation in these people we need to move in such that we 3 kill it because," okay, there's another important word, 4 "because we need to protect a situation where any jick and 5 jiff from a political" – 6 CHAIRPERSON: That should be Jack and 7 Jill, I think was – 8 MR MPOFU: It should be Jack and Jill, 9 yes – "Jack and Jill from a political area," and again 10 I'll, the words probably were "can come and resolve it and 11 get the limelight," or something to that effect, but it 12 doesn't matter. The point I'm making to you is that you've 13 used the word "hence" and now you use the word "because". 14 So every time you're talking about killing the thing – and 15 I'm prepared to accept that that is metaphorical – you are 16 linking it directly to the political question. Do you 17 agree with that, General Mbombo? 18 GENERAL MBOMBO: I do not agree with it, 19 Chairperson. 20 MR MPOFU: Do you know the meaning of the 21 words "hence" and "because" which you used? 22 GENERAL MBOMBO: Maybe it's because, 23 maybe it's those words that I don't understand clearly. 24 MR MPOFU: But you used the words, 25 General, so we need your assistance.</p>

<p style="text-align: right;">Page 22404</p> <p>1 GENERAL MBOMBO: When I say I do not 2 agree with you, Chairperson, everything that I was saying 3 there, this was an ordinary discussion. Whoever it brought 4 in, my main idea, my intention was that an endeavour should 5 be made to brought this thing to an end then.</p> <p>6 MR MPOFU: General Mbombo, please, I'm 7 going to try again, Madam. I need your assistance. I'm 8 saying to you, you on two occasions now which I've read out 9 to you, you have used the word that "There's this political 10 consideration, hence we must kill it," and then you say 11 again, "We must move in tomorrow because we do not want 12 people from a political arena coming to take advantage," or 13 whatever the rest of the sentence is. Now I'm asking you a 14 simple question. Do you accept that in those two 15 statements you, General Mbombo, are using those words, were 16 linking causally and directly the issue of the political 17 considerations to the "killing of the thing"?</p> <p>18 GENERAL MBOMBO: That's why I say first 19 of all I'm not very sure of – let me say I do not agree 20 with you altogether.</p> <p>21 MR MPOFU: Okay, then we get to that 22 problem again. I think if you use the word "altogether" it 23 could be interpreted to mean that she doesn't agree 24 completely. I think she used the word "entirely."</p> <p>25 MR MAHLANGU: Yes, it would, can also be</p>	<p style="text-align: right;">Page 22406</p> <p>1 MR MPOFU: Yes, but in this case 2 fortunately this was not a matter of speculation. Here you 3 with your own words, you were referring to a person whose 4 involvement previously had brought about a solution, 5 correct?</p> <p>6 GENERAL MBOMBO: It is correct.</p> <p>7 MR MPOFU: So we can put aside the issue 8 of people who might come and spoil the issue. Not only 9 were you referring to somebody who had brought about a 10 solution, according to the discussion between you and the 11 National Commissioner that is exactly what you did not 12 want. You did not want that politician to bring a solution 13 again, as you said, that "This thing now happening such 14 that again Malema come and defuse this thing." So you 15 didn't want this thing to be defused, correct?</p> <p>16 GENERAL MBOMBO: Not altogether so, 17 Chairperson.</p> <p>18 MR MPOFU: General –</p> <p>19 GENERAL MBOMBO: Maybe let me explain why 20 I say this.</p> <p>21 MR MPOFU: No, I understand what you are 22 saying. Again, once again you are using this "you don't 23 agree entirely" type of answer. I'm saying that does the 24 part where you agree with me confirm that you did not want 25 Mr Malema to come and defuse this thing, as you put it, "so</p>
<p style="text-align: right;">Page 22405</p> <p>1 interpreted as entirely.</p> <p>2 MR MPOFU: Okay, so you partly agree with 3 me. Now let's just forget the part where you don't agree 4 with me. Let's concentrate on the part where you agree 5 with me. Does that part involve an understanding on your 6 part or an agreement on your part that the words "hence" 7 and "because" link the killing, the finalisation of the 8 operation – let's use a neutral word – and the political 9 consideration?</p> <p>10 GENERAL MBOMBO: Where I agree with you, 11 Chairperson, is that indeed yes, I did use these words. 12 With me these words only indicated the urgency with which 13 we had to handle this matter.</p> <p>14 MR MPOFU: Yes, that I accept. I accept 15 that, General, wholeheartedly, entirely, that you were 16 saying things must be speeded up. All I'm saying is that 17 you were saying things must be speeded up, to use your 18 words, "because we need to protect a situation where any 19 Jack and Jill from a political area can do what they like." 20 Agreed?</p> <p>21 GENERAL MBOMBO: What I was trying to 22 explain there, Chairperson, because in many occasions where 23 you allow a number of people to come and get involved in 24 trying to solve a situation, some would cause it in fact to 25 escalate instead of bringing a solution.</p>	<p style="text-align: right;">Page 22407</p> <p>1 that it becomes as if Malema has taken charge of the 2 mining." That's what, your discussion with the National 3 Commissioner concerned that topic and those were your 4 concerns and you wanted to prevent that, correct?</p> <p>5 GENERAL MBOMBO: I am not denying that 6 that was discussed. We did talk about it, but it does not 7 mean that if he had come and he had a solution, that he 8 would have been denied.</p> <p>9 MR MPOFU: No, please, General, but the 10 reason why you had to kill this thing is exactly to make 11 sure that that does not happen, according to you, or the 12 other part which I read to you many times, correct?</p> <p>13 GENERAL MBOMBO: The idea was to 14 [inaudible] so that we come to a solution to this thing 15 before a lot of trouble is caused.</p> <p>16 MR MPOFU: And is it something that 17 should concern you as the police what Mr Cyril Ramaphosa 18 did or did not do in a disciplinary hearing of a political 19 organisation?</p> <p>20 GENERAL MBOMBO: No, it is not so.</p> <p>21 MR MPOFU: And yet while you agree that 22 that is something that should not come into play, that is 23 exactly what you considered as an important factor in this 24 whole saga, correct?</p> <p>25 GENERAL MBOMBO: If you'd just repeat the</p>

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1 question, Sir?

2 MR MPOFU: You considered it an important

3 fact worth mentioning that the person who according to you

4 was pressurising the Minister was also in the Appeal

5 Committee of Malema, which is reference to a disciplinary

6 hearing in a political organisation, the ANC, correct?

7 GENERAL MBOMBO: It is correct, yes.

8 MR MPOFU: Yes, now I'm saying that was

9 it – well, you've already agreed that that is not something

10 you should have taken into account. I'm saying, and yet

11 while you accept that it's a matter of a political

12 organisation, while you accept that it's a matter that

13 should play no role in your considerations, you placed it

14 as one of the issues that were important, an important

15 consideration for your decision to kill this thing. Do you

16 agree?

17 GENERAL MBOMBO: I'm not sure where you

18 put it as though, as if I considered it as important in

19 making my decision.

20 MR MPOFU: General, you know, the worse

21 thing about this is that these are your words. You are the

22 person who made all these connections. You say Minister

23 calls you, Minister says I'm being pressurised by Mr

24 Ramaphosa, and then you say that – you on your own say,

25 "Remember Cyril was in the Appeal Committee of Malema,

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1 remember?" In other words you are making the connection,

2 not anyone else, not Mr Mokwena, not the Minister, not the

3 National Commissioner, but you are making that connection,

4 correct?

5 GENERAL MBOMBO: As you say yes, that was

6 said.

7 MR MPOFU: Then you say that the source

8 of the pressure, or rather, "The source of the concern,

9 remember that this person caused a solution to be found in

10 Impala," correct?

11 GENERAL MBOMBO: It is so.

12 MR MPOFU: And you say that the National

13 Commissioner, you and the National Commissioner decided,

14 had a discussion around this thing that once again that

15 person might come and defuse this thing and then looks like

16 they are in charge of mining, correct? You said that.

17 GENERAL MBOMBO: I remember saying that.

18 MR MPOFU: Yes, and you also made a

19 connection between that potential to defuse the situation,

20 which was unwanted, and the fact that the person who was

21 going to bring that is a believer in the nationalisation of

22 mines. You made that connection, correct?

23 GENERAL MBOMBO: It is correct.

24 MR MPOFU: And having made that

25 connection you then made the statement that "This thing

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1 therefore has got serious political connotations that we

2 need to take into account." You made that statement,

3 correct?

4 GENERAL MBOMBO: It's correct, Sir.

5 MR MPOFU: And you then connected it with

6 the word "hence as I said, this thing must be killed." You

7 made the connection again. That final connection now

8 between all these things and the operation was made by you,

9 correct?

10 GENERAL MBOMBO: I hear you, Sir.

11 MR MPOFU: No, but I know you –

12 CHAIRPERSON: It's not a question of just

13 hearing Mr Mpofu. What Mr Mpofu is putting to you is you

14 yourself said that "This is a serious political connotation

15 we need to take into account," said in the context of the

16 necessity to act soon to deal with the matter the following

17 day. Now what Mr Mpofu is suggesting to you, as Mr

18 Budlender had done previously, is that by saying "we need

19 to take into account" you were in effect saying you did

20 take it into account. You took serious political

21 connotations into account as reasons, not necessarily the

22 only reasons, but as reasons for acting, immediately acting

23 the following day. That's what Mr Mpofu is putting to you.

24 It's not a question of whether you hear him. Do you accept

25 the correctness of what he's putting to you?

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1 GENERAL MBOMBO: Chairperson, I agree

2 that this which is written there, I said it, but in the

3 context in which it was said I do not agree with counsel.

4 MR MPOFU: No, so once again she said she

5 doesn't agree entirely.

6 GENERAL MBOMBO: Correct, I do not agree

7 with it entirely.

8 CHAIRPERSON: Mr Mpofu, I must say I

9 think that you've got enough on record now to argue the

10 point you want to argue at the end of the day. We're going

11 around in circles a bit. I'm not apportioning blame to

12 anybody, but we are going around in circles and I think all

13 the material you want is on record.

14 MR MPOFU: It's on record.

15 CHAIRPERSON: Mr Semenya will presumably

16 argue that the witness doesn't agree and you can argue

17 where in your contention one cannot agree with what she

18 says.

19 MR MPOFU: Yes, fair enough. That is

20 true, Chairperson. Okay, I'll go to a point that's related

21 to this, but I accept what the Chairperson is saying. It

22 would seem that when the Minister – and you can tell me if

23 you got the same impression – when the Minister – okay, let

24 me start it like this. Is it a usual occurrence that a

25 Minister would phone you as Provincial Commissioner and

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1 share with you issues of political pressure or concern, or  
 2 whatever you call it, or is it – in fact let me put it  
 3 directly; it's not something that happens usually. Is that  
 4 correct?  
 5 GENERAL MBOMBO: It is correct,  
 6 Chairperson.  
 7 MR MPOFU: So for the Minister to pick up  
 8 the phone and basically jump the National Commissioner –  
 9 and I know that he did also speak to her, but speak to you  
 10 directly, is not something that happens all the time,  
 11 correct?  
 12 GENERAL MBOMBO: It is do.  
 13 MR MPOFU: So the Minister took this  
 14 matter so seriously that he saw it fit to call you directly  
 15 and tell you that Mr Cyril Ramaphosa had pressurised him,  
 16 correct?  
 17 GENERAL MBOMBO: I do not know if he did  
 18 not phone the National Commissioner.  
 19 MR MPOFU: Yes, no, no, fair enough.  
 20 Let's assume that he also phoned the National Commissioner,  
 21 but I'm saying he viewed this matter so seriously that he  
 22 felt that he must phone you directly as well, correct?  
 23 GENERAL MBOMBO: I think so.  
 24 MR MPOFU: And therefore this was indeed  
 25 something that you had to take into account. It's not

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1 everyday that you get phoned by the Minister and he tells  
 2 you that, you know, some chit-chat that, you know, I had a  
 3 call - by the way, the other day I had a call from Mr  
 4 Ramaphosa.  
 5 [09:49] This was something about which you were expected  
 6 to do something, correct?  
 7 GENERAL MBOMBO: When the minister phoned  
 8 me, Chairperson, I had already taken the thing serious.  
 9 MR MPOFU: Yes, that's why I'm prepared  
 10 to accept that but he obviously didn't know that. So he  
 11 was making sure that you indeed take it very seriously,  
 12 correct?  
 13 GENERAL MBOMBO: It is so.  
 14 CHAIRPERSON: How long did this  
 15 conversation with the minister take, when the minister  
 16 phoned you, was that on the Sunday evening or the Monday or  
 17 when was it? The conversation that your, that forms the  
 18 subject of the transcript took place, we know, on the  
 19 Tuesday afternoon. But when did the conversation between  
 20 you and the Minister take place? Was it the Monday or the  
 21 Sunday? Earlier on the Tuesday for that matter.  
 22 GENERAL MBOMBO: It was on Sunday,  
 23 Chairperson –  
 24 CHAIRPERSON: How long –  
 25 GENERAL MBOMBO: The Sunday night.

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1 CHAIRPERSON: How long did the  
 2 conversation last?  
 3 GENERAL MBOMBO: I am not sure,  
 4 Chairperson. But I don't think it exceeded five minutes.  
 5 Because I said to the Minister I am already busy with this  
 6 operation.  
 7 CHAIRPERSON: So what exactly did the  
 8 Minister say to you, apart from what you told Mr Mokwena?  
 9 GENERAL MBOMBO: First she asked me if I  
 10 was aware of what was happening at Lonmin, Chairperson. I  
 11 said to him, yes I'm aware of it, I'm already busy working  
 12 on it. He then mentioned that he had been phoned by the  
 13 Ramaphosa, telling him about this thing and then he said to  
 14 me he was satisfied that I'm aware of it and I'm working on  
 15 it.  
 16 CHAIRPERSON: Is that essentially the  
 17 whole of the conversation?  
 18 GENERAL MBOMBO: Yes, Chairperson, that  
 19 was –  
 20 CHAIRPERSON: What exactly did he say  
 21 had Mr Ramaphosa said to him, did he tell you at all what  
 22 Mr Ramaphosa said to him in his conversation with Mr  
 23 Ramaphosa?  
 24 GENERAL MBOMBO: He didn't tell me every  
 25 part of the conversation he had with Mr Ramaphosa,

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1 Chairperson.  
 2 CHAIRPERSON: What did he tell you?  
 3 GENERAL MBOMBO: He only said that.  
 4 MR MPOFU: He only said that he had been  
 5 phoned also by Mr Ramaphosa telling him about what was  
 6 happening in Lonmin.  
 7 CHAIRPERSON: Yes, thank you, Mr Mpofo.  
 8 MR MPOFU: Yes, and you on your own  
 9 interpreted what the minister was saying to you to be  
 10 saying that Mr Ramaphosa was pressuring the minister?  
 11 GENERAL MBOMBO: Chairperson, I've  
 12 already explained that this is my own way of expressing  
 13 things. If people have been, if people have phoned me. I  
 14 take it that it is pressure because a person wouldn't just  
 15 phone. It means if a person phones he's feeling some  
 16 pressure.  
 17 MR MPOFU: Yes, even in that limited  
 18 sense your view, is this your general view, as General  
 19 Mbombo, is that if someone takes the trouble to phone you  
 20 that means they are putting some pressure on you, correct?  
 21 GENERAL MBOMBO: It is so, Chairperson.  
 22 MR MPOFU: Yes, so in the same way you  
 23 construed this telephone call of Mr Ramaphosa as being  
 24 pressure in that sense, correct?  
 25 GENERAL MBOMBO: That is how I



<p style="text-align: right;">Page 22416</p> <p>1 interpreted it, Mr Chairperson.</p> <p>2 MR MPOFU: Yes, and the Minister for some</p> <p>3 reason wanted you to know that he was under that pressure,</p> <p>4 quote unquote, correct?</p> <p>5 GENERAL MBOMBO: What the Minister wanted</p> <p>6 to know is what we were doing about it and asked if I was</p> <p>7 aware of what was happening.</p> <p>8 MR MPOFU: Yes, I accept that he wanted</p> <p>9 to know what you were doing but he also wanted you to know</p> <p>10 that he has been pressured or called by Mr Ramaphosa,</p> <p>11 correct?</p> <p>12 GENERAL MBOMBO: Maybe it is so but he</p> <p>13 did not say he wanted me to know that there's pressure</p> <p>14 brought to bear on him but he said to me Mr Ramaphosa had</p> <p>15 also phoned him.</p> <p>16 MR MPOFU: Yes, and you knew Mr Ramaphosa</p> <p>17 as a politically high placed individual?</p> <p>18 MR SEMENYA SC: Chair, this is just</p> <p>19 argumentative. The document says exactly that –</p> <p>20 CHAIRPERSON: He's already said that,</p> <p>21 you're just, Mr Semenya's right. She's already described</p> <p>22 him as a high placed political figure, whether you</p> <p>23 paraphrase what she said. So we've already got it on</p> <p>24 record that she regarded him as a political heavyweight.</p> <p>25 So I don't think you need make the point again.</p>	<p style="text-align: right;">Page 22418</p> <p>1 MR MPOFU: Okay.</p> <p>2 CHAIRPERSON: It's before that, it's</p> <p>3 before the passage, presence, I think it's near the top of</p> <p>4 the page.</p> <p>5 MR MPOFU: Page 10.</p> <p>6 CHAIRPERSON: Here we are, National</p> <p>7 Commissioner says to me, "look General who are the</p> <p>8 shareholders here. So I said I did not know the</p> <p>9 shareholders." Then she, the question of Mr Ramaphosa</p> <p>10 comes up. So I'm not sure that your paraphrase of what the</p> <p>11 National Commissioner said was correct. But reformulate</p> <p>12 your question and put it to her and let's move on to the</p> <p>13 point that you're getting ready to make.</p> <p>14 MR MPOFU: Well firstly let me just ask</p> <p>15 you plainly when you spoke to the National Commissioner,</p> <p>16 did you get the impression that the Minister and her had</p> <p>17 had a conversation regarding the shareholders of Lonmin?</p> <p>18 GENERAL MBOMBO: No, that's not how I</p> <p>19 understood it.</p> <p>20 MR MPOFU: Okay. Now your, the</p> <p>21 Chairperson is correct, when you say that you then, she</p> <p>22 said to you who are the shareholders and you said well I</p> <p>23 don't know the shareholders but when the Minister called me</p> <p>24 he mentioned Cyril and she said to you, "now I've got it."</p> <p>25 What did you think she was referring to?</p>
<p style="text-align: right;">Page 22417</p> <p>1 MR MPOFU: I'm obviously going somewhere</p> <p>2 else as I indicted when I started, Chairperson. I said I'm</p> <p>3 going to another, not that topic that I have already</p> <p>4 covered.</p> <p>5 CHAIRPERSON: Well let's go there.</p> <p>6 MR MPOFU: Yes. This is what I was</p> <p>7 saying to you, General, when the, this is about the</p> <p>8 National Commissioner really. When the National</p> <p>9 Commissioner discussed this matter with you she said that</p> <p>10 the minister had called her about shareholders, Lonmin</p> <p>11 shareholders, correct?</p> <p>12 GENERAL MBOMBO: No, that I don't</p> <p>13 remember.</p> <p>14 CHAIRPERSON: That's not what she said</p> <p>15 in the transcript. She wanted to know who the shareholders</p> <p>16 were, or said she didn't know who the shareholders were but</p> <p>17 I'm not sure that it went further than that and I'm not</p> <p>18 sure that your paraphrasing is correct. Let's have a look</p> <p>19 at that passage.</p> <p>20 MR MPOFU: Ja.</p> <p>21 CHAIRPERSON: And then we can see</p> <p>22 whether your paraphrase is correct, I think, but I</p> <p>23 understand you're using it as a springboard to something</p> <p>24 else. So let's deal with it as quickly as we can. The</p> <p>25 previous page of this.</p>	<p style="text-align: right;">Page 22419</p> <p>1 GENERAL MBOMBO: She wanted to know who</p> <p>2 the holders, shareholders are, Chairperson, because it</p> <p>3 sometimes happens that when we have a problem we sometimes</p> <p>4 look at people that could have an influence. That are</p> <p>5 close to the company that could be influential.</p> <p>6 MR MPOFU: General Mbombo, when the</p> <p>7 National Commissioner said to you, when you identified this</p> <p>8 particular shareholder, "now I've got it," what did you</p> <p>9 think she meant? What is it that she got or she understood</p> <p>10 because I think that was the contents. You accept that</p> <p>11 that's what she was saying, when she says now I've got it,</p> <p>12 she means now I understand something, correct?</p> <p>13 GENERAL MBOMBO: Yes. I thought she was</p> <p>14 saying possibly that Cyril is one of the shareholders.</p> <p>15 MR MPOFU: And that's the only reason you</p> <p>16 thought she said now I've got it?</p> <p>17 GENERAL MBOMBO: That's how I thought,</p> <p>18 yes.</p> <p>19 MR MPOFU: But that's not what you said.</p> <p>20 You see, General, here the problem I have is that your</p> <p>21 words contradict you. You say there you know why she says</p> <p>22 she got it, you're asking a rhetorical question, and then</p> <p>23 you answer that question. You say, "remember Cyril was in</p> <p>24 the appeal committee of Malema," remember, that's your</p> <p>25 answer. Your own answer to your own question, is that</p>

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1 correct?

2 GENERAL MBOMBO: It is so.

3 MR MPOFU: So the answer that you've now

4 given to the Commission is not what you understood to be

5 why the National Commissioner said, "now I've got it." The

6 answer is what you said to Mr Mokwena, is that correct?

7 GENERAL MBOMBO: According to me when she

8 asked about shareholders I thought she was saying maybe

9 that Cyril is one of the shareholders. What I then

10 responded to below there is one of the things that I was

11 thinking –

12 MR MPOFU: No, I mean that answer is,

13 can't make sense, General. If she knew that Mr Ramaphosa

14 was one of the shareholders, she wouldn't say, "now I've

15 got it." In other words the penny has now dropped because

16 you told her and she says, "now I've got it" and you ask

17 the question, "do you know why she said she got it" and

18 then you answer your own question. So that is the reason,

19 that can be the only reason, it can't be the one that you

20 want the Commission to now believe about a year and a half

21 later. Do you agree?

22 GENERAL MBOMBO: According to me when I

23 was talking to the National Commissioner I thought that she

24 had the belief that Cyril is one of the shareholders when I

25 mentioned that he had been in contact telephonically with

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1 the Minister.

2 MR MPOFU: Any way, once again

3 Chairperson, I think we go around in circles, I'll leave

4 that point for argument, Chair. You see the problem here,

5 General, is quite a big one. It is that when the National

6 Commissioner was testifying here she did not even allude,

7 in fact she disowned anything to do with political

8 considerations and yet from this, at least we can guess

9 what she was referring to when she says now I've got it.

10 At least what we know is that she discussed with you this

11 question of political pressure as I call it, correct in the

12 passages that I've just read to you, correct?

13 GENERAL MBOMBO: We did not discuss with

14 the National Commissioner any political pressure. Except

15 that she wanted to know who are directors or shareholders

16 of Lonmin.

17 MR MPOFU: Yes, and when you told her you

18 linked it to the question of the political pressure,

19 correct?

20 GENERAL MBOMBO: When I personally spoke?

21 MR MPOFU: Yes, that's what I'm saying,

22 so the National Commissioner did not disclose to the

23 Commission any of these discussions regarding Mr Ramaphosa

24 in any, whether as a shareholder or as any player in this.

25 CHAIRPERSON: I'm not sure that you

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1 could take this very far with this witness. What, the

2 National Commissioner is coming back, we've asked that she

3 should come back, when the National Commissioner comes back

4 you can perhaps ask her about it, obviously do so briefly.

5 But I'm not sure this witness can help us in regard to

6 that. May I ask, while Mr Mpofo is looking for his next

7 point after this, you, what you said to Mr Mokwena was, at

8 line 9, "you know why she said she got it," now did she and

9 you in fact say she said to you, "now I got it," did she

10 tell you why she got it or how she got it?

11 GENERAL MBOMBO: No, Chairperson, she did

12 not articulate that.

13 CHAIRPERSON: So what you are saying in

14 this, to remember things, remember Cyril was in the appeal

15 committee and remember Mr Malema was involved in the, what

16 happened at Impala, were this just your theory as to what

17 she meant when she said, "now I got it?"

18 GENERAL MBOMBO: You mean it was me who

19 was discussing it, Mr Chairperson, and not the National,

20 not the Commissioner, National Commissioner.

21 MR MPOFU: Yes, Chairperson, I'm

22 addressing the Commission now. The part that I'm looking

23 for was, there was a discussion between the Chairperson and

24 myself in June around this issue and the Chairperson almost

25 prophetically said that to me that if, if later I find any

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1 evidence to suggest this question of pressure then at that

2 stage that would entitle me to apply for the recall of the

3 National Commissioner. As it happens now the –

4 CHAIRPERSON: I've already indicated

5 that I have said that I want the National Commissioner back

6 –

7 MR MPOFU: If I may, Chairperson –

8 CHAIRPERSON: There's a particular topic

9 that I have in mind but clearly it will be open to you to

10 apply then when she comes to deal with other topics and I

11 will consider your application when you make it.

12 MR MPOFU: Yes, that's exactly where I'm

13 going, Chairperson. I'm saying, recall witnesses,

14 obviously don't just get recalled for you know the whole

15 case to be re-canvassed with them and yes I was assuming

16 that the Chairperson was intending to call her for a

17 particular reason. I'm simply indicating to the Commission

18 that I myself will be making an application that when she

19 is recalled that this issue is canvassed at the time.

20 CHAIRPERSON: And the Minister will also

21 be coming and Mr Ramaphosa will be coming. So he will have

22 ample, I understand this is an important issue in this

23 matter.

24 MR MPOFU: Yes.

25 CHAIRPERSON: And we have to make it

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1 clear to everybody that this, whenever people maybe saying  
2 outside this is not a cover-up commission.  
3 MR MPOFU: Yes.  
4 CHAIRPERSON: We're here to get the  
5 truth and the Minister will come, Mr Ramaphosa will come I  
6 hope not too much time will be spent because the issue is a  
7 narrow one with them but they will be here and they'll be  
8 asked about these matters.  
9 MR MPOFU: Yes.  
10 CHAIRPERSON: And when the National  
11 Commissioner comes back I have in mind another topic but  
12 I'm not prepared to say what it is at this stage but if you  
13 wish to bring an application then your application will be  
14 considered, it may well be opposed but whatever, your  
15 application will be considered.  
16 MR MPOFU: Yes, no, fair enough,  
17 Chairperson. I accept that, I'm not expecting the  
18 application to be entertained now. I was simply saying  
19 unlike Mr Ramaphosa and Minister Mthetwa she would be in a  
20 different category because she'll be called for a specific  
21 topic. Thank you, Chairperson. Okay, fine I won't refer  
22 you to what the National Commissioner said now that we had  
23 this discussion, we'll have the conversation with her, I  
24 think.  
25 CHAIRPERSON: If your application is

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1 granted.  
2 MR MPOFU: I'm an optimist, Chairperson.  
3 CHAIRPERSON: You make an assumption.  
4 We'll deal with that matter when –  
5 MR MPOFU: Fair enough, Chairperson, yes,  
6 yes. Alright, now, okay anyway we got sidetracked. I was  
7 outlining to you and I think I was at number 4 or number 5.  
8 The topics that you covered in the meeting with Mr Mokwena.  
9 The, I was at number 4. The other topic that you wanted to  
10 discuss with Mr Mokwena was your, can't find a better word,  
11 your collusion regarding deployment between yourselves and  
12 Lonmin. Between the SAPS and Lonmin.  
13 [10:09] MR VAN AS: Mr Chairman, there are a lot  
14 of words other than collusion that can be used and  
15 collusion has a very specific meaning. Cooperation is  
16 perhaps a more appropriate word to be put at this stage.  
17 CHAIRPERSON: I've heard this phrase  
18 "toxic collusion" quite early on in the commission and  
19 obviously it's going to be explored I would imagine when  
20 your witnesses come and give evidence. It's common cause  
21 there was a substantial degree of cooperation. Whether  
22 that was appropriate in the circumstances or not will be an  
23 issue. But that's something which really will arise, I  
24 would imagine more fully when your witnesses come.  
25 Questions have been asked of the operational commanders

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1 about the cooperation they got from Lonmin and the degree  
2 to which if at all Lonmin was allowed to participate in  
3 discussions of tactics and so on. But this isn't the  
4 appropriate time I would've thought for that part of the  
5 field to be re-ploughed.  
6 MR VAN AS: I merely object to the use of  
7 the word "collusion" at this stage, Mr Chair.  
8 CHAIRPERSON: It's a phrase that he uses.  
9 He puts a meaning on it. Your counsel will later argue  
10 it's inappropriate but we can't decide that in advance. If  
11 he wants to use the word I won't stop him.  
12 MR MPOFU: Thank you.  
13 CHAIRPERSON: - understood that the fact  
14 I allow him to use the word means I've accepted it's  
15 correct, but anyone who has any experience in how courts  
16 and commissions work would know that no such assumption can  
17 be made.  
18 MR MPOFU: General, you know what  
19 collusion is. You accused management of Lonmin - you  
20 accused the management of Lonmin of running the risk of  
21 being – of it being said that they were colluding with  
22 AMCU, correct?  
23 GENERAL MBOMBO: I remember that, yes.  
24 MR MPOFU: And you used that word. You  
25 said that management is colluding with AMCU. Correct?

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1 GENERAL MBOMBO: I remember that day,  
2 something like that, yes.  
3 MR MPOFU: Yes. Now, I'm saying to you  
4 that in the same way I'm going to show you now that your  
5 discussion regarding what I call the fifth topic which is  
6 the issue of deployment –  
7 CHAIRPERSON: I'm sorry to interrupt you.  
8 Is this your last topic? You said you were coming to your  
9 last – if this is your last topic may I suggest we take the  
10 comfort break now so that you can then deal with the matter  
11 as – with the witness and people here in the commission are  
12 able to concentrate fully on what you have to say.  
13 MR MPOFU: Ja, Chairperson, I just want  
14 to correct. This is my last topic of the – it's not my  
15 last topic of the cross-examination. I said I'm going to  
16 deal with this. I'm doing a list now. I'm at number 5 and  
17 then I'll deal with –  
18 CHAIRPERSON: So this is your penultimate  
19 topic?  
20 MR MPOFU: Yes.  
21 CHAIRPERSON: All right. Well, we'll  
22 take – before the penultimate topic we'll take a comfort  
23 break.  
24 MR MPOFU: Thank you, Chairperson.  
25 [COMMISSION ADJOURNS COMMISSION RESUMES]

<p style="text-align: right;">Page 22428</p> <p>1 [10:29] CHAIRPERSON: The commission resumes.  2 Provincial Commissioner, you're still under oath. Mr  3 Mpofo, I believe you have some more questions.  4 CROSS-EXAMINATION BY MR MPOFU (CONT.):  5 That is correct, Chairperson. General, I know I made a  6 promise to the chairperson which I'm just about to break.  7 I just want to round off a point that we discussed which  8 the chairperson and I had agreed that the point is made  9 enough is on the record, but I just want to put one more  10 little aspect on the record in respect of that point. It  11 won't be long. And the topic I'm going back to is as I  12 said the connection once again between your decision that  13 the operation be speeded up and these external improper  14 considerations as I will argue later. And for that I'll  15 just refer you directly to the passage so that we don't  16 waste time. Firstly you agree, would you agree – that's a  17 topic I'll come to later. You agree that whatever your  18 objectives were for the meeting Mr Mokwena, one of Mr  19 Mokwena's main things was that you should arrest people.  20 That's what he kept on saying to you, arrest, arrest,  21 arrest.  22 GENERAL MBOMBO: It is so, yes.  23 MR MPOFU: Now, the – and you agreed that  24 you would indeed do so, correct?  25 GENERAL MBOMBO: When the time came, yes,</p>	<p style="text-align: right;">Page 22430</p> <p>1 that's gone off or else someone has – is it – or someone's  2 got earphones off and we can hear what's being said on the  3 earphones. I think it was a cell phone ringtone. I've  4 previously ordered people to leave the chamber because they  5 hadn't turned their cell phones off. I won't do it in  6 respect of this ringtone but I will in respect of the next  7 so please all turn your cell phones off otherwise – I don't  8 like asking people to leave the chamber because I know  9 they're here because they want to hear what's happening,  10 but we have to maintain some rules of decorum and not have  11 unnecessary disturbance.  12 MR MPOFU: Yes, Chairperson –  13 CHAIRPERSON: Mr Tokota refers me to a  14 passage at the top of page 5.  15 MR MPOFU: Page – it starts at page 4.  16 CHAIRPERSON: Bottom of page 4, top of  17 page 5. It does say what you've said so you may proceed.  18 MR MPOFU: Thank you, Chairperson. Do  19 you remember the discussion that you had about Mr Mokwena,  20 I'm paraphrasing now, suggested that they had a recording.  21 They had evidence of who was responsible and that kind of  22 thing but that there was some audio evidence. Do you  23 remember that?  24 GENERAL MBOMBO: I remember him saying  25 so, Chairperson.</p>
<p style="text-align: right;">Page 22429</p> <p>1 when the time I arrived I agreed that we would see what can  2 be done.  3 MR MPOFU: No, General, there's a  4 difference between seeing what can be done and making a  5 promise that people will be arrested.  6 CHAIRPERSON: What is the passage where  7 the witness – I know there are a lot of passages where Mr  8 Mokwena says he wants people arrested. What is the passage  9 where the witness says, agrees with that and says that will  10 be done?  11 MR MPOFU: Okay.  12 CHAIRPERSON: I'm not quite sure that  13 that's said expressly. I'd like to refresh my memory by  14 looking at it if you would give me the reference.  15 MR MPOFU: Yes. Chairperson, can I find  16 out a bit later because that's not where I am now.  17 CHAIRPERSON: But I won't allow you to  18 proceed with cross-examining on this point until you give  19 me the point.  20 MR MPOFU: That's fine. It's there. I'm  21 just saying can I find it for you exactly where it is.  22 CHAIRPERSON: Yes, of course, of course  23 you can. I'll give you time.  24 MR MPOFU: All right, okay.  25 CHAIRPERSON: It's either a cell phone</p>	<p style="text-align: right;">Page 22431</p> <p>1 MR MPOFU: And you said at the bottom of  2 paragraph 4 or you said that actually get that telephone  3 and download this and then go and arrest them. In other  4 words you will get the evidence, download it and then go  5 and arrest them. Remember saying that?  6 GENERAL MBOMBO: I remember, Chairperson.  7 MR MPOFU: Okay, anyway, that was just in  8 passing. The –  9 CHAIRPERSON: I think it's – the point  10 goes a bit further than that. There was an earlier  11 reference to, by Mr Mokwena.  12 MR MPOFU: Yes.  13 CHAIRPERSON: To an incident where he  14 says which proved that AMCU were involved in this and were  15 behind this and they wanted to make Lonmin ungovernable was  16 the phrased used and he said we have a recording which  17 demonstrates that and this of course is a reference to  18 arresting people who are involved in that kind of statement  19 if the recording bears it out, but I think it's also  20 correct to say that Mr Mokwena went further and he wanted  21 other people arrested. He wanted the leaders of the strike  22 effectively arrested and I'm not sure whether the witness  23 in express terms agreed with that. That is what concerns  24 me. Because I'm not sure that she went that far, but  25 anyway, if there is a passage that says it – I can't</p>

<p style="text-align: right;">Page 22432</p> <p>1 remember clearly on this. If there's a passage that 2 supports you, you may proceed but if there isn't one I 3 won't allow you to ask the witness these questions. Page 2 4 around about line 20 Mr Mokwena in the course of what you 5 describe as a fairly long speech talks about people having 6 to be arrested.</p> <p>7 MR MPOFU: Ja.</p> <p>8 CHAIRPERSON: And expecting people to be 9 arrested and he says in line 23, "That is why I think it's 10 very important for us. We want to see somebody arrested." 11 Now, I'm not sure if he's talking about the tape recording.</p> <p>12 MR MPOFU: No.</p> <p>13 CHAIRPERSON: "So that the message gets 14 across that the nine people who were killed," and so on. 15 And then he talks about AMCU leaders are behind it. "If 16 they do not get arrested and we do paperwork afterwards 17 people gathered at the mountain will still believe their 18 leaders were doing this." That's what he says up to line 19 30. Now, I couldn't see a passage thereafter where the 20 witness – could you just go onto the next page because we 21 have it in front of us on screen now – couldn't find a 22 passage where the witness agreed with that in terms. She 23 did say line 6, you simply said the word "issue" because 24 that relates to the question of the court interdict. It's 25 true that she doesn't in terms disagree with Mr Mokwena –</p>	<p style="text-align: right;">Page 22434</p> <p>1 That's our interest. So she's not saying we can arrest 2 people. She says we're going to address people if you give 3 us information which justifies the arrest which is a 4 slightly different proposition I think. And in relation to 5 this tape recording that was referred to at the beginning 6 of the discussion there her evidence is, her attitude was 7 if they've got a tape recording of that kind they must give 8 it to the detectives and the detectives will investigate 9 and do the necessary so I'm not sure it's fair to put to 10 the witness that she agreed in terms as it were to arrest 11 anybody that Lonmin wanted to have arrested or agreed or 12 consented to receive favourably the request that was being 13 put to her by Mr Mokwena.</p> <p>14 MS PILLAY: Chair, I'm sorry, if I can 15 just indicate there is now an agreed version of JJJ192 16 which is slightly different from the version which we've 17 been relying on to date.</p> <p>18 CHAIRPERSON: You see, but is it – are 19 the difference material for the present discussion?</p> <p>20 MS PILLAY: For the current question, 21 yes. There are some differences. But maybe I could give a 22 copy to Mr Mpofo during the tea adjournment and he can have 23 a look at it and decide.</p> <p>24 CHAIRPERSON: Yes, yes, that's a very 25 practical suggestion and my sister Hemraj says she'd like a</p>
<p style="text-align: right;">Page 22433</p> <p>1 MR MPOFU: Mr Commissioner –</p> <p>2 CHAIRPERSON: But I couldn't find any 3 passage or I wasn't aware of one where she agreed in terms 4 that leaders of the strike as it were would be arrested as 5 requested by Lonmin, so perhaps we can ask her about it but 6 what was your attitude? In the course of that conversation 7 you remember Mr Mokwena did say that Lonmin were rather 8 keen that people should be arrested. You remember that.</p> <p>9 GENERAL MBOMBO: I remember that, Chair.</p> <p>10 CHAIRPERSON: Now, what was your attitude 11 in relation to that request by Lonmin.</p> <p>12 GENERAL MBOMBO: Mr Chairperson, 13 according to me at that time it wouldn't have been easy for 14 us to arrest people. That is why I believe that we first 15 have to talk to the people and see how we can assist or how 16 we could be assisted.</p> <p>17 CHAIRPERSON: Page 9 around about line 18 17. She responds to – I see Advocate Hemraj drew my 19 attention to it, she responds to the request for arrests as 20 follows. She says –</p> <p>21 MR MPOFU: I want us to be clear.</p> <p>22 CHAIRPERSON: So I want us – about line 23 14, "so I want us to – when you said people must be 24 arrested I want us to be very clear that any information 25 that we get we should get so that we can arrest people."</p>	<p style="text-align: right;">Page 22435</p> <p>1 copy as well as would the rest of us here at the table.</p> <p>2 MR MPOFU: Thank you, Chairperson. Yes, 3 for now we can just leave it at the fact that you did not 4 when Mr Mokwena suggested that people or somebody, people 5 must be arrested you did not disagree with him, correct?</p> <p>6 CHAIRPERSON: No, no, that's not entirely 7 fair. What she said was if you want people arrested give 8 us information so that we can arrest them, so she wasn't 9 saying we'll arrest anyone you ask us to arrest. What she 10 was saying –</p> <p>11 MR MPOFU: Help us.</p> <p>12 CHAIRPERSON: If you give us the 13 information –</p> <p>14 MR MPOFU: Yes.</p> <p>15 CHAIRPERSON: Which indicates that people 16 should be arrested then we will do so but that falls short 17 of what you're putting to her so I think we must be fair.</p> <p>18 MR MPOFU: Okay, but what you did say was 19 that it is our interest, it is your interest collectively, 20 you and Lonmin, that people should be arrested, correct?</p> <p>21 GENERAL MBOMBO: No, no, I wasn't talking 22 about my interest together with Lonmin, Chairperson. I was 23 talking of the interest of our interest as police.</p> <p>24 MR MPOFU: No, no.</p> <p>25 CHAIRPERSON: I think she's wrong too. I</p>

<p style="text-align: right;">Page 22436</p> <p>1 think the true position is this. This statement relates to  2 the perception that Lonmin are as it were encouraging AMCU  3 to do what they do and I have a clear recollection. I  4 checked the file of press cuttings that the government  5 provided me with. There was a statement issued by NUM at  6 one stage alleging that the mining houses were actually  7 assisting AMCU because they wanted – I think it was put  8 also in the course of cross-examination – that they were  9 assisting AMCU and they wanted AMCU to displace NUM as the  10 dominant trade union in this area. And clearly the police  11 attitude would be, look here, we can't come to help Lonmin  12 to put down a violent situation which they say AMCU are  13 responsible for if in fact they are secretly assisting AMCU  14 to do what they do in order to displace NUM, so quite  15 clearly the police wanted to know are Lonmin being straight  16 with us, are they – do they really just genuinely want us  17 to deal with this violent situation or are they secretly  18 somehow supporting AMCU and that was the perception. That  19 was in fact an allegation that was in effect being made by  20 NUM and she wanted clarity on that point before they could  21 proceed which seems perfectly sensible.  22 MR MPOFU: Ja, well, General, you know  23 that I represent people who were arrested, correct, among  24 others?  25 GENERAL MBOMBO: It is so, yes.</p>	<p style="text-align: right;">Page 22438</p> <p>1 the protest. The one you're referring to now, Chairperson,  2 we were saying to them if there were problems, if you were  3 doing a particular thing we will act this way.  4 MR MPOFU: General Mbombo, can you go to  5 paragraph 62.5 of your statement, sorry, the amplified one,  6 LLL1.  7 CHAIRPERSON: What paragraph are you  8 referring to?  9 MR MPOFU: 65.  10 CHAIRPERSON: 65.  11 MR MPOFU: Or rather 62.5, Chairperson.  12 CHAIRPERSON: 62.5 so it's in –  13 MR MPOFU: It's on page 22.  14 CHAIRPERSON: Okay, thank you.  15 MR MPOFU: You say there – have you got  16 it, General? Or you can use the screen.  17 GENERAL MBOMBO: I can see the screen.  18 MR MPOFU: You say there, "Where I say  19 that if protestors were to be angered by what is  20 communicated to be the attitude of Lonmin then SAPS was  21 prepared to take a different direction I meant that SAPS  22 would take appropriate steps to disarm and arrest the  23 protesters." Did you say that?  24 GENERAL MBOMBO: I said that that is what  25 I'm saying.</p>
<p style="text-align: right;">Page 22437</p> <p>1 MR MPOFU: Ja. Now, I will suspend this  2 questioning until we have the transcript, the proper  3 transcript, but all I'm saying to you is that I want – my  4 only interest in this is I want to know whether the people  5 that I represent were arrested partly or wholly as a result  6 of this invitation I suppose is a light word but  7 exhortation that people must be arrested so that a message  8 must be sent out there. That's what I'm going to explore  9 with you, but for now your evidence is that you did not  10 agree with that people should be arrested.  11 GENERAL MBOMBO: Not at the time they  12 said it, at the time they wanted it. Not that I'm saying  13 people would be arrested, Chairperson. When the time was  14 appropriate they would.  15 MR MPOFU: And did you say for example if  16 the pamphlets anger them you will move in a different  17 direction and did that include arresting?  18 GENERAL MBOMBO: No, not at all.  19 MR MPOFU: Didn't you say in your  20 evidence in chief that when you used those words, we'll  21 move in a different direction, you meant that the people  22 would be dispersed and arrested?  23 GENERAL MBOMBO: By the way the people we  24 are talking about here in the context of this transcription  25 it had to do with people that Lonmin alleged were leading</p>	<p style="text-align: right;">Page 22439</p> <p>1 MR MPOFU: Okay, no, we'll come back to  2 these things after tea. Right. Now, I want to go to where  3 once again you make or you make or you confirm the link  4 between what you term for lack of a better word political  5 opportunism.  6 CHAIRPERSON: That point has been covered  7 really fully.  8 MR MPOFU: Well, Chairperson –  9 CHAIRPERSON: I would've thought you've  10 got enough material on record –  11 MR MPOFU: I don't.  12 CHAIRPERSON: To argue it.  13 MR MPOFU: Well, that's the point I was  14 making. I said I needed to add one more despite my  15 agreement with you earlier, Chairperson, if you allow me  16 just to add one more point.  17 CHAIRPERSON: Well, when you've asked the  18 question, I will then rule that we carry on.  19 MR MPOFU: Ja, okay, can we go to page 12  20 of JJJ192? This is a short extract of the conversation  21 which I think for me is the most important issue which  22 links the D day to –  23 CHAIRPERSON: Which line are you  24 referring to?  25 MR MPOFU: I'm starting at 17, 18, 19,</p>

<p style="text-align: right;">Page 22440</p> <p>1 about 18, Chairperson. I'll read it out. So Mr Mokwena  2 says to you, "So I agree with you, Commissioner," underline  3 that. "If we can arrest these people because the longer it  4 goes it is giving all the other opportunity to commence and  5 seize the opportunity and then it gets out of control."  6 SAPS Commissioner, "That is it." That is what you say.  7 And Mr Mokwena, "So I think, yes, let tomorrow be the D day  8 where we issue the ultimatum and say if you do not show up  9 for work, sorry, that's it," and so on and so on. And  10 remember now the, this – I don't want to go into all that.  11 Your advice is that you must issue this pamphlet so that  12 when we move in nobody has any doubt as to where the  13 company stands – words to that effect. You remember that?  14 [10:49] GENERAL MBOMBO: May I correct the part  15 where you speak of advice. Again I want to say I was  16 making there an example.  17 MR MPOFU: Yes, Ma'am, I accept, let's  18 say it's an example, but I'm saying your example, so-  19 called, was that they must issue the ultimatum so that when  20 you move in the workers know what is expected of them by  21 the company. I'm not quoting it directly. If you force me  22 to, I'll go to that passage, but was that generally what  23 you were saying to them, this example of yours?  24 GENERAL MBOMBO: That is what I was  25 saying, yes.</p>	<p style="text-align: right;">Page 22442</p> <p>1 And I think Mr Budlender asked you this question, but just  2 for my own clarity because I'm going to argue that it's  3 highly irregular that you would discuss this decisive piece  4 of information with Lonmin and not the people that you  5 should be discussing it with, if it was proper, who are  6 your commanders. What will you say when I argue that?  7 GENERAL MBOMBO: Remember even when I  8 answered then I said the purpose of my discussion with  9 Lonmin was to find out what it is that they were doing in  10 order to bring this problem to an end.  11 MR MPOFU: Well I'll leave I'll leave it  12 with that answer and the answer you gave to Mr Budlender.  13 I was now saying, before the comfort break –  14 CHAIRPERSON: You were moving onto  15 another point.  16 MR MPOFU: Yes, to the point that I was  17 going to move on before the comfort break.  18 CHAIRPERSON: All right. You say you  19 didn't share these considerations that you said had to be  20 borne in mind about the political connotation, didn't share  21 that with the commanders, the operational commander and the  22 overall commander and members of the JOCCOM. Did you  23 mention them to the National Commissioner?  24 GENERAL MBOMBO: Chairperson, there was  25 just one thing that we spoke with the National</p>
<p style="text-align: right;">Page 22441</p> <p>1 MR MPOFU: Thank you. So now I'm saying  2 that ja – the link between the pamphlets and the action has  3 been established. I'm saying what he's saying now here is  4 that so when all those things must happen must be tomorrow  5 which he calls D Days and he says that because of what you  6 and him and have agreed that opportunity to receive – will  7 receive the opportunity as it were. Do you understand  8 that?  9 GENERAL MBOMBO: I understand,  10 Chairperson.  11 MR MPOFU: Thank you, Chairperson. And  12 by the way, is it correct that the fact that there were  13 these police considerations to be taken into account was  14 not discussed by you with your generals, correct?  15 GENERAL MBOMBO: No it is not so.  16 MR MPOFU: Oh I see, so did you also  17 share with them this issue about the Minister having phoned  18 you about Mr Ramaphosa and Mr Malema and all that jazz?  19 MR MPOFU: If I say it is not so I  20 intended to convey that I did not discuss with them.  21 MR MPOFU: Okay sorry. That was a  22 language issue. So you're agreeing with me that you did  23 not share it with the commanders.  24 GENERAL MBOMBO: I did not.  25 MR MPOFU: Yes, sorry, sorry about that.</p>	<p style="text-align: right;">Page 22443</p> <p>1 Commissioner, Chairperson, and it was that the Minister had  2 said to me he had been phoned by Mr Ramaphosa.  3 CHAIRPERSON: Yes, I understand, but you  4 then went on in talking to Mokwena to say there would be  5 serious political connotations we must take into account.  6 Now did you mention those to the National Commissioner at  7 any stage?  8 GENERAL MBOMBO: We did not have such  9 discussion, Chairperson, not that I remember.  10 CHAIRPERSON: And we've heard that the  11 extraordinary session of what one can describe as the rump  12 of the National Management Forum discussion, took about an  13 hour or up to an hour you told us. Now during the course  14 of that discussion were these points mentioned at all in  15 any way?  16 GENERAL MBOMBO: I did not talk about  17 this, Chairperson.  18 CHAIRPERSON: Did anybody else do so?  19 GENERAL MBOMBO: I don't remember it  20 being mentioned by any other person.  21 MR MPOFU: General, you did not know that  22 your conversation with Mr Mokwena was being recorded  23 correct?  24 GENERAL MBOMBO: It is so, yes.  25 MR MPOFU: If the transcript of that</p>

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1 conversation had not surfaced through the work of the  
 2 evidence leaders would you have revealed the discussion  
 3 about Mr Ramaphosa, between you and the Minister?  
 4 GENERAL MBOMBO: Firstly, Chairperson,  
 5 before it came up I didn't even remember this discussion.  
 6 The possibility is that I wouldn't have mentioned it  
 7 because I would not have remembered because I didn't even  
 8 remember this discussion.  
 9 CHAIRPERSON: The problem the word  
 10 revealed is a bit ambiguous in the context. The first  
 11 point is it didn't come up solely through the work of the  
 12 evidence leaders. It was Lonmin's counsel who very  
 13 properly drew it to the attention of the evidence leaders  
 14 and said it was relevant. And despite the fact that it had  
 15 apparently disclosed to the police in compliance with  
 16 section 205 subpoena it was only included in an audible  
 17 form in the police hard drive. But we won't go there, the  
 18 point is the Lonmin counsel drew it to the attention of the  
 19 police very commendably. The second point is about  
 20 revealing. Now I take it if you'd been asked a direct  
 21 question about the conversation with the Minister and what  
 22 the Minister said you would have mentioned what the  
 23 Minister told you?  
 24 GENERAL MBOMBO: If I remembered it yes,  
 25 Chairperson, I was going to mention it.

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1 CHAIRPERSON: And similarly, if you'd  
 2 been asked about your conversation with the National  
 3 Commissioner in which the question of Mr Ramaphosa's  
 4 involvement was discussed you would have mentioned it also.  
 5 GENERAL MBOMBO: I would have mentioned  
 6 it if I remember it, Chairperson.  
 7 MR MPOFU: You see the reason I'm asking  
 8 you that question is because General Phiyega, I questioned  
 9 her around these issues and at that stage, before this  
 10 transcript was revealed through the commendable work of  
 11 Lonmin counsel, she did not say that you and her had a  
 12 discussion about the shareholders and Mr Ramaphosa.  
 13 CHAIRPERSON: To be fair she wasn't asked  
 14 directly about it was she?  
 15 MR MPOFU: She was, by me.  
 16 CHAIRPERSON: What did you ask her  
 17 directly? What's the passage in the transcript to which  
 18 you refer?  
 19 MR MPOFU: Let's go to 10586 of the day  
 20 99, day 99.  
 21 CHAIRPERSON: You did give us the page  
 22 reference, what was it again?  
 23 MR MPOFU: 10586, Chairperson.  
 24 CHAIRPERSON: No, we've got 10584 at the  
 25 moment, we need 10586. There we have it.

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1 MR MPOFU: She says against the line 12  
 2 "No I've never heard that conversation of Mokwena and  
 3 Ramaphosa with the Minister." Now I said to her, I'll  
 4 assume in her favour that no names are mentioned at that  
 5 stage, but the point I'm making is that even if we assume  
 6 that no names were mentioned when the Minister spoke to  
 7 her, she subsequently spoke to you and you revealed the  
 8 name as we have established, correct?  
 9 GENERAL MBOMBO: It is so, yes.  
 10 MR MPOFU: Ja, now I'm saying that if it  
 11 was not meant to be concealed really which is where I'm  
 12 going when I was having this discussion with the National  
 13 Commissioner she would have said "Oh well the Minister may  
 14 not have mentioned the name, but I spoke to General Mbombo  
 15 and she made it clear to me and I said oh now I understand"  
 16 and the penny dropped. I'm just saying that -  
 17 CHAIRPERSON: Now what's the question you  
 18 want to put to this witness.  
 19 MR MPOFU: It's the same question that I  
 20 had put earlier. You had just invited me to show you the  
 21 passage.  
 22 CHAIRPERSON: Yes and you've shown me the  
 23 passage, but how can she answer for the National  
 24 Commissioner? The National Commissioner, I told you, is  
 25 coming back and if it's appropriate in the circumstances

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1 you can ask her about it then, but I don't see how this  
 2 witness can help us to understand what was passing through  
 3 the mind of the National Commissioner when she gave this  
 4 answer to you.  
 5 MR MPOFU: No that's not what I'm asking  
 6 this witness, Chairperson, obviously.  
 7 CHAIRPERSON: I understand the point as  
 8 follows, the National Commissioner has said in this  
 9 passage, that she'd never heard of any conversation Mr  
 10 Ramaphosa had with the Minister, your point is that this  
 11 witness had told the National Commissioner, as she  
 12 mentioned, that she had been told by the Minister that he  
 13 had a conversation with Mr Ramaphosa. So therefore, the  
 14 National Commissioner should have known about it. That's  
 15 your point as I understand it.  
 16 MR MPOFU: That's part of the point,  
 17 Chairperson, but just to allay your fears, Chairperson, I  
 18 do accept that, I'm not expecting this witness to be a mind  
 19 reader of National Commissioners or other such luminaries.  
 20 All I'm saying is that I'm putting a point to her about the  
 21 active concealment as it were of this information which is  
 22 why I first asked her whether she would have revealed it  
 23 had it not come to light. And now I'm saying - in a follow  
 24 to that question I'm saying the reason why I'm making that  
 25 supposition that she might not have revealed it is because,



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1 among other things, before it was revealed the National  
 2 Commissioner did not even allude to the conversation with  
 3 her, let alone –  
 4 CHAIRPERSON: Okay I have the point.  
 5 What do you say to that point Mr Mpofu now makes? He says  
 6 that you wouldn't have mentioned it, there are two  
 7 circumstances in which you could have mentioned it. Either  
 8 spontaneously as it were, as part of your evidence in  
 9 chief, alternatively you could have mentioned it in  
 10 response to a direct question. Now you say if you'd been  
 11 asked a direct question you would have mentioned it, but  
 12 you hadn't remembered it before, so you wouldn't have  
 13 mentioned it in chief. That I understand to be your  
 14 evidence. Now what Mr Mpofu says, he suggests that there  
 15 was a deliberate attempt to conceal this conversation and  
 16 he put to you what the National Commissioner said and his  
 17 suggestion is that you would also have deliberately  
 18 concealed this if it hadn't come out through this  
 19 transcript. Now that's the allegation that he's putting to  
 20 you, am I summarising correctly?  
 21 MR MPOFU: Yes, Chairperson.  
 22 CHAIRPERSON: How do you respond to that?  
 23 GENERAL MBOMBO: According to me I do not  
 24 agree with this. As I said earlier had I remembered it I  
 25 would have mentioned it.

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1 MR MPOFU: Okay, what is more is that  
 2 once again before this was revealed through the good work  
 3 of Lonmin counsel the Minister also did not mention the  
 4 conversations with you about Mr Ramaphosa in his statement.  
 5 So the concealment goes even further.  
 6 CHAIRPERSON: She can't comment either  
 7 surely. That's something that you'll have to ask the  
 8 Minister when he comes. Unless someone else asks him  
 9 before you do.  
 10 MR MPOFU: Yes, that I accept,  
 11 Chairperson. I'm just building up so that I can put to  
 12 this witness that there is a person, including her, well  
 13 okay let me put it this way. You did not mention the  
 14 conversation with the Minister regarding Mr Ramaphosa in  
 15 your earlier statement, correct?  
 16 GENERAL MBOMBO: It is so, Chairperson.  
 17 CHAIRPERSON: She didn't remember. She  
 18 says if she had remembered she would have.  
 19 MR MPOFU: No, Chairperson, let's be very  
 20 careful. What she says she does not remember is the  
 21 discussion with Mr Mokwena which was taped, that's why I  
 22 accept that.  
 23 CHAIRPERSON: Well let's see. Did you  
 24 remember when you gave your evidence originally, did you  
 25 remember that you'd had this conversation with the Minister

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1 in which he had mentioned to you that he'd been spoken to  
 2 by Mr Ramaphosa? At what stage did you remember that?  
 3 MR MBOMBO: Chairperson, at the time that  
 4 I made a statement in writing I did not remember this  
 5 discussion with the Minister.  
 6 MR MPOFU: You and I have already agreed  
 7 that this is a very big and unusual occurrence, you being  
 8 phoned directly by the Minister, correct?  
 9 GENERAL MBOMBO: It is so, it's not every  
 10 day that he phones me.  
 11 MR MPOFU: And when you were at Roots  
 12 retracing all these issues about this event you still did  
 13 not remember this important, unusual occurrence of you  
 14 being phoned by the Minister?  
 15 GENERAL MBOMBO: I was only at Roots on  
 16 two occasions, Chairperson.  
 17 MR MPOFU: Ja, well I don't mind how  
 18 times you went there. The question I'm asking you –  
 19 CHAIRPERSON: No, no it's relevant to  
 20 know what was under discussion at Roots on the two  
 21 occasions when she was there.  
 22 MR MPOFU: I suppose it was the events of  
 23 Marikana in which 34 people were killed. Is there anything  
 24 else that was discussed at Roots that we might know of.  
 25 GENERAL MBOMBO: According to me,

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1 Chairperson, on the first day that I was there I wasn't  
 2 part of the discussions. My being there was the official  
 3 opening of the meeting and explaining what the purpose of  
 4 the meeting was, I then left.  
 5 MR MPOFU: General, I'm sorry, I don't  
 6 want to cut you short. I don't want to discuss the goings  
 7 on at Roots. I'm saying to you Roots was called to retrace  
 8 the steps around the event of the killings and the injuries  
 9 of people, correct?  
 10 GENERAL MBOMBO: It is correct.  
 11 MR MPOFU: I'm saying to you in that  
 12 period when that was happening did you "forget" such an  
 13 important and unusual event as the Minister having called  
 14 you and told you that – or having called you anyway? But  
 15 also having told you that he had, had this conversation  
 16 with Mr Ramaphosa, did you forget that?  
 17 GENERAL MBOMBO: I had forgotten it yes,  
 18 certainly had I not forgotten it I would have mentioned it.  
 19 MR MPOFU: And when you approved exhibit  
 20 L and the opening statement later than Roots once again you  
 21 had forgotten about this conversation?  
 22 GENERAL MBOMBO: It is so.  
 23 MR MPOFU: And when in October or  
 24 November I presented to the Commission emails which we said  
 25 would support the fact that there had been this political

<p style="text-align: right;">Page 22452</p> <p>1 pressure which was widely publicised you didn't jog your 2 memory? 3 GENERAL MBOMBO: Maybe during that time 4 or around December it came to my mind. I then thought I 5 would be putting it in my supplementary statement when I 6 corrected it. 7 MR MPOFU: So you specifically thought in 8 December 2012 that maybe one day in 2014 you will do a 9 supplementary statement and then you'll mention this 10 important fact. 11 [11:08] GENERAL MBOMBO: According to me I was 12 busy already with the supplementary statement. I don't 13 remember whether it was in 2013. 14 MR MPOFU: Yes, so your evidence is that 15 for a whole year you sat with this information between 16 December 2012 and December 2013, on the hope because you 17 thought that maybe in a year's time there would be a 18 supplementary statement. Didn't you think this was now an 19 important issue before this Commission? 20 GENERAL MBOMBO: It was something that I 21 had to say in my statement, yes. 22 MR MPOFU: Did you bring it to the 23 attention of your lawyers in December 2012 when it crossed 24 your mind, when your memory was jogged? 25 GENERAL MBOMBO: I did not do so,</p>	<p style="text-align: right;">Page 22454</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: - because I was proposing 3 to take the tea adjournment at a convenient stage, that's 4 all - 5 MR MPOFU: Yes. No, no, I think it's my 6 fault - 7 CHAIRPERSON: - a stage that's 8 convenient - 9 MR MPOFU: Yes, it's my fault, 10 Chairperson. What I said to the witness in the morning is 11 that I'm going to deal with a number of points and then I 12 have a big topic which I will deal with as hopefully the 13 last topic. I'm not there yet. I'm still doing the 14 cleaning up, that cluster of points which I - 15 CHAIRPERSON: How many of the cluster 16 points have you still got? 17 MR MPOFU: Well, some of them have kind 18 of sneaked in through, so I think I have two - let me just 19 explain to you, Chairperson. What I'm doing is I've said 20 that her topics in the meeting with Mokwena were these six. 21 We've now covered four of - 22 CHAIRPERSON: I see. So you've got two 23 of those points to cover. 24 MR MPOFU: Yes, and then we - 25 CHAIRPERSON: Alright, okay.</p>
<p style="text-align: right;">Page 22453</p> <p>1 Chairperson. 2 MR MPOFU: Well, I put it to you that for 3 all these, because of all these issues that I've raised, 4 whether your own actions or the actions of others who also 5 seem at this stage to have concealed this event, I put it 6 to you that had this not been revealed through the good 7 work of Lonmin counsel you would not have revealed it to 8 this Commission, despite the fact that it crossed your mind 9 in December 2012. 10 GENERAL MBOMBO: I disagree with you 11 there, Sir. 12 CHAIRPERSON: Are you now moving on to 13 your ultimate point? 14 MR MPOFU: On this topic, yes, 15 Chairperson. 16 CHAIRPERSON: No, no, never mind this 17 topic. You indicated to me there was what we called a 18 penultimate point and then there was going to be your last 19 point. Now have you finished with the penultimate point 20 and moving on to the last point - 21 MR MPOFU: No - 22 CHAIRPERSON: - or are you still busy 23 with the penultimate point? 24 MR MPOFU: No, Chairperson, let me - 25 CHAIRPERSON: I'm just asking you -</p>	<p style="text-align: right;">Page 22455</p> <p>1 MR MPOFU: And then I had what Mokwena's 2 topics were and we've already covered one of them, which 3 was the - 4 CHAIRPERSON: Yes, well okay, I 5 understand now what's going on. 6 MR MPOFU: Yes. 7 CHAIRPERSON: And that is covered by the 8 topics that I gave you permission to cross-examine on. 9 MR MPOFU: Correct. 10 CHAIRPERSON: No, I understand. 11 MR MPOFU: Thank you, Chairperson. 12 CHAIRPERSON: Okay, shall we take the tea 13 adjournment now? 14 MR MPOFU: Yes, it will be convenient, 15 Chairperson. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [11:40] CHAIRPERSON: The Commission resumes. 18 During the adjournment we had some housekeeping matters to 19 attend to, which explains the delay in coming back. One of 20 the things related to the new version of exhibit, it's 21 JJJ192 bis. This is the revised and improved and agreed 22 version of the transcript of the conversation on the 23 afternoon of Tuesday, the 14th of August 2012, between Mr 24 Mokwena and others of Lonmin on the one hand and the 25 witness on the other. It's headed "Second proofread</p>

<p style="text-align: right;">Page 22456</p> <p>1 version," that's the way that one distinguishes it from the 2 one we've had up to now. Because there's been cross- 3 examination on the earlier one I don't propose just 4 replacing the exhibit because those who follow the cross- 5 examination will be puzzled if they find the references of 6 the exhibit don't match up with the one that's before us. 7 So that's why it's got to be in as a separate exhibit, but 8 to avoid confusion it's JJJ192 bis. 9 The main points of difference, as I understand, 10 this is not intended to be an exclusive statement to the 11 points of difference, but at certain parts of the record 12 there are insertions of comments made by the witness which 13 I quote one as an example, at the foot of page 2 she's 14 recorded as having said "Mmmm," and then that four Ms and 15 then after that in brackets it says "in agreement," and 16 then there are a number of other examples of that. So 17 that's why Adv Pillay drew our attention to the fact that 18 there are material insertions in the second proofread 19 version of the transcript and that's why I'm referring to 20 them now, and I understand Mr Mpofu is now going to return 21 to those because there was a point he left over until the 22 revised transcript was before us. But let me ask the 23 witness - you're still under oath, Provincial 24 Commissioner - 25 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.</p>	<p style="text-align: right;">Page 22458</p> <p>1 party whom he represents. 2 MR SEMENYA SC: It would be less amusing 3 if you saw page 1 where Mr Mokwena speaks, but he's not in 4 agreement there. He just says Mmmm. 5 CHAIRPERSON: There's no interpretive 6 comment in parenthesis or otherwise as to what he meant by 7 "Mmmm." So what do you want me to do? Do you agree that 8 these others are - 9 MR SEMENYA SC: Well, it's clearly not 10 evidence, so those were to be in square brackets - 11 CHAIRPERSON: No, the transcript before 12 us, do you want me to delete the expressions in brackets? 13 MR SEMENYA SC: Indeed, Chair. 14 CHAIRPERSON: Alright, I'll do that. The 15 Mmmm, the four Ms stands, but the words which are the 16 transcriber's interpretation are deleted. 17 MR MPOFU: Don't delete it too hard, 18 Chairperson. You might have to reinstate it. 19 CHAIRPERSON: [Microphone off, inaudible] 20 ask the witness whether she was agreeing obviously - 21 MR MPOFU: Yes, that's what I intend to 22 do. 23 CHAIRPERSON: But one of the problems is 24 I understand from what she says that she's only seen it 25 now. I assumed that it had been, you know, agreed by</p>
<p style="text-align: right;">Page 22457</p> <p>1 CHAIRPERSON: Have you had an opportunity 2 to see the revised transcript? 3 GENERAL MBOMBO: I see it now, Mr Chair. 4 CHAIRPERSON: I take it the words "in 5 agreement" for example at the foot of page 2 and the foot 6 of page 3, those are obviously not the witness's words, so 7 they should really be in square brackets rather than in 8 round brackets. So I will amend my one, which I hope one 9 day will be the official document, but even there I suppose 10 the objection arises that that is the interpretation of the 11 transcribers rather than anything else. But Ms Pillay did 12 tell me this had been agreed by the parties. Did they 13 agree to that in parenthetical insertion as well? 14 MS PILLAY: Chair, the version that we 15 have now has been circulated and agreed by the parties, 16 yes. 17 COMMISSIONER HEMRAJ: But the comment "in 18 agreement" at the end of all these Mmmms, that's the 19 transcriber's comment, isn't it? 20 MS PILLAY: That's correct, Chair. What 21 has happened is that certain parties were insisting that 22 that be included in the transcript and that's why it was 23 included. 24 CHAIRPERSON: Well, perhaps we should 25 hear from Mr Semenya because it directly relates to the</p>	<p style="text-align: right;">Page 22459</p> <p>1 everybody, including the SAPS, and the witness had seen it. 2 That appears not to be the case. 3 MR MPOFU: Chairperson, I'm prepared to 4 leave it for now. If it so happens that I have to come to 5 this issue, then we'll have a break to give the witness a 6 chance to have a look at it, or it might just happen that 7 she'll have the lunch break. 8 COMMISSIONER HEMRAJ: Ms Pillay, has 9 someone done the exercise of comparing these two documents 10 so we might know where our attention needs to be focussed? 11 MS PILLAY: Commissioner Hemraj, we have 12 compared the two documents. I think all the parties that 13 have looked at 192 bis have compared 192 and 192 bis. If I 14 can just explain the different, Chair, between the two, the 15 "Mmmm (in agreement)" and the plain "Mmmm," it really was 16 trying to capture the difference in the sound between the 17 two. That was the debate which resulted in the difference 18 between the two. 19 CHAIRPERSON: We now have a new 20 certificate on page 22 by Ms Louw who confirmed that she 21 was instructed by Cliffe Dekker Hofmeyr Inc, that's the 22 attorneys for Lonmin, to listen carefully to the audio clip 23 of a meeting between the Provincial Police Commissioner and 24 Lonmin representatives which took place on 14 August 2012 25 and to compare same against the transcript of Realtime</p>

<p style="text-align: right;">Page 22460</p> <p>1 Transcriptions. "On 20 November [she says] I prepared an 2 accurate transcription that I can confirm is true and 3 correct," and this is the document that was then 4 circulated. Is that right? 5 MS PILLAY: This is the document, Chair. 6 In addition, AMCU listened very carefully to the tape as 7 well and asked for certain changes to be made and that was 8 considered by the transcribers and then included in the 9 final version. 10 CHAIRPERSON: Yes, but did the police 11 also see it? 12 MR SEMENYA SC: We're seeing it now, 13 Chair, for the first time. 14 CHAIRPERSON: Have you not seen it 15 before? 16 MR SEMENYA SC: No. 17 MS PILLAY: Chair, this has been a 18 process that's been in the pipeline for months now, since 19 May last year, trying to find an accurate transcription of 20 192. We've given the parties numerous opportunities to 21 feed into the process – 22 CHAIRPERSON: What you're saying is SAPS 23 have been given opportunities? 24 MS PILLAY: That's correct, Chair. 25 CHAIRPERSON: Yes, now one of the</p>	<p style="text-align: right;">Page 22462</p> <p>1 for the audio to be played. 2 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 3 Yes, thank you, Chairperson. If I may just be permitted to 4 try a shortcut, and if it doesn't work then we'll stick 5 with what has been discussed here. General, let's take an 6 example at page 3 of the new document – oh, now we've lost 7 the line numbering. Somewhere in the middle, this is 8 JJJ192 bis, Mr Mokwena says, "Tomorrow we want to issue an 9 ultimatum because we have a court interdict that we're 10 actually about to issue," and you say, "Issue, Mmmm." Were 11 you agreeing with Mr Mokwena? 12 GENERAL MBOMBO: Maybe I was trying to 13 ask whether it was issued. 14 MR MPOFU: And maybe you are agreeing? 15 GENERAL MBOMBO: That's possible, but I'm 16 not sure. 17 MR MPOFU: Well, if you were asking he 18 would have answered you, but he just carried on, says, "We 19 want to give everybody the benefit of the doubt so your 20 team are the only ones tomorrow which will need to advise 21 us whether we should issue an ultimatum and ask the people 22 to come to work," and you say, "Mmmm." Were you agreeing 23 with him? 24 GENERAL MBOMBO: Mr Chair, I cannot be 25 sure whether I was agreeing. This "Mmmm" in Xhosa, I'm</p>
<p style="text-align: right;">Page 22461</p> <p>1 remaining questions is whether this "Mmmm," when they 2 transcribe what I say they just have to put quotation marks 3 and four Ms, when the word "Mmmm" appears it's the 4 interpretation of the transcriber that that's in agreement. 5 Now the question is whether that's accepted by SAPS and all 6 the parties. If not, and if it's a matter which is capable 7 of being settled by listening to the recording then it may 8 well be that the recording has to go in as an exhibit as 9 well, but we don't have to decide that now. I mention 10 that; the parties can think about it and perhaps come to an 11 agreement on it later, but for the moment we have the 12 revised transcript and the words "in agreement" have been 13 struck out wherever they appear, and there can be obviously 14 further debate on the point or, as I've said, if necessary 15 the actual audio clip, the tape, I suppose, can be put in 16 as an exhibit also. 17 MR MPOFU: Chairperson, ja – 18 CHAIRPERSON: Adv Hemraj wants to make a 19 point before you make yours. 20 MR MPOFU: Okay. 21 COMMISSIONER HEMRAJ: The point is when I 22 listened to the audio it appears that at some places two 23 speakers were talking over each other and I'm not sure that 24 in the transcribing that's always accurately captured, so 25 it might become necessary if those points are in dispute</p>	<p style="text-align: right;">Page 22463</p> <p>1 sure counsel knows, could mean being in agreement or being 2 in shock. 3 MR MPOFU: That I can confirm and it can 4 also mean a question. It could be "Mmmm" or "Mmmm?" 5 GENERAL MBOMBO: Mmmm. 6 MR MPOFU: Ja, but the point I'm making 7 is looking at the context of what was being discussed here 8 I'm saying he simply says to you, "Your team are the only 9 ones which will need to advise us whether we should issue 10 an ultimatum and ask the people to come to work." That's 11 hardly a shocking statement. So in this case what do you 12 think the "Mmmm" indicated? 13 GENERAL MBOMBO: I'm not sure, Mr Chair. 14 Maybe I was trying to ask is it like that, or will it be 15 like that. 16 MR MPOFU: Okay, my last one; then he 17 says, "We don't want to do that and to compromise your 18 plans. So in terms of security if you ask me, 19 Commissioner, we really are reliant on you leading us," and 20 you go, "Mmmm." Were you also shocked by that? 21 GENERAL MBOMBO: Again there I'm not sure 22 what I meant. Maybe I was trying to find out, are you sure 23 you're relying on us. 24 MR MPOFU: Alright. Thanks, Chairperson, 25 I tried. I think we'll –</p>

<p style="text-align: right;">Page 22464</p> <p>1 CHAIRPERSON: The only problem is of 2 course Xhosa is a language, unlike English, where I 3 understand the tone can alter the meaning quite 4 dramatically. 5 MR MPOFU: No, but Chairperson – 6 CHAIRPERSON: As I say that's a correct 7 statement as far as the Xhosa language is concerned. It 8 resembles Chinese in that respect, I believe, but not 9 English. So you've got tone problems as well here and 10 certainly it will be a very unsafe basis for us to proceed 11 where we've got "Mmmm" which could mean a number of things. 12 So I would have thought that the way forward is for perhaps 13 the witness to listen to the recording and she might well 14 be able to say yes, I accept that that's, when I said that 15 I meant I agree, and when I said that I mean carry on and 16 I – 17 MR MPOFU: Yes, no – 18 CHAIRPERSON: - when I said the third 19 version of "Mmmm" I meant I understand, or whatever. 20 MR MPOFU: Yes. 21 CHAIRPERSON: But perhaps an exercise of 22 that kind can be performed. 23 MR MPOFU: Thank you, Chairperson – 24 CHAIRPERSON: But it's not possible for 25 us to decide it here. You of course got the point that in</p>	<p style="text-align: right;">Page 22466</p> <p>1 says. 2 MR MPOFU: Yes. 3 GENERAL MBOMBO: Mmmm. 4 MR MPOFU: Now that's – 5 COMMISSIONER TOKOTA: Somebody who 6 doesn't speak Xhosa who listens to the audio will not 7 understand. 8 GENERAL MBOMBO: Mmmm. 9 MR MPOFU: Ja, I accept that, 10 Chairperson, but all I'm saying is that despite all these 11 intonations and so on, the issue is that the context would 12 clearly say whether a person is agreeing or not, but the 13 witness doesn't want to go along with that. 14 CHAIRPERSON: So that will be a matter of 15 argument at the end - 16 MR MPOFU: Yes, I'll leave it for now, 17 yes. Thank you, Chairperson. And also the hearer would 18 know which of those it is, but – 19 CHAIRPERSON: Yes, of course. There are 20 other complications. There's what has been, the speech 21 patterns – 22 MR MPOFU: Yes. 23 CHAIRPERSON: But there are also levels 24 of Xhosa, the witness I understands speaks what's described 25 as very deep Xhosa, which is the same as Mr Tokota's Xhosa,</p>
<p style="text-align: right;">Page 22465</p> <p>1 certain circumstances – 2 MR MPOFU: Context – 3 CHAIRPERSON: - where one would expect 4 disagreement and there is no disagreement, you could argue 5 in certain cases - 6 MR MPOFU: Yes. 7 CHAIRPERSON: - that silence indicates 8 agreement or consent. 9 MR MPOFU: Yes. 10 CHAIRPERSON: But that's also a matter 11 which should stand over – 12 MR MPOFU: I accept that. 13 CHAIRPERSON: - for argument at the end. 14 MR MPOFU: I accept that, Chairperson. I 15 just was intending to use context, but obviously it's not 16 working. So as I say, I'm not wasting anymore time. 17 COMMISSIONER TOKOTA: I just want to 18 demonstrate what the Judge has just said. For example you 19 can say "Mmmm," in other words he was going to say the 20 "Mmmm," saying is that so? 21 MR MPOFU: Ja. 22 GENERAL MBOMBO: Mmmm. 23 COMMISSIONER TOKOTA: Or you say "Mmmm," 24 what you mean I hear you. Or "Mmmm," when you say I agree. 25 Yes, there's also, the tone is very important, as the Judge</p>	<p style="text-align: right;">Page 22467</p> <p>1 which is sort of aristocratic kind of speech and there are 2 other forms of Xhosa usage which can't be so described. 3 MR MPOFU: Yes. 4 CHAIRPERSON: But these are all 5 complications which are very difficult for the Commission 6 to resolve. I suspect the witness – I'm correct in saying 7 she speaks what's described as a deep Xhosa, aristocratic 8 kind of Xhosa - 9 MR MPOFU: Well, I – 10 CHAIRPERSON: - which may well cause 11 difficulties in certain quarters. But I don't think we 12 need to go there either. 13 MR MPOFU: No, we don't, Chairperson, but 14 we must also remember that her conversation with Mr Mokwena 15 was not in Xhosa, it was in English, but be that as it may; 16 we'll come back to this. I think bottom line is that we're 17 not ready to cross-examine on this for now. So it had 18 nothing to do – 19 CHAIRPERSON: Of course the question is 20 when she was saying "Mmmm," whether she was speaking Xhosa 21 or English, but we don't have to go there now either. 22 MR MPOFU: Well, the rest of the 23 transcript she was speaking English. She didn't even once 24 say anything in Xhosa. So I think it's a red herring, if 25 you ask me, Chairperson. I think it's just an escape –</p>

<p style="text-align: right;">Page 22468</p> <p>1 CHAIRPERSON: In English, you know, you 2 have judges who you put a point to them and they say 3 "Mmmm," you think they're with you and you find out to your 4 horror at the end of the case when you get judgment they're 5 merely understanding you and seeing the fallacy of what 6 you're arguing. So I'm not sure if this is a line that's 7 going to give us much profit – 8 MR MPOFU: No, that's true. 9 CHAIRPERSON: But anyway – 10 MR MPOFU: But that's true in English as 11 well, not in Xhosa only. But anyway, be that as it may. 12 Okay, General, I won't ask you the questions as to whether 13 you agreed or didn't agree with Mr Mokwena at certain 14 points, or at least I won't ask you based on the "Mmmm" or 15 whatever it is. The only issue that I really want to 16 canvass with you on this is that - in case we never come 17 back to this, because it might well not be pertinent – the 18 only issue I want to say is that as the Chairperson 19 indicated earlier, it would seem that there were two types 20 of arrests that were postulated in the discussion. The one 21 type was an arrest of Lonmin leaders because of what they 22 may or may not have said in the audio material – 23 CHAIRPERSON: [Microphone off, inaudible] 24 not Lonmin leaders, AMCU leaders. 25 MR MPOFU: Or rather AMCU – I'm sorry.</p>	<p style="text-align: right;">Page 22470</p> <p>1 between me and Mr Van As, refers to what I called the 2 collusion between the police and Lonmin regarding 3 deployment and I will now go into that and then it will be 4 clear whether I'm justified to use that word or not. Do 5 you understand? 6 GENERAL MBOMBO: I understand. 7 MR MPOFU: Now if you go to the original 8 JJJ192. Maybe I should preface it with this cross- 9 examination, if you'll forgive me, General, by saying that 10 when I say this amounted to a collusion, what I really I 11 mean is that here you were almost, by the end of this 12 discussion you were talking about Lonmin and SAPS as one 13 thing. In other words one of the issues was to align your 14 plan and then as I've said in another context this almost 15 became like a joint operation and you were talking about 16 each other as one team as it were. Would that be a fair 17 summary? 18 GENERAL MBOMBO: I do not agree with 19 doing that way. 20 MR MPOFU: Okay, when you said, for 21 example, at page 9 – 22 CHAIRPERSON: Is this page of the 23 original – 24 MR MPOFU: Of the original, yes, 25 Chairperson.</p>
<p style="text-align: right;">Page 22469</p> <p>1 Yes, well it's a Freudian slip, Chairperson. Of AMCU 2 leaders because of something that was contained in some 3 recorded evidence. You remember that? 4 GENERAL MBOMBO: I remember that, Sir. 5 MR MPOFU: But when you according to what 6 I read out to you from your statement, your evidence is 7 that when you said, "If they are angered by these 8 pamphlets, then we will move in a different direction," 9 there you were talking about arrest of the protesters, 10 correct? 11 GENERAL MBOMBO: That is so, Mr 12 Chairperson. 13 MR MPOFU: Okay, as long as that is clear 14 then we can move to my next topic. Now the next – okay, 15 no, let me just finish those issues so that the Chairperson 16 and I don't get entangled again. I've given you four 17 issues that I said you raised at the meeting. The fifth 18 one is something that's not controversial. You were also, 19 you raised the issue of your concern about the unrest 20 possibly spreading to other mines. That was your fifth 21 topic that you raised in that meeting, correct? 22 GENERAL MBOMBO: That is correct, Mr 23 Chair. 24 [12:00] MR MPOFU: Right, then the last one, 25 which is the one we touched on where there was a debate</p>	<p style="text-align: right;">Page 22471</p> <p>1 CHAIRPERSON: Let's see if we can find 2 the passage in the new one? 3 What line on the original – 4 MR MPOFU: It's line 16. 17, 17, 5 Chairperson. When you say that is our interest, this is 6 after – 7 CHAIRPERSON: It's on the bottom of page 8 10 of the new one, that one hasn't got the line side of the 9 page but it's – 10 MR MPOFU: Yes that's why I'm using the 11 old one, Chairperson. 12 CHAIRPERSON: About 13 lines from the 13 foot of the page there's a sentence beginning "So I think 14 yesterday, AD will recall." That's around about the point 15 that you were referring to on page 9 of the original – 16 MR MPOFU: That's correct, Chairperson. 17 Chairperson, to avoid confusion can we just put aside the 18 new one completely? 19 CHAIRPERSON: We have to be careful 20 because it is suggested that there were mistakes in the 21 original which have been corrected on the new one, so I 22 understand as a general matter you can refer to the 23 original one but we've constantly got to be careful that 24 there isn't a change. 25 MR MPOFU: Okay.</p>

<p style="text-align: right;">Page 22472</p> <p>1 CHAIRPERSON: Perhaps we can proceed on 2 the page where there isn't one – 3 MR MPOFU: But just be mindful – 4 CHAIRPERSON: Ms Pillay who seems to know 5 her way around the new document can keep an eye on that and 6 if there's a significant difference she can turn her light 7 on and draw our attention to it. 8 MR MPOFU: Thank you, Chairperson. 9 CHAIRPERSON: If she doesn't mind having 10 that task imposed upon her. 11 MS PILLAY: I'll do so, Chairperson. 12 CHAIRPERSON: Thank you. 13 MR MPOFU: Okay so for the purposes of 14 you and I, General, we are on the original JJJ192. When 15 you say after this discussion about management being 16 separated from the perception and so on. Then you say that 17 "I want it to be very clear that any information that we 18 get we should get so that we arrest the people, that is our 19 interest because yourselves here as management, you will 20 clear yourselves from this perception, you know" and so on. 21 When you say our interests who are you referring to? 22 GENERAL MBOMBO: I think, Mr Chair, I was 23 referring to us as the police. 24 MR MPOFU: Okay and when you say at 25 paragraph 13, the bottom of paragraph 13, line 28,</p>	<p style="text-align: right;">Page 22474</p> <p>1 don't they know? Surely you were talking about – you were 2 using Lonmin and SAPS in the collective as one collective 3 to say our employees, meaning that you and Lonmin were one 4 thing for the purposes of that sentence. Correct? 5 GENERAL MBOMBO: I was referring to my 6 employees, the police and they would also be referring to 7 their employees. 8 MR MPOFU: General, that is patently 9 untrue because you remember you were agreeing what Mr 10 Sinclair was talking about which we will go into now. It 11 was about deployment of horses and all that and you're 12 saying you agree with Graham because this would show 13 employees, all of them, in a balance that we are still in 14 control. So there's no need to show the police that you 15 are in control by deploying the same police. I mean that 16 is senseless. 17 GENERAL MBOMBO: Mr Chair, what I was 18 referring to here was the police, yes I did speak about the 19 police and Lonmin and its employees. 20 MR MPOFU: Okay well I'll argue that but 21 that's just simply untrue. Can you go to page 14? Against 22 the letter, about 18, Chairperson. There you say – okay 23 again Graham Sinclair talks about moral support for the 24 guys and so on and then it says "No they are going to – we 25 already deployed them because now they have to call them</p>
<p style="text-align: right;">Page 22473</p> <p>1 Chairperson, also. 2 GENERAL MBOMBO: Sorry, page 13? 3 MR MPOFU: 13 of JJJ192 ja. 4 CHAIRPERSON: The original document. 5 He's using that because it's got a line indication to the 6 side of the page. What line are you referring to on the 7 original page – 8 MR MPOFU: 28, Chairperson. 9 CHAIRPERSON: So it's the comment by the 10 witness "I think it is very right what Graham is saying." 11 MR MPOFU: Yes, that's the one. I'll 12 read it out. You say there "I think it was very right what 13 Graham is saying because you know we need to show our 14 employees, all of them, in a balance that we are still in 15 control." Who are our employees? 16 GENERAL MBOMBO: Yes, in this context I 17 was referring to the police and Lonmin. 18 MR MPOFU: As one team, as a collective, 19 correct? So "we" there was the collective for the Lonmin 20 and SAPS. 21 GENERAL MBOMBO: Chair, I was referring 22 to Lonmin and its employees as well as SAPS and its 23 employees. 24 MR MPOFU: No, are you suggesting now 25 that you also wanted the police to know who is in control,</p>	<p style="text-align: right;">Page 22475</p> <p>1 back for this operation. We deployed them to key areas" 2 and Graham says "Yes we deployed 110." So the we there 3 clearly again talks about the police and Lonmin as one 4 thing. Do you agree? 5 GENERAL MBOMBO: This statement of Graham 6 where he speaks about 110 I thought he was referring to his 7 people that he had deployed. 8 MR MPOFU: Okay I'll show you that that's 9 also untrue. Ja he carries on and he says "we are going to 10 deploy the horse and dot, dot" and then he says "but we 11 bring them back now because I want all of them to move all 12 of them at once to that area." So surely here you were 13 talking about members of SAPS. 14 GENERAL MBOMBO: Yes, there I'm talking 15 about the police. 16 MR MPOFU: Yes but it's clear that 17 between you and Mr Sinclair you're talking about the same 18 group of people. So if you were talking about the police, 19 he was talking about the police too. 20 GENERAL MBOMBO: I was not at all times 21 sure that whenever he spoke he was referring to the police. 22 MR MPOFU: And even when he says Calitz 23 is on top of that with me, Ma'am. In other words this 24 deployment that he's talking about, he still talks to you 25 as referring to him and Calitz were on top of deployment of</p>

<p style="text-align: right;">Page 22476</p> <p>1 Lonmin security.</p> <p>2 GENERAL MBOMBO: I thought he meant</p> <p>3 Calitz was on top of the deployment of the police whilst he</p> <p>4 was on top of the deployment of Lonmin security.</p> <p>5 MR MPOFU: Okay last attempt. If you go</p> <p>6 back to page 13 which is the original statement that you</p> <p>7 are agreeing with from Mr Sinclair. He says now we have</p> <p>8 got now the horse units we want to deploy as well for</p> <p>9 visible policing. So visible policing must mean the</p> <p>10 police, correct?</p> <p>11 GENERAL MBOMBO: According to that</p> <p>12 terminology yes it refers to the police.</p> <p>13 MR MPOFU: All right.</p> <p>14 MR VAN AS: Sorry, Mr Chairman. Policing</p> <p>15 in that context doesn't necessarily have to refer to</p> <p>16 police. Security –</p> <p>17 CHAIRPERSON: I think that's a matter for</p> <p>18 the witness to answer and not for you to answer from the</p> <p>19 bar.</p> <p>20 MR MPOFU: Thank you and the witness has</p> <p>21 answered. Okay can –</p> <p>22 COMMISSIONER HEMRAJ: Mr Van As does</p> <p>23 Lonmin – sorry does Lonmin have any security officers on</p> <p>24 horseback?</p> <p>25 MR VAN AS: Not to the best of my</p>	<p style="text-align: right;">Page 22478</p> <p>1 does not refer to a discussion with the Minister which</p> <p>2 might have happened on the Sunday or before the 13th, let me</p> <p>3 put it that way. Would you agree?</p> <p>4 GENERAL MBOMBO: I saw it, that is</p> <p>5 correct.</p> <p>6 MR MPOFU: Yes okay, and in fact the only</p> <p>7 conversation he talks about regarding the Minister is at a</p> <p>8 time when already policemen had been killed. Is that</p> <p>9 correct?</p> <p>10 GENERAL MBOMBO: I do not remember now</p> <p>11 whether –</p> <p>12 MR MPOFU: We can just have a quick look.</p> <p>13 GENERAL MBOMBO: - his statement contains</p> <p>14 something like that.</p> <p>15 MR MPOFU: Yes, it's FFF32 –</p> <p>16 GENERAL MBOMBO: Paragraph?</p> <p>17 CHAIRPERSON: Just let me understand</p> <p>18 what's going on now. The are exhibits before us where the</p> <p>19 affidavits made by the Minister and Mr Ramaphosa –</p> <p>20 MR MPOFU: Yes, Chairperson –</p> <p>21 CHAIRPERSON: - now they are both going</p> <p>22 to come and give evidence and they're going to be</p> <p>23 presumably asked about these affidavits.</p> <p>24 MR MPOFU: Yes.</p> <p>25 CHAIRPERSON: You may at some stage that</p>
<p style="text-align: right;">Page 22477</p> <p>1 knowledge.</p> <p>2 MR MPOFU: Thank you, Commissioner. Also</p> <p>3 just to round off another point very quickly, I promise. I</p> <p>4 asked Mr Semenya last night to ask you to read from</p> <p>5 exhibits that were not our list. One of them was the</p> <p>6 statement of the Minister. Have you read it?</p> <p>7 GENERAL MBOMBO: Yes I have.</p> <p>8 MR MPOFU: Thank you, I think,</p> <p>9 Chairperson, indeed I made an arrangement with Mr Semenya</p> <p>10 to kindly convey the message and the witness says she has</p> <p>11 read the statement but I don't want to refer to it in</p> <p>12 detail. So I'll just ask one question, a broad one which</p> <p>13 might not necessitate us going to the actual –</p> <p>14 CHAIRPERSON: I would appreciate that</p> <p>15 mode of procedure.</p> <p>16 MR MPOFU: Thank you, Chairperson.</p> <p>17 Having read the statement of the Minister would you agree</p> <p>18 simply that he does not refer to the telephone conversation</p> <p>19 with you which you have now testified about most of the</p> <p>20 morning.</p> <p>21 GENERAL MBOMBO: I saw that statement.</p> <p>22 MR MPOFU: Yes, and I also asked you to</p> <p>23 read Mr Ramaphosa's statement, do you remember?</p> <p>24 GENERAL MBOMBO: That is so.</p> <p>25 MR MPOFU: Would you also agree that he</p>	<p style="text-align: right;">Page 22479</p> <p>1 certain things appear from the statements, particular</p> <p>2 passages should be interpreted in a particular away, but</p> <p>3 what's the point of asking this witness questions like</p> <p>4 that? I don't understand what's going on. There may a</p> <p>5 point that you've got that I don't understand which is a</p> <p>6 permissible way of proceeding, but I'd be grateful if you'd</p> <p>7 explain it to me.</p> <p>8 MR MPOFU: There is, Chairperson, the</p> <p>9 simple point is that the - whatever the Minister or Mr</p> <p>10 Ramaphosa might whoever might come insofar as the evidence</p> <p>11 I'm dealing with now concerns conversations with this</p> <p>12 witness I have to put things to her because she was part of</p> <p>13 that conversation. There's no use in me saying to the</p> <p>14 Minister later but you had a telephone call with General</p> <p>15 Mbombo and then by then he'll say oh well you must ask</p> <p>16 General Mbombo and I'm asking her now because she's here.</p> <p>17 I don't want to bring her back –</p> <p>18 CHAIRPERSON: All right, what passage –</p> <p>19 Mr Ramaphosa's affidavit is what exhibit? Has it not got</p> <p>20 an exhibit number yet?</p> <p>21 MR MPOFU: I think it's 32.</p> <p>22 MS PILLAY: FFF32.</p> <p>23 CHAIRPERSON: FFF33?</p> <p>24 MS PILLAY: 32.</p> <p>25 CHAIRPERSON: FFF32, 32, FFF32. Yes I</p>



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1 see, that's the top left hand corner of the screen, FFF32.  
 2 What paragraph in that exhibit do you wish to draw the  
 3 witness's attention to?  
 4 MR MPOFU: Chairperson, maybe let me take  
 5 one step back. The only point I'm making now is that  
 6 neither the Minister nor Mr Ramaphosa referred to the  
 7 conversation. As far as the Minister is concerned she has  
 8 agreed that that's how she understood the statement. Now  
 9 all I'm saying now is that Mr Ramaphosa's reference to any  
 10 conversation with the Minister would have happened where  
 11 already there were murders, as he puts it, of policemen.  
 12 And therefore it could only have been after the 13th.  
 13 That's all, the only point I'm making.  
 14 CHAIRPERSON: I would have thought you  
 15 don't have to even make the point from the witness, the  
 16 point is self evident.  
 17 MR MPOFU: Well thank you, then in that  
 18 case I'll move onto something else.  
 19 CHAIRPERSON: There's no suggestion that  
 20 any policemen was killed at Marikana until the afternoon of  
 21 Monday the 13th.  
 22 MR MPOFU: Yes –  
 23 CHAIRPERSON: This witness, as I  
 24 understand it, said she had a conversation with the  
 25 Minister on the evening of Sunday –

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1 MR MPOFU: Before the event –  
 2 CHAIRPERSON: - the 12th.  
 3 MR MPOFU: That's correct, Chairperson.  
 4 That's all right, Chairperson, I'll move on. Yes, you're  
 5 quite right, Chair, thank you. Then I wanted to ask you  
 6 about – okay I think we've almost covered what I've listed  
 7 here as Mr Mokwena's topics which he raised in the meeting  
 8 and would you agree – I'll just say them collectively to  
 9 save time, that firstly it was this issue that he wanted  
 10 people to be arrested and so on. And then it was the issue  
 11 of the alignment of the plan and then he also wanted the  
 12 guidance of the police and then it was to articulate his  
 13 view that the fatality issue should be resolved before the  
 14 HR issue. Is that a fair summary of some of the issues he  
 15 raised?  
 16 GENERAL MBOMBO: That is so, Mr Chair,  
 17 but can I explain the alignment of plan part?  
 18 MR MPOFU: Yes.  
 19 GENERAL MBOMBO: From what I remember it  
 20 only referred to a specific day.  
 21 [12:19] Not that all the police plans, or the actual  
 22 police plan had to be aligned with Lonmin's plan.  
 23 MR MPOFU: Yes, but you and I have just  
 24 gone through now another alignment about deploying horses  
 25 and whoever was the owner of those horses, but that there

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1 was some discussion about aligning the plans in terms of  
 2 deployment as well. Would you agree?  
 3 GENERAL MBOMBO: I cannot dispute that.  
 4 MR MPOFU: Yes, thank you. Now just to  
 5 get one thing out of the way, you've already said that you  
 6 were involved and approved of exhibit L and the opening  
 7 statement. Were you also involved in the compilation of  
 8 the National Commissioner's report, or rather – okay, let  
 9 me put it this way. On the 17th it looks like there were  
 10 two statements that were prepared. One was for the  
 11 National Commissioner and the other one was for the  
 12 President. There are small differences, but they more or  
 13 less deal with the same thing.  
 14 CHAIRPERSON: FFF4 and FFF5.  
 15 MR MPOFU: And FFF5, that's correct.  
 16 CHAIRPERSON: I'm not sure whether the  
 17 differences can be described as, some of them as little  
 18 differences, but that's a matter that will be argued later.  
 19 MR MPOFU: Yes. Okay, let's just say,  
 20 the Chairperson is right; there are similarities and there  
 21 are differences –  
 22 CHAIRPERSON: I think the evidence is  
 23 that the one to the President, which is FFF4, was prepared  
 24 on the evening of the 16th and sent to Mozambique where the  
 25 President and the Minister of International Affairs, or

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1 International Cooperation were at a SADEC meeting, and the  
 2 subsequent statement which the National Commissioner read  
 3 out –  
 4 MR MPOFU: FFF5.  
 5 CHAIRPERSON: - FFF5, that I think on the  
 6 evidence was done on the morning of the 17th.  
 7 MR MPOFU: Okay. Okay, in any event the  
 8 question is were you involved in the preparation of either  
 9 one or both of those statements?  
 10 GENERAL MBOMBO: Yes, I was part of it.  
 11 MR MPOFU: Right, and you agreed with  
 12 their contents?  
 13 GENERAL MBOMBO: That's according to the  
 14 reports we received.  
 15 MR MPOFU: Yes, and there was also – were  
 16 you present when the National Commissioner gave her speech  
 17 about thanking the people and that they'd done nothing  
 18 wrong and all that?  
 19 CHAIRPERSON: [Microphone off, inaudible]  
 20 what do you –  
 21 MR MPOFU: I think it was the 18th,  
 22 Chairperson. Well, it only happened once. Were you  
 23 present when the National Commissioner addressed the  
 24 troops, as it were, and assured them that they had done  
 25 nothing wrong and thanked them?

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1 CHAIRPERSON: Brigadier Calitz made a  
2 speech on the 18th.  
3 MR MPOFU: That's a different one, yes.  
4 CHAIRPERSON: That's a different matter.  
5 MR MPOFU: Yes.  
6 CHAIRPERSON: I've got an idea - one  
7 should have these things at one's fingertips, but I'm  
8 afraid I haven't - I've got an idea that the National  
9 Commissioner spoke on the 20th.  
10 MR MPOFU: That's correct, Chairperson.  
11 I think I also have that date in mind.  
12 CHAIRPERSON: Yes, Mr Pretorius assures  
13 us it's the 20th, so we'll accept his word.  
14 MR MPOFU: That's correct, then it must  
15 be true.  
16 GENERAL MBOMBO: I was present, Mr Chair.  
17 MR MPOFU: Yes, thank you, and did you  
18 agree with the sentiments expressed by the National  
19 Commissioner?  
20 GENERAL MBOMBO: No, Mr Chair, I cannot  
21 say, put it that way; the National Commissioner was talking  
22 to the police in a way she saw fit to talk to them.  
23 MR MPOFU: Okay, did you find anything  
24 disagreeable in what she was saying, or did you agree with  
25 her?

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1 GENERAL MBOMBO: There was nothing I  
2 could not agree with her in what she was saying. She was  
3 doing the talking. She knows why she was saying what she  
4 said.  
5 MR MPOFU: Yes, so there's nothing to  
6 disagree with?  
7 GENERAL MBOMBO: According to me I did  
8 not see anything to disagree with. I did not notice  
9 anything.  
10 CHAIRPERSON: As we saw from the video we  
11 saw she was reading from a prepared speech which was  
12 actually handed to her by somebody before she started  
13 speaking. I think that's correct. Now did you help at all  
14 in drafting the speech? Did you make any suggestions as to  
15 things that could be incorporated in the speech?  
16 GENERAL MBOMBO: Mr Chair, I do not  
17 remember whether she was reading from a speech on that day.  
18 MR MPOFU: Yes, Chairperson, I think the  
19 witness is right. Maybe the Chairperson is thinking about  
20 the other speech, which I'm going to deal with, which was  
21 at the -  
22 CHAIRPERSON: Well, let's deal with it  
23 then. Did you make any suggestions to her as to either of  
24 the speeches that she made, one was I think to - as Mr  
25 Mpofo puts it - to the troops who assembled, and another

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1 occasion was at a funeral, I think. Now did you make any  
2 suggestions as to points that could be made or should be  
3 made in either of the speeches which the National  
4 Commissioner delivered?  
5 GENERAL MBOMBO: I did not make any  
6 suggestions to her, Mr Chair, because she only told me that  
7 she wanted to go and talk to the police, tell them that  
8 they should be tolerant under the circumstances they were  
9 in.  
10 MR MPOFU: Yes, and part of the reason  
11 was to boost their morale, or something to that effect,  
12 correct?  
13 GENERAL MBOMBO: Yes, she said so in her  
14 speech.  
15 MR MPOFU: Yes, and you agreed with this  
16 intention of boosting their morale, correct?  
17 GENERAL MBOMBO: I did not see anything  
18 wrong in her saying so and she had to speak to the police.  
19 MR MPOFU: Yes, and then you were also  
20 present when she spoke at the funeral of Warrant Officer  
21 Lepaaku, correct?  
22 GENERAL MBOMBO: That is so.  
23 MR MPOFU: Yes, and she was reported to  
24 have said there that "We are not sorry, the police are not  
25 sorry." Did you hear that?

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1 GENERAL MBOMBO: I do not remember, Mr  
2 Chair, because there she was reading a speech that was  
3 prepared for me.  
4 MR MPOFU: Yes, no that I accept. I  
5 think that is her evidence as well, and I can assure you  
6 that part is not in the speech. So outside of the speech  
7 did you hear her saying that the police are not sorry?  
8 GENERAL MBOMBO: I do not remember.  
9 MR MPOFU: So it's possible that she said  
10 that but you'd just forgotten?  
11 GENERAL MBOMBO: It is possible.  
12 MR MPOFU: Now the other issue is you and  
13 I have dealt with this whole issue about the emotional  
14 state of the police. I'm not going back there. All I just  
15 want to ask you is this; do you accept that the traumatic  
16 events of the 13th - let's start there - must have equally  
17 affected the emotional wellbeing of the protesters who  
18 witnessed the same events that you thought had troubled the  
19 members of the police?  
20 GENERAL MBOMBO: I cannot be sure of  
21 that, Mr Chair.  
22 MR MPOFU: So you think the trauma might  
23 have been just confined to the members of the police?  
24 GENERAL MBOMBO: I'm saying I cannot be  
25 sure. It could be like that, it could be the opposite.

<p style="text-align: right;">Page 22488</p> <p>1 MR MPOFU: Yes, you were not sure even in 2 the case of the police, that's why you took them to EHW. 3 I'm saying in your estimation were the protesters also 4 affected emotionally? 5 GENERAL MBOMBO: Maybe. 6 MR MPOFU: And the events of the 16th you 7 would agree were even more traumatic and graphic than those 8 of the 13th, at least in terms of numbers. Would you agree? 9 GENERAL MBOMBO: That is so. 10 MR MPOFU: And while you and the 11 Commissioner were boosting the morale, as you put it, of 12 the troops - and I'm using that word loosely - did it occur 13 to you that the protesters who were the only people who had 14 lost on that occasion their friends and colleagues, could 15 have been even more traumatised? 16 GENERAL MBOMBO: Do you mean whether we 17 spoke about it or not? 18 MR MPOFU: I don't know whether you spoke 19 about it or not, but did it occur to you? 20 GENERAL MBOMBO: According to me yes, I 21 thought of it like that. 22 MR MPOFU: Given your realisation that 23 they would have been more traumatised, do you now think 24 that instead of being sent to EHW like the police, it was 25 proper for them to be sent to police cells instead?</p>	<p style="text-align: right;">Page 22490</p> <p>1 documents the other day and I see that one at least of the 2 people, one at least, or two I think were allegedly found 3 in possession of firearms on koppie 3. I didn't check up 4 in relation to dangerous weapons, but certainly at least 5 two of the persons are charged with possessing firearms and 6 there are dockets open in respect of that and they were 7 arrested at koppie 3 and the firearms, there's photographs 8 of the firearms in exhibit L. So I'm not sure the 9 statement you make in its total ambit is correct. 10 MR MPOFU: Ja, okay. Do you think it's 11 reasonable to arrest 250 people for two firearms? 12 CHAIRPERSON: They weren't arrested for 13 two firearms. There were specific people arrested for 14 firearms. Most of the others were arrested for public 15 violence, as I understand it. 16 MR MPOFU: That's the point. 17 CHAIRPERSON: And a charge of murder was 18 added later, but I'm not sure that the opinion of this 19 witness whether it's appropriate to arrest or not is 20 something that's going to help us to answer the terms of 21 reference of this Commission. 22 MR MPOFU: Yes. General, was your 23 evidence earlier on that everything that is done there, 24 including the arrests and criminal investigations, you are 25 ultimately responsible for?</p>
<p style="text-align: right;">Page 22489</p> <p>1 GENERAL MBOMBO: You must remember, Mr 2 Chair, some of them had to be arrested for being in 3 possession of the weapons. 4 MR MPOFU: So you went along with a 5 decision that said people who have gone through this 6 horrific experience with their friends having been killed 7 in front of their eyes, that instead of them being 8 counselled like the police, they must be locked up? 9 GENERAL MBOMBO: Yes, it is like that. 10 MR MPOFU: And you took no steps 11 whatsoever that they should be counselled for the traumatic 12 event of having witnessed their loved ones dying in front 13 of them? 14 GENERAL MBOMBO: That was not up to me to 15 do. 16 MR MPOFU: And did you know that none of 17 the people who were arrested there had been linked to any 18 dangerous weapons? 19 GENERAL MBOMBO: No, I do not know about 20 that. I only hear it now from you. 21 CHAIRPERSON: Is that factually correct? 22 MR MPOFU: Yes. 23 CHAIRPERSON: Well, I – 24 MR MPOFU: It is. 25 CHAIRPERSON: I went through some of the</p>	<p style="text-align: right;">Page 22491</p> <p>1 GENERAL MBOMBO: Please repeat the 2 question. 3 MR MPOFU: Was your evidence, or was it 4 not, that everything that happened on that scene in 5 relation to that operation, including the arrests of 6 people, were your ultimately responsibility? 7 GENERAL MBOMBO: The arrests of people 8 there for public violence and being in possession of 9 weapons, yes, is my responsibility. 10 MR MPOFU: Well, now you're 11 opportunistically grabbing what the Chairperson has just 12 said. You said earlier that the people were arrested for 13 dangerous weapons, but now you're taking the hint from the 14 Chairperson. Is that correct? 15 GENERAL MBOMBO: That is so, because I do 16 not explain. 17 MR MPOFU: Yes, so let's confine 18 ourselves to what you regarded as being the reason for the 19 arrests. I'm saying to you, I've given you the background; 20 here's a group of people who are on your version even more 21 traumatised than, or should be more traumatised than the 22 police members, at least on that occasion. We know the 23 police members could not have been traumatised because they 24 were laughing around those dead bodies. So I'm saying to 25 you, you have a situation where you have a group of people,</p>

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1 you are more concerned about the ones who are laughing  
2 around dead bodies than the ones who must have been  
3 traumatised because they witnessed their friends being  
4 butchered by your members.  
5 CHAIRPERSON: No, I don't think the word  
6 "butcher" is an appropriate word to use in the  
7 circumstances –  
8 MR MPOFU: Well, okay, massacred –  
9 CHAIRPERSON: It may be the subject of a  
10 finding later, it may not be –  
11 MR MPOFU: Massacred.  
12 CHAIRPERSON: - but I don't think you can  
13 state it as a fact.  
14 MR MPOFU: Massacred? Is that better?  
15 The people who were massacred by your members and your  
16 members were laughing around them –  
17 MR SEMENYA SC: Chair, that can't be  
18 stated. If, as the Chair correctly says, if that case is  
19 made up somewhere we'll answer that, but he cannot use that  
20 word. We're not using murderers in relation to Dali's  
21 clients.  
22 MR MPOFU: You do. In exhibit L, as I  
23 demonstrated the other day –  
24 CHAIRPERSON: Mr Mpofo, Mr Mpofo, let's  
25 just bring the temperature down a bit. I suggest you

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1 substitute the word "killed" and then carry on.  
2 MR MPOFU: Well, Chairperson, I will do  
3 that, but massacre –  
4 CHAIRPERSON: At the end of the day –  
5 MR MPOFU: Massacre means the killing of  
6 many people.  
7 CHAIRPERSON: No, anyway –  
8 MR MPOFU: And 34 people is too many.  
9 CHAIRPERSON: We'll get there at the end  
10 of the matter. You can argue all the pejorative  
11 expressions that you consider appropriate in respect of the  
12 killings. For the moment just use the word "killing" and  
13 you can make your point and without objections and –  
14 MR MPOFU: Okay.  
15 CHAIRPERSON: - side issues –  
16 MR MPOFU: Alright.  
17 CHAIRPERSON: - and if your point is a  
18 good point, you can establish it correctly.  
19 MR MPOFU: Yes.  
20 CHAIRPERSON: And if it isn't we'll  
21 discover later whether it isn't.  
22 MR MPOFU: Okay, I'll use the many words  
23 rather than one word. The police had killed many people,  
24 correct? On the 16th.  
25 GENERAL MBOMBO: That is so, as you say.

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1 MR MPOFU: Okay, right, now the point I  
2 was making to you is that the people who had been, where  
3 the police had killed many people and those people were  
4 colleagues - to put it generally - of the people, of the  
5 other protesters, of the people that I represent, you  
6 concerned yourself about the counselling of your members  
7 who had laughed around the dead bodies, who had removed  
8 some of the weapons from the dead bodies, who some of them  
9 had said they would "pyp hom 'life,'" "Pyp hom 'life,'  
10 daardie enetjie," and who maybe, at least one of them had  
11 said "These people deserve to die," you thought it was a  
12 priority to counsel those people over the ones who had lost  
13 their loved ones, correct?  
14 CHAIRPERSON: Were you aware of the fact  
15 that counsel has now put to you that somebody said they, at  
16 that stage someone had said they deserve to die and these  
17 other points that were put to you by Mr Mpofo? Were you  
18 aware of those allegations that people had laughed and so  
19 on? Were you aware of those allegations at the time that  
20 you're now being asked about, just after the 16th?  
21 GENERAL MBOMBO: I was not aware of these  
22 things raised by the counsel, Mr Chair.  
23 MR MPOFU: Shame, I must apologise. Now  
24 that you know those things now, that people were laughing  
25 around dead bodies, do you think it would have been

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1 appropriate to prioritise their counselling, the ones who  
2 were laughing and who were kicking people, who were  
3 dragging them on the ground while they were dead, and  
4 removing weapons from them, now that you know those things,  
5 do you think it would be appropriate?  
6 [12:39] CHAIRPERSON: I don't know if there's any  
7 evidence of kicking. There are allegations of kicking,  
8 there are explanations in relation to actions that might be  
9 seen to be kicking, but I don't think the witness should  
10 answer any question –  
11 MR MPOFU: Okay, I'll do –  
12 CHAIRPERSON: - which accepts as a fact  
13 that there was kicking. But anyway, you got the basic  
14 thrust of counsel's question. What counsel says is this;  
15 your police members were clearly traumatised by what  
16 happened and you had reason to believe they were. Even  
17 some of those who laughed may actually have been  
18 traumatised; the laugh may have been a way of reacting to  
19 the situation. Bizarre as though that proposition may  
20 seem, nevertheless it may be true. But the point that's  
21 been put to you is you were concerned about the  
22 psychological wellbeing of your members and that's why you  
23 were concerned that they should receive therapy and  
24 counselling and so on from the EHW people. What counsel  
25 says is but you must have realised that there would have

<p style="text-align: right;">Page 22496</p> <p>1 been equally –</p> <p>2 MR MPOFU: More.</p> <p>3 CHAIRPERSON: - or possibly more, but</p> <p>4 anyway, we won't debate that either. There would have been</p> <p>5 traumatic experiences suffered by those on what one can</p> <p>6 call the other side. The people who were arrested, the</p> <p>7 people who survived the shooting, the people who saw their</p> <p>8 comrades killed and maimed, they would also have gone</p> <p>9 through a wrenching traumatic emotional experience. They</p> <p>10 were in custody. They were detained in police cells which</p> <p>11 fell under your jurisdiction as the Provincial</p> <p>12 Commissioner. Did you consider it necessary or desirable</p> <p>13 or appropriate or human to make arrangements to see that</p> <p>14 they also receive counselling for the traumatic experiences</p> <p>15 they undoubtedly underwent? That's counsel's question. I</p> <p>16 put it a little bit at greater length than he did, but I</p> <p>17 think that is his question. If he doesn't agree with it,</p> <p>18 he will tell me.</p> <p>19 MR MPOFU: I agree. Mmmm.</p> <p>20 CHAIRPERSON: I don't know what that</p> <p>21 "Mmmm" means, but what's your answer to the question,</p> <p>22 Provincial Commissioner?</p> <p>23 GENERAL MBOMBO: Mr Chair, it is my</p> <p>24 responsibility to have counselling for the police, that</p> <p>25 they are counselled when they have been in such an</p>	<p style="text-align: right;">Page 22498</p> <p>1 and your initiative?</p> <p>2 GENERAL MBOMBO: That is not so, Mr</p> <p>3 Chair. I never was involved in that discussion.</p> <p>4 MR MPOFU: Yes, that's why I said, when</p> <p>5 the Chairperson was not listening I said the investigators</p> <p>6 for whom you are ultimately responsible, the record will</p> <p>7 show that –</p> <p>8 CHAIRPERSON: I understand people for</p> <p>9 whom she's responsible did things, but you were really</p> <p>10 asking her about her mental attitude in response to things</p> <p>11 and I thought it appropriate to establish whether it was</p> <p>12 her initiative or the initiative of people for whose acts</p> <p>13 she may be responsible.</p> <p>14 MR MPOFU: Yes, in any event –</p> <p>15 CHAIRPERSON: You don't have to suggest I</p> <p>16 wasn't listening. Sometimes –</p> <p>17 MR MPOFU: No, no –</p> <p>18 CHAIRPERSON: - I'm not able to hear</p> <p>19 everything, but –</p> <p>20 MR MPOFU: No, Chairperson, I was</p> <p>21 criticising the witness, not you.</p> <p>22 CHAIRPERSON: Well, I'm afraid I was</p> <p>23 caught in the crossfire. I don't like that.</p> <p>24 MR MPOFU: I'm sorry.</p> <p>25 CHAIRPERSON: Don't do it again.</p>
<p style="text-align: right;">Page 22497</p> <p>1 operation. According to us, the police, we do not have</p> <p>2 facilities to counsel people who are not police officers</p> <p>3 and who are arrested. Not disputing that they could have</p> <p>4 been traumatised, but our job there was to disarm and</p> <p>5 arrest people and that's what we were doing.</p> <p>6 MR MPOFU: And instead you and the police</p> <p>7 for whom you are ultimately responsible took steps to</p> <p>8 ensure that those people are charged with the murder of</p> <p>9 their comrades, correct?</p> <p>10 GENERAL MBOMBO: That is what I heard,</p> <p>11 yes.</p> <p>12 MR MPOFU: Ja, so that's the point I'm</p> <p>13 making. I'm juxtaposing, and I'll accept for now that it's</p> <p>14 one thing not to arrange counselling for them because of</p> <p>15 the reasons you've explained, but what I'm talking to you</p> <p>16 is the things that you actually did, which was, (a), to</p> <p>17 have them arrested and also to take steps to intimate to</p> <p>18 the public prosecutors that they should be charged with the</p> <p>19 murder of the same people –</p> <p>20 CHAIRPERSON: Let's just clarify that.</p> <p>21 Did you do that? Did you –</p> <p>22 MR MPOFU: Van Zyl did that.</p> <p>23 CHAIRPERSON: Did you cause the – you</p> <p>24 yourself cause the prosecutor to be contacted and to be</p> <p>25 told he must add a charge of murder? Was that your idea</p>	<p style="text-align: right;">Page 22499</p> <p>1 MR MPOFU: No, no, I'm sorry,</p> <p>2 Chairperson. No, what I was saying, again like I said that</p> <p>3 she's taking advantage opportunistically of something that</p> <p>4 you say. I'm not suggesting anything the way the</p> <p>5 Chairperson took it.</p> <p>6 CHAIRPERSON: Well, you know if I maybe</p> <p>7 with a little bit of modesty can say if I sometimes, really</p> <p>8 infrequently make a good point there's no reason why the</p> <p>9 witness can't be entitled to take advantage of it.</p> <p>10 MR MPOFU: Absolutely.</p> <p>11 CHAIRPERSON: The trouble is if she takes</p> <p>12 advantage of my bad points –</p> <p>13 MR MPOFU: Yes, Chairperson. Thank you.</p> <p>14 No, what I'm trying to say, General, is you would at least</p> <p>15 agree with me if I put it like this; that some of the</p> <p>16 senior people who are answerable to you – in fact, let's</p> <p>17 just be direct. I'm talking about Brigadier Van Zyl. He</p> <p>18 in cooperation – I think let's use that word – with</p> <p>19 National Director of Prosecutions, and I'm saying that</p> <p>20 because I had to cross-examine him in the bail application,</p> <p>21 so I'm saying the police, including Brigadier Van Zyl, who</p> <p>22 are answerable to you, took steps, instead of arranging for</p> <p>23 counselling took steps that these people should be charged</p> <p>24 with the murder of the very same colleagues in respect of</p> <p>25 whom they would have been traumatised, correct?</p>

<p style="text-align: right;">Page 22500</p> <p>1 GENERAL MBOMBO: That is what I heard, Mr 2 Chair, 3 MR MPOFU: And when that happened you did 4 not say, 'What nonsense is this? How can these people be 5 charged with the murder of their own comrades when we know 6 who killed their comrades?' Did you? 7 GENERAL MBOMBO: Firstly I could not have 8 been able to say so because the investigation was ongoing 9 and secondly what I heard, when I heard it, that is when 10 interventions were being done, that includes you. 11 MR MPOFU: No – yes, but those 12 interventions were made after about 10 days that the people 13 had been incarcerated and where your police officers had 14 gone to oppose the bail application and in doing so 15 produced a list of the 34 people who had died as being the 16 victims of the alleged murder perpetrated by those people, 17 by my clients. 18 CHAIRPERSON: I'm sorry to interrupt – 19 GENERAL MBOMBO: I do not understand – 20 CHAIRPERSON: - but I'm not sure that 21 it's correct to put the question the way it was, to talk 22 about murders perpetrated by your clients. There is 23 authority for the proposition, the exact correctness of it 24 I think may be subject to debate, but there certainly is 25 authority, decision of the courts for the proposition that</p>	<p style="text-align: right;">Page 22502</p> <p>1 wouldn't say that the first robber was guilty of 2 perpetrating a murder on the second robber. The legal 3 doctrine to which I've referred, if correctly applied on 4 the facts could lead, in fact in the past has led to 5 convictions. But I don't think the question you're 6 asking – 7 MR MPOFU: I'll leave it to – 8 CHAIRPERSON: - is essentially a bad 9 one – 10 MR MPOFU: That's fine. 11 CHAIRPERSON: But I think the question 12 could be reformulated – 13 MR MPOFU: I understand. 14 CHAIRPERSON: - in a way which avoids 15 those objections. 16 MR MPOFU: I understand, Chairperson. 17 Instead of – 18 MR SEMENYA SC: Well, perhaps – 19 MR MPOFU: Instead of perpetrated by – 20 I'm sorry. 21 MR SEMENYA SC: Perhaps further to that 22 objection must be added the following, Chair – 23 CHAIRPERSON: [Microphone off, inaudible] 24 MR SEMENYA SC: I say perhaps I must add 25 to the objection, Chair, that the opinion of this witness</p>
<p style="text-align: right;">Page 22501</p> <p>1 for example if two persons go together to commit a robbery 2 and in the course, and they foresee that the robbery may be 3 resisted and there may be shots fired by the victims of the 4 robbery, and if one of the robbers if then killed in the 5 course of the robbery, there's authority for the 6 proposition, people have been convicted of murder, the one 7 robber has been convicted of murder of his colleague not 8 because he actually shot at him, but because he foresaw 9 that the enterprise upon which they were engaged might lead 10 to the exchange of fire and the colleague might be killed, 11 and on the basis of recklessness, dolus eventualis, courts 12 have convicted people in those circumstances. That I 13 assume was the doctrine relied on by the prosecution in the 14 present matter. Whether it's a good doctrine – 15 MR MPOFU: It's a bad doctrine. 16 CHAIRPERSON: - is a matter upon which I 17 do not feel called upon to express an opinion. 18 MR MPOFU: Yes. 19 CHAIRPERSON: Whether it applies in the 20 particular facts of this case is another question which we 21 can possibly look at later in the course of these hearings. 22 MR MPOFU: Yes. 23 CHAIRPERSON: But you certainly can't 24 say, it's inappropriate in those circumstances to talk 25 about a murder perpetrated by one person on another. You</p>	<p style="text-align: right;">Page 22503</p> <p>1 about whether or not people can or cannot be prosecuted is 2 totally irrelevant. It doesn't – 3 CHAIRPERSON: Yes, yes, I understand. I 4 wasn't quite sure that that was going to be the question. 5 If it had been I might have said something else, but I 6 think Mr Mpofo is busy with a slightly different question. 7 MR MPOFU: Yes. 8 CHAIRPERSON: So reformulate your 9 question clearly so that Mr Semanya and I can understand 10 it, and the witness, and then we can proceed. 11 MR MPOFU: Yes, thank you, Chairperson. 12 Well, for the record, the doctrine to which you referred 13 was used in apartheid times and it's a bad doctrine, but 14 I'll use instead of "perpetrated by" I thought I'd take the 15 Chairperson's point, I'll use "guilty of," which will cover 16 the difference. 17 The point I was making to you, General, is that 18 the intervention – you said because of interventions in 19 which I was involved, the people were released. You are 20 right about that. But I'm saying those interventions came 21 only after about 10 days, during which your senior 22 policemen, in particular Brigadier Van Zyl, had opposed 23 bail, and in so doing had produced the list of the 34 24 people who had died on the 16th as prima facie proof that 25 the people that I represented were guilty of murder. So</p>

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1 the fact that those interventions were made does not  
 2 absolve the police – that’s what I will argue – does not  
 3 absolve your –  
 4 CHAIRPERSON: What exactly is the  
 5 question? The police, as I understand, relied on the legal  
 6 doctrine to which I’ve referred. Whether it applies to the  
 7 facts of this case, whether it’s a good doctrine in fact  
 8 may be a matter than can be argued. Certainly there’s  
 9 legal authority in support of the doctrine. As I say,  
 10 whether it applies to the facts of this matter is a  
 11 different thing altogether, but what exactly is the  
 12 question you’re asking this witness?  
 13 MR MPOFU: Well, Chairperson – okay,  
 14 well, I was trying to avoid this debate, but now let’s have  
 15 it. You see, Chairperson, whether that doctrine is a bad  
 16 doctrine –  
 17 CHAIRPERSON: No –  
 18 MR MPOFU: - and whether it is –  
 19 CHAIRPERSON: Sorry, before we even get  
 20 involved in the debate, let’s hear what the question is.  
 21 MR MPOFU: Well no, let me address you –  
 22 CHAIRPERSON: But there is –  
 23 MR MPOFU: No –  
 24 CHAIRPERSON: My colleague Adv Hemraj  
 25 informs me of the case that I had in mind, a judgment –

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1 MR MPOFU: Ja, we all know it. That’s  
 2 one case –  
 3 CHAIRPERSON: A judgment of the SCA.  
 4 Apparently she says there are two decisions -  
 5 MR MPOFU: Sorry, there’s two out of a  
 6 million, ja.  
 7 CHAIRPERSON: - a field of law of which  
 8 she has considerable expertise. But the point, even if  
 9 there’s only one case –  
 10 MR MPOFU: Ja.  
 11 CHAIRPERSON: - I’m not sure that a  
 12 prosecutor can be criticised for saying here’s a case, if  
 13 this case is right the accused is guilty of murder and I’m  
 14 charging him with murder.  
 15 MR MPOFU: No. Ja, Chairperson, I’m  
 16 sorry, I have to say this –  
 17 CHAIRPERSON: Anyway, let’s hear what –  
 18 MR MPOFU: - on behalf of the -  
 19 CHAIRPERSON: No, no, let’s not get  
 20 involved in that argument now.  
 21 MR MPOFU: No.  
 22 CHAIRPERSON: What’s the question you’re  
 23 asking the witness?  
 24 MR MPOFU: Chairperson, I’m sorry, I have  
 25 to say this. My clients feel very strongly about this –

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1 CHAIRPERSON: They can feel as strongly  
 2 as they like and you can talk –  
 3 MR MPOFU: Well –  
 4 CHAIRPERSON: Mr Mpofo, behave yourself.  
 5 Your clients can feel as strongly as they like. The point  
 6 that you want to argue you will have ample opportunity to  
 7 argue at the end of the hearing. At the moment you are  
 8 busy asking questions of a witness –  
 9 MR MPOFU: Well, Chair –  
 10 CHAIRPERSON: - and this is not the  
 11 occasion to insert in the middle of the questions some  
 12 presently irrelevant contention that your clients wish to  
 13 have raised at a later stage. Ask your question. Once  
 14 we’ve heard the question, if the question is an appropriate  
 15 one I’ll ask the witness to answer it.  
 16 MR MPOFU: Chairperson, I will ask the  
 17 question. What I want to do is to address the remarks  
 18 you’ve made to me about a certain doctrine. I’m entitled  
 19 to do that.  
 20 CHAIRPERSON: No, you’re not. This is  
 21 not appropriate to do so at this stage. I’ll give you full  
 22 opportunity to do so before the end of the Commission.  
 23 MR MPOFU: But then, Chairperson –  
 24 CHAIRPERSON: I determine that –  
 25 MR MPOFU: How am I going to justify the

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1 question? Because I’m saying – you are saying the question  
 2 is irrelevant because of whatever you’ve said –  
 3 CHAIRPERSON: No, I don’t know what –  
 4 MR MPOFU: I want to show you that you  
 5 are wrong.  
 6 CHAIRPERSON: Mr Mpofo, I don’t know what  
 7 the question is. Let’s hear the question first.  
 8 MR MPOFU: Well then, Chairperson, then  
 9 you shouldn’t criticise my question if you don’t know what  
 10 it is, on the basis of some doctrine.  
 11 CHAIRPERSON: You made some introductory  
 12 remarks which I felt I couldn’t allow to stand uncorrected  
 13 because of the factors that I put on record. What is your  
 14 question?  
 15 MR MPOFU: General, the 34 people were  
 16 killed by the police, correct? To your knowledge.  
 17 GENERAL MBOMBO: I know that people died.  
 18 I know that the police were there, but investigations will  
 19 tell what happened.  
 20 MR MPOFU: You don’t know who killed  
 21 them?  
 22 GENERAL MBOMBO: I know that the police  
 23 were also involved.  
 24 MR MPOFU: You don’t know who killed the  
 25 34 people?

<p style="text-align: right;">Page 22508</p> <p>1 GENERAL MBOMBO: I cannot be sure, Mr 2 Chair, but the investigations will tell, give a definite 3 thing of what happened. 4 MR MPOFU: Do you know who shot the 34 5 people dead? 6 GENERAL MBOMBO: Mr Chair, I've already 7 said that the police were there and they admit that they 8 fired. People died. But I cannot be sure whether all 9 those people were killed by the police, but investigations 10 will tell you. 11 MR MPOFU: Do you know that the version 12 of the police is that all those 34 people were shot dead by 13 the police? 14 GENERAL MBOMBO: If that is the version, 15 yes, because we did fire and they do not dispute that they 16 fired. 17 MR MPOFU: Ja, now what I'm asking you is 18 this; even assuming there's some farfetched doctrine on the 19 basis – 20 CHAIRPERSON: It's been upheld by the 21 Appellate Division, by the way, but anyway – 22 MR MPOFU: Yes, during apartheid times 23 mostly. Even assuming that they – 24 CHAIRPERSON: No, no. No, no, that's – 25 MR MPOFU: Yes, that's correct.</p>	<p style="text-align: right;">Page 22510</p> <p>1 CHAIRPERSON: Well, anyway – 2 MR MPOFU: Ja, the point I'm making to 3 you, General, is simply this; the people, even if this non- 4 apartheid doctrine applies, the people, it would never say 5 that the people who actually shot the people must be left 6 off the hook and on the basis of some non-apartheid 7 doctrine you go and find their colleagues – 8 CHAIRPERSON: Now, Mr Mpofu, I don't 9 understand the – 10 MR MPOFU: Isn't that correct? 11 CHAIRPERSON: You're arguing the law with 12 the witness. In fact – 13 MR MPOFU: Well – 14 CHAIRPERSON: - the example I gave you of 15 two robbers who go to commit a robbery, what each robber 16 foresees that there may well be shooting and his 17 colleague – 18 MR MPOFU: By guns. 19 CHAIRPERSON: - and his colleague may be 20 killed. 21 MR MPOFU: Yes. 22 CHAIRPERSON: They proceed with the 23 robbery and the victims defend themselves, the victims 24 fire. One of the robbers is killed. In that case - 25 MR MPOFU: By someone.</p>
<p style="text-align: right;">Page 22509</p> <p>1 CHAIRPERSON: That's not correct either. 2 MR MPOFU: It is correct. 3 CHAIRPERSON: The case was decided 4 relatively recently and I'm sure Adv Hemraj will be able to 5 give us – she says it's less than five years old. 6 MR MPOFU: Well, okay – 7 CHAIRPERSON: So it's not an apartheid 8 doctrine. It's a doctrine of the, upheld by the SCA. So 9 there may be room for debate about it, particularly room 10 for debate about its application on the facts of this case, 11 but that's a matter that will arise later on. 12 MR MPOFU: Yes. Yes. 13 CHAIRPERSON: But anyway, let's just 14 concentrate on, without side issues and comments – 15 MR MPOFU: Yes. 16 CHAIRPERSON: - on the question you're 17 asking. 18 MR MPOFU: Well, yes, Chairperson, but 19 the fact that it was upheld by the SCA doesn't mean it's 20 not an apartheid doctrine. 21 CHAIRPERSON: [Microphone off, inaudible] 22 no, but – 23 MR MPOFU: It might still be tested in 24 the Constitutional Court and found to be so. But be that 25 as it may –</p>	<p style="text-align: right;">Page 22511</p> <p>1 CHAIRPERSON: Yes, in that case the dead 2 robber has been killed, justifiably, by the victim of the 3 robbery, but that still did not prevent the co-robber from 4 being convicted by Justice Theron in the KwaZulu Natal High 5 Court and did not prevent that conviction being upheld by 6 the SCA. 7 MR MPOFU: Yes. 8 CHAIRPERSON: Those are the facts. Now 9 you're putting to the witness a rather confused and 10 inaccurate legal proposition. I don't think that the 11 witness's views on the matter, even if she has an 12 appreciation of the correct legal doctrine and its 13 application, will assist this Commission and I propose to 14 rule that question out of order. 15 MR MPOFU: Yes. 16 CHAIRPERSON: At this point I think we 17 can take the lunch adjournment. 18 MR MPOFU: Thank you. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [13:57] CHAIRPERSON: The Commission resumes. 21 Provincial Commissioner, you're still under oath. 22 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 23 CHAIRPERSON: Mr Mpofu. 24 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 25 Thank you, Chairperson. General, you joined the police</p>



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1 during the apartheid era in 1980, correct?

2 GENERAL MBOMBO: You can say so, Mr

3 Chair.

4 MR MPOFU: And you worked for the

5 security branch, the Internal Security Branch, correct?

6 GENERAL MBOMBO: Yes, I once worked for

7 them.

8 MR MPOFU: Are you familiar with the

9 concept of Ubuntu?

10 GENERAL MBOMBO: I think so, Mr Chair.

11 MR MPOFU: And the National Commissioner

12 confirmed with me that one of the values that guides the

13 police is the value of Ubuntu. Would you agree with that?

14 GENERAL MBOMBO: That is so, yes.

15 MR MPOFU: It is correct, isn't it, that

16 when people are in your custody, in police custody, then

17 both their physical and emotional wellbeing becomes your

18 responsibility, correct?

19 GENERAL MBOMBO: Especially the physical

20 part, yes.

21 MR MPOFU: Yes, especially the physical,

22 but also the emotional, correct? Their health, total

23 health, is your responsibility, correct?

24 GENERAL MBOMBO: You can say so, yes.

25 MR MPOFU: You are aware that on top of

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1 all the things that I've said to you about what I will

2 argue was the highhanded manner in which the people that I

3 represent were treated, you are aware that there were also

4 allegations that they were assaulted in custody by among

5 others General Mpembe –

6 CHAIRPERSON: Mr Mpofu, what's the

7 relevance – there are two points I want to put to you.

8 Firstly, what's the relevance of this to the terms of

9 reference, and secondly, is this one of the topics on which

10 I gave you leave to cross-examine?

11 MR MPOFU: Yes, Chairperson, it goes to

12 the issue of – it will be clear now; it goes to the issue

13 of the, what I call the revenge motive around the 13th.

14 CHAIRPERSON: Oh, I see.

15 MR MPOFU: Thank you, Chairperson.

16 General, yes, were you aware that the people were allegedly

17 assaulted by among others General Mpembe?

18 GENERAL MBOMBO: I heard about that, Mr

19 Chair.

20 MR MPOFU: And you know that General

21 Mpembe is – well, you and I have gone through the evidence

22 that suggests that General Mpembe would have been one of

23 the people traumatised by the events of the 13th, correct?

24 GENERAL MBOMBO: It could have been like

25 that, but he said he felt, he was in right spirits, right

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1 mood.

2 MR MPOFU: Now whether or not there were

3 specific prescripts that compelled you to do so, shouldn't

4 you have on the basis of just pure compassion and Ubuntu,

5 ensured that these people instead of being exposed to all

6 these other hazards, that they were assisted emotionally?

7 GENERAL MBOMBO: Which people are you

8 referring to?

9 MR MPOFU: The ones which I represent,

10 the ones who were arrested and/or injured.

11 GENERAL MBOMBO: I wouldn't be against

12 such assistance if there was such assistance available.

13 MR MPOFU: Yes. No, I understand that.

14 I'm saying doesn't Ubuntu give you a duty to act rather

15 than a duty not to prevent? What you're telling us is if

16 someone wanted to help them, counsel them, you wouldn't

17 have stood in their way. That's not what I'm asking. I'm

18 asking you whether you didn't have a positive duty to see

19 to it, just as you did with the police, that they are

20 assisted.

21 COMMISSIONER HEMRAJ: This is the witness

22 in her personal capacity, Mr Mpofu?

23 MR MPOFU: No.

24 COMMISSIONER HEMRAJ: As the –

25 MR MPOFU: That's why I – I'm sorry,

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1 Commissioner.

2 COMMISSIONER HEMRAJ: Are you putting

3 this question to the witness in her personal capacity or as

4 SAPS as an organisation or –

5 MR MPOFU: No, thank you, Commissioner.

6 No, I'm putting it to her as SAPS because that's why I

7 prefaced it by saying that the National Commissioner

8 accepted Ubuntu as one of their, as built in into the

9 prescripts. Do you understand the distinction, what the

10 Commissioner is putting? It might well be that you as a

11 person you might have had one feeling or another. That's

12 not what I'm talking about. That's why I said once these

13 people are in your custody as SAPS, they are your

14 responsibility. Their emotional and physical wellbeing is

15 your responsibility, to which you have agreed, and then

16 I've asked you about Ubuntu, that the National Commissioner

17 confirmed it's built into your prescripts. Now I'm saying

18 given those two issues, it's not sufficient to say if

19 someone wanted to take them to counselling you wouldn't

20 have stood in their way. I want to suggest, and I'm going

21 to argue that you had a positive duty to ensure that that

22 happened. What is your comment?

23 GENERAL MBOMBO: Mr Chair, from what I

24 know and according to our prescripts what I know how we

25 help arrested people is when they have health issues, they

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1 are injured or not feeling well. That is why I said we do  
 2 assist them physically. If there were injured arrested  
 3 persons it was my duty to ensure that they are taken to a  
 4 doctor.

5 MR MPOFU: Yes, I understand that,  
 6 General. I understand it very well. But I'm not talking  
 7 about that now. I'm putting aside the question of physical  
 8 injury. I'm only questioning you about the issue of  
 9 emotional injury. Yes, otherwise known as trauma.

10 CHAIRPERSON: Yes, sorry, let's draw a  
 11 distinction. Sorry to interrupt you, Mr Mpofu. The  
 12 injured ones, I'm not sure if all of them but many of them  
 13 were in hospital. Is that correct?

14 GENERAL MBOMBO: That is so, yes.

15 CHAIRPERSON: A number of them were in  
 16 hospital receiving medical treatment.

17 GENERAL MBOMBO: That is correct, Mr  
 18 Chair.

19 CHAIRPERSON: And presumably the medical  
 20 authorities in the hospital would have, if they had  
 21 perceived a need for them to receive counselling or  
 22 anything of that kind, or psychological therapy, that would  
 23 have been provided if it was considered necessary by the  
 24 medical authority of the hospital. Is that correct?

25 GENERAL MBOMBO: If they had such help I

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1 think that will be the situation, yes.

2 CHAIRPERSON: Yes, but what Mr Mpofu's  
 3 main point is relates to, is this; it relates I think to  
 4 those who weren't in hospital, weren't receiving medical  
 5 treatment, but who were just detained in various police  
 6 cells and the suggestion is that many of them would have  
 7 been suffering from psychological trauma and as much in  
 8 need - he would say maybe more, but we won't go there - as  
 9 much in need of the kind of therapeutic counselling that  
 10 your members were getting. They were as much in need of  
 11 that as your members were. What is your response to that?

12 GENERAL MBOMBO: I note what counsel  
 13 says, Mr Chair. What I'm saying is we as the police at the  
 14 present moment do not have that service of counselling  
 15 arrested persons. If we need it or it is needed I think we  
 16 can approach the Department of Social Services.

17 MR MPOFU: Yes, Ma'am, I understand that.  
 18 So in the same way that if one of the people was suffering  
 19 from - I don't know what - some serious physical  
 20 affliction, I'm not expecting you as the police to have  
 21 treated that person. You would have referred that person  
 22 to an outside medical person, correct?

23 GENERAL MBOMBO: That is so, yes.

24 MR MPOFU: Yes, so similarly I'm saying,  
 25 putting to you that similarly if that injury was to happen

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1 to be emotional as opposed to being physical, you had a  
 2 similar duty to refer the people to outside assistance,  
 3 correct?

4 GENERAL MBOMBO: You can put it that way.

5 CHAIRPERSON: May I ask a question -

6 MR MPOFU: And -

7 CHAIRPERSON: Sorry, before you carry on.

8 People who are in the police cells, people who are being  
 9 detained in the police cells, does the district surgeon  
 10 come and examine them or see them while they're in the  
 11 police cells? Are there regular inspections of those who  
 12 are detained in the police cells by the district surgeon?

13 GENERAL MBOMBO: Mr Chair, at the moment  
 14 we'll either ask the district surgeon to come and see them  
 15 at the cells if there are many of them, or we would  
 16 transport them to the doctor.

17 CHAIRPERSON: Carry on, Mr Mpofu.

18 MR MPOFU: Yes, I understand that,  
 19 General. In other words, and it's a fair point you're  
 20 making. Your choice, because of the numbers it might have  
 21 been too demanding to do what I was suggesting to you just  
 22 now, of transporting 250 people to some psychologist, but  
 23 what you could and should have done is to bring somebody to  
 24 where they were held in custody to assist them. Isn't that  
 25 the obvious thing? Just as you would do if someone was

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1 suffering, let's assume if they were all suffering from  
 2 epileptic seizures, you might not have taken all of them  
 3 into a particular clinic, but you could have brought  
 4 doctors inside the cells, correct?

5 GENERAL MBOMBO: That is so, yes.

6 MR MPOFU: And similarly what I'm going  
 7 to argue you should and that you failed to do, knowing that  
 8 they were traumatised, as you and I have now confirmed, was  
 9 to arrange for them to be attended to either by an outside  
 10 doctor or one of your EHW people.

11 GENERAL MBOMBO: I think it never crossed  
 12 our mind, Mr Chair.

13 COMMISSIONER HEMRAJ: Mr Mpofu, is it  
 14 suggested that these traumas and these anxieties were  
 15 conveyed to the charge office commander and in spite of  
 16 that nothing was done, or was nothing communicated at all,  
 17 or are you saying that the police should have taken the  
 18 initiative to have done it?

19 MR MPOFU: Yes - no, it's the latter,  
 20 Commissioner. That's why I started by establishing from  
 21 the witness that it was predictable, and I think the Chair,  
 22 on my version that these people are more traumatised,  
 23 according to the Chair they were at least equally  
 24 traumatised. I'm happy with that.

25 COMMISSIONER HEMRAJ: And those of them

<p style="text-align: right;">Page 22520</p> <p>1 who were in police cells in custody and were taken to see 2 the district surgeon, did they complain to the district 3 surgeon about their psychological problems? 4 MR MPOFU: No – well, I don't know 5 anything about anyone who was taken to a district surgeon. 6 CHAIRPERSON: [Microphone off, inaudible] 7 district surgeon normally is consulted, is he not, I mean 8 in the case of people who are detained in the police cells, 9 whenever there's a change of staff the new person in charge 10 has to see to it that the people are all well and there's a 11 record made in the occurrence book of the police station, 12 and also prisoners are taken to the, in respect of whom 13 there's a problem, a health problem, are taken to the 14 district surgeon and if, as the witness says it's not 15 practically feasible to do that then the district surgeon 16 comes to the police station. Isn't that correct? Let's 17 ask the witness. Is that correct? 18 GENERAL MBOMBO: That is correct, Mr 19 Chair, if amongst the people detained there is someone who 20 needs medical help or some kind of help. 21 MR MPOFU: Yes, Chairperson, well my 22 instructions – and I'll confirm this – are that nobody was 23 taken to any district surgeon, but from my own experience I 24 can tell you that when you are in police cells, it might 25 happen like that in the book; you only get taken to a</p>	<p style="text-align: right;">Page 22522</p> <p>1 that recommendation at the end and you may well find 2 support even from the SAPS if you made such a 3 recommendation. 4 MR MPOFU: Yes, thank you, Chairperson, 5 yes. No, no, that – yes, thank you, Chairperson. I just 6 want to point out that the legal duty I have established, I 7 hope, through cross-examination. That's why I asked the 8 witness is it so that when people are in your custody, both 9 their physical and wellbeing – 10 CHAIRPERSON: We heard the cross- 11 examination. 12 MR MPOFU: Yes, okay. 13 CHAIRPERSON: I did hear that. 14 MR MPOFU: Thank you. So the legal duty 15 is established and what I'm doing now is probably just – 16 and I'm not going to spend more time on this – is something 17 much more which says that – 18 CHAIRPERSON: [Microphone off, inaudible] 19 the legal duty is a matter you can argue at the end. I 20 hear you will contend that you did establish that from the 21 facts you elicited from the witness. 22 MR MPOFU: Fine. 23 CHAIRPERSON: Anyway, I think we can move 24 on. You've – 25 MR MPOFU: Okay.</p>
<p style="text-align: right;">Page 22521</p> <p>1 district surgeon, or at least I was taken to a district 2 surgeon when you are physically ill and in our case then 3 what would happen is that you'd raise that with the 4 district surgeon, and this particular one used to give us a 5 sleeping tablet, but my instructions on this - subject to 6 correction – are that none of the people were visited, 7 either them visiting or being visited by a district 8 surgeon. 9 CHAIRPERSON: Well, there are two points, 10 aren't there? The first is whether there's any legal 11 obligation on the police to do that, the way things are at 12 the moment, and whether there's a legal obligation is a 13 matter the witness can't testify on because she can't tell 14 us what the law is. Then of course you may wish at the end 15 of the hearings to suggest that we should make a 16 recommendation that people who are traumatised in the 17 psychological sense, steps should be taken and there should 18 in fact be a duty on the charge office, you know, station 19 commander under whom the charge office, the detention cells 20 fall to see to it that the, not only the physical wellbeing 21 of the prisoners but also the psychological wellbeing where 22 there's reason to believe that there's trauma, should be 23 looked into. 24 MR MPOFU: Yes. 25 CHAIRPERSON: And you're free to make</p>	<p style="text-align: right;">Page 22523</p> <p>1 CHAIRPERSON: You've put the facts on 2 record on which you will rely. 3 MR MPOFU: Yes. 4 CHAIRPERSON: I don't know if the witness 5 can help us any more than she has, but you will presumably 6 have detailed submissions on this point - 7 MR MPOFU: Yes. 8 CHAIRPERSON: - which will elicit some 9 reply from the police service. 10 MR MPOFU: Fair enough, Chairperson. 11 Yes, in any event, General, your answer is that it just 12 didn't cross your mind, and my last question is that what 13 did cross your mind was the fact that they should be 14 charged with murder? 15 CHAIRPERSON: No, I don't think she 16 admitted that. Did you think they should be charged with 17 murder? They'd been arrested on charges, we know that. 18 They were taken into custody on particular charges which 19 have been explained to us, and at a later stage a murder 20 charge was added. We heard that the primary responsibility 21 for that, according to what Mr Mpofu tells us, rests with 22 the Brigadier Van Zyl. 23 MR MPOFU: That's correct, Chair. 24 CHAIRPERSON: Were you yourself involved? 25 You may ultimately be responsible in some kind of way, but</p>

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1 were you yourself personally involved in the decision to  
2 add a charge of murder?  
3 GENERAL MBOMBO: That is not correct, Mr  
4 Chair.  
5 MR MPOFU: Yes, let's understand each  
6 other. Even when you say it didn't cross your mind to get  
7 them counselling, I don't necessarily mean you as a person.  
8 It's you, and I'm talking about SAPS really, for which you  
9 are responsible. Do you understand that?  
10 GENERAL MBOMBO: I hear you.  
11 MR MPOFU: Okay, anyway, just help me  
12 with this. You foresaw that if Lonmin drops the pamphlets  
13 that might anger the protestors, correct?  
14 [14:17] GENERAL MBOMBO: Yes, I did think of it  
15 that way.  
16 MR MPOFU: And you were prepared to take  
17 that risk because you, even if they were angry you would  
18 have then moved in and arrested them and so on, correct?  
19 GENERAL MBOMBO: If there was a need for  
20 that, yes.  
21 MR MPOFU: Yes, and you knew that if  
22 Lonmin had engaged them on the issue of wages that would  
23 not anger them, it would make them happy, correct?  
24 GENERAL MBOMBO: It would have depended  
25 on the negotiations.

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1 MR MPOFU: No, I'm not talking about the  
2 outcome of the negotiations, you knew that what would have  
3 made them happy is to be engaged at all, irrespective of  
4 the outcome, correct?  
5 GENERAL MBOMBO: I was not sure about  
6 that, I was sure though that they should talk to their  
7 people.  
8 MR MPOFU: Okay and I'm, yes, so I want  
9 to, I'm going to criticise you at the end that you were  
10 prepared to discuss with Mr Mokwena to do something which  
11 in your estimation was likely to anger these people, but  
12 you were not prepared to recommend something which you knew  
13 would make them happy and maybe end the violence. What  
14 will you say when I criticise you like that?  
15 GENERAL MBOMBO: I trust that Counsel  
16 Semanya would disagree with you on that.  
17 MR MPOFU: Yes, but unfortunately Counsel  
18 Semanya is not the one who said if they get angry I'll move  
19 in another direction and shoot them.  
20 MR SEMENYA SC: No, no, no.  
21 CHAIRPERSON: Mr Mpofo, where is that in  
22 the record? Where is that in the record? Using the old  
23 version of the transcripts at page 7. The line 20 the  
24 witness says, "then let us communicate what needs to be  
25 communicated to them, you do not have to shy away from

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1 that. It doesn't matter how it will anger them or whatever  
2 that is the policy of the company they know. But once  
3 again also we're ready for tomorrow if it angers them in  
4 any way tomorrow we, obviously ourselves we're prepared to  
5 move in a different direction." That's what she said.  
6 MR MPOFU: Yes.  
7 CHAIRPERSON: What you put to her, to  
8 the witness was a very free and imaginative paraphrase of  
9 what she said which didn't convey fully and accurately the  
10 precise meaning of what she said. So I suggest you  
11 reformulate, well perhaps you can simply say you were, your  
12 attitude is as set out in the passage at page 7, the  
13 original version of JJJ192 against lines 20 and following.  
14 So that's your point and then –  
15 MR MPOFU: Yes.  
16 CHAIRPERSON: What follows from that?  
17 MR MPOFU: Well, Chairperson, I think  
18 that's slightly unfair. I went further then to put what is  
19 on page 7. I put to the Commission, I decoded what she  
20 says in the, paragraph 7 using her own words, Chairperson,  
21 which are in 62.5 of her own statement. I'll just go back  
22 to that.  
23 CHAIRPERSON: Alright, I haven't got a  
24 problem if you put to her what appears here on page 7 of  
25 JJJ192 and the paragraph in her statement. My complaint

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1 was that I thought your summary had gone a bit further then  
2 the ipsissima verba of those two documents.  
3 MR MPOFU: Okay.  
4 CHAIRPERSON: If you go back to those  
5 two documents, the ipsissima verba thereof I haven't got a  
6 problem.  
7 MR MPOFU: Fair enough. When, to  
8 paraphrase it, when you are saying we'll move in another  
9 direction you meant stage 3, the tactical phase, correct?  
10 GENERAL MBOMBO: That is not what I was  
11 saying, Chairperson. That is not what I was saying. But  
12 what I was saying was that we'll devise means to protect  
13 them if there is a problem.  
14 MR MPOFU: No, General, you meant, I put  
15 it to you that you meant exactly that, if it angers them  
16 the issue of the pamphlets you'll move in with stage 3  
17 which involved their disarming and their arrest. Do you  
18 disagree with that?  
19 GENERAL MBOMBO: I do not remember saying  
20 exactly that.  
21 MR MPOFU: Okay, well let me remind you.  
22 Can you go once again to paragraph 62.5 of your statement,  
23 of your amplified statement.  
24 CHAIRPERSON: What Mr Mpofo is  
25 suggesting, have you got the paragraph? It's paragraph

<p style="text-align: right;">Page 22528</p> <p>1 62.5 of exhibit LLL1. What you say there was "where I say 2 that if the protestors were to be angered by what is 3 communicated to be the attitude of Lonmin the SAPS was 4 prepared to take a different direction. I meant the SAPS 5 would take appropriate steps to disarm and arrest the 6 protestors. This was meant to make it plain that the 7 communications between the employer and the employees must 8 happen but if things were wayward as police we would have 9 to disarm and arrest them" and what Mr Mpofu says that the 10 idea of disarming or the process of disarming and arresting 11 them was involved in stage 3. So what you were in effect 12 saying in 62.5 is that if the strikers were angered by what 13 was in the pamphlets then the SAPS would be prepared to 14 move to stage 3, I think that's - 15 MR MPOFU: 100% - 16 CHAIRPERSON: A summary of his - 17 MR MPOFU: 110%, Chairperson. 18 CHAIRPERSON: Now what's your answer to 19 that? 20 GENERAL MBOMBO: Mr Chair, it appears in 21 my statement. What I meant there was that if, yes the 22 dropping of the pamphlets angers them or whatever they do 23 not agree with each other we will be there to maintain law 24 and order and if it is necessary we would have to effect 25 arrests and disarm them.</p>	<p style="text-align: right;">Page 22530</p> <p>1 encirclement plan, isn't that correct, which would involve, 2 I'm not asking the question of you, Mr Mpofu, I'm asking - 3 MR MPOFU: Well I'm just shocked, 4 Chairperson. 5 CHAIRPERSON: Well behave yourself. 6 The, at that stage in your mind stage 3 was disarm, was 7 encirclement which would then involve disarming the people 8 at the koppie and arresting them, is that right? 9 GENERAL MBOMBO: At the time I was 10 talking to them, Mr Chair, I knew that there was a plan 11 entailing encirclement but there were criticisms about that 12 plan already. 13 MR MPOFU: Yes, thank you very much. 14 CHAIRPERSON: - refer to evidence on 15 that. But any way but what we're concerned with, Mr Mpofu 16 and I is when you said in the last line of paragraph 62.5 17 that if the strikers becomes angry and so forth, in 18 consequence of the pamphlets then things were wayward as 19 you put it then the police would have to disarm and arrest 20 them and that would have been one form of implementation of 21 stage 3, is that correct? 22 GENERAL MBOMBO: I agree with you, Mr 23 Chair. 24 MR MPOFU: And it would be a form that 25 would involve the shedding of blood, correct?</p>
<p style="text-align: right;">Page 22529</p> <p>1 MR MPOFU: And that would be done in 2 terms of stage 3, that part of the operation of disarming 3 and arresting is stage 3, correct? 4 GENERAL MBOMBO: You can say it is 5 associated with stage 3. 6 MR MPOFU: What other stage do you think 7 is, it is about? What other stage of the operation do you 8 think the arrest and disarming is associated with other 9 then stage 3? 10 GENERAL MBOMBO: You must remember, Mr 11 Chair, the reason for our presence there was to disarm 12 them. Whether stage 3 was on the plans or not, that is why 13 I'm saying it is associated with stage 3. 14 MR MPOFU: Okay, let's - 15 CHAIRPERSON: Sorry, when you were 16 speaking to Mr Mokwena and his colleagues on the Tuesday 17 afternoon you didn't yet know of Mr Twala's death and 18 according to your evidence, other evidence on the point by 19 other people but we're busy with your evidence. According 20 to your evidence as far as you were concerned encirclement 21 was still going to be the plan because you use the word 22 encircle remember several times. So what you were saying I 23 take it by, when you refer to disarm and arrest was if 24 necessary you would have to proceed to what is stage 3 and 25 what was stage 3 at that stage in your mind was the</p>	<p style="text-align: right;">Page 22531</p> <p>1 GENERAL MBOMBO: That was not in my mind. 2 MR MPOFU: General, that can't be 3 correct. Go to page 5 of JJJ192. You said after, if they 4 did not surrender their arms and Mr Mokwena says, I'm sorry 5 Chairperson, I'm reading, around 25 or so, and then you say 6 "their arms, their weapons, weapons will leave them, move 7 your vehicles, come back and park here because why, this 8 evening I'm getting 480 members, tomorrow when we go there 9 for the second time now that we were there today and they 10 did not surrender then it's blood". Did you say that? 11 GENERAL MBOMBO: I said it, Mr Chair. 12 MR MPOFU: Now in other words if you put 13 all these pieces of evidence together you were prepared to 14 ask Lonmin to distribute those pamphlets and if it angered 15 them it didn't matter because you would move in, into stage 16 3 or whatever you call it, but whatever it is that you were 17 going to do would involve blood, correct? 18 CHAIRPERSON: No, no, that's not quite 19 accurate, Mr Mpofu. 20 MR MPOFU: Okay, my - 21 CHAIRPERSON: What she said was and if 22 they did not surrender then it's blood. 23 MR MPOFU: Yes, my - 24 CHAIRPERSON: Remember there was the 25 story of the show of force and there was this big gun that</p>

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1 actually, if it worked could have knocked over a wall, in  
 2 fact wasn't in working order and all that. So there was  
 3 going to be a show of force but if they didn't surrender in  
 4 spite of that show of force then the point you make is  
 5 correct.  
 6 MR MPOFU: Yes.  
 7 CHAIRPERSON: She then said that it's  
 8 blood.  
 9 MR MPOFU: Yes, fine I'll use the word  
 10 might then if it assists. Yes, the Chairperson is correct  
 11 so I'll use the word might. You were prepared that they  
 12 would be angered and you'd move in and if they did not  
 13 surrender then there would be blood or let me put it this  
 14 way you knew that one of the possibilities would be blood,  
 15 bloodshed, correct?  
 16 GENERAL MBOMBO: That's what I thought  
 17 might happen but it was not our wish.  
 18 MR MPOFU: Yes, no I'm prepared to accept  
 19 it was not your wish. All I'm saying is that you  
 20 appreciate the risk of bloodshed and despite your  
 21 appreciation of that risk you in any event asked Lonmin to  
 22 do what might spark that bloodshed, namely the dropping of  
 23 the pamphlets, correct?  
 24 GENERAL MBOMBO: I actually wanted them  
 25 to do something from their side.

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1 MR MPOFU: Even if it might result in  
 2 bloodshed?  
 3 GENERAL MBOMBO: That is not what I was  
 4 thinking.  
 5 MR MPOFU: No, you're not thinking, you  
 6 said it with your mouth. If they do not surrender then  
 7 it's blood, it's not about thinking. In other words you're  
 8 saying that they must distribute those pamphlets even if  
 9 the consequences might be blood, correct?  
 10 CHAIRPERSON: Mr Mpofo, Mr Semenya has  
 11 turned his light on.  
 12 MR MPOFU: Oh, I'm sorry, Chairperson.  
 13 MR SEMENYA SC: Well to make only one  
 14 objection, Chair, this is argumentative. These questions  
 15 he has asked them, they've been answered. The document  
 16 also speaks for itself.  
 17 MR MPOFU: Chairperson, I'm sorry that,  
 18 the purpose of cross-examination as I understand it is  
 19 exactly to get the witness to either concede or dispute a  
 20 proposition that I'm going to argue at the end. It's true  
 21 that is something that I want to argue at the end, but I  
 22 can't be disentitled from giving the witness an  
 23 opportunity, maybe by blood she meant something else, I  
 24 don't know but in fairness to her I must give her the  
 25 opportunity.

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1 CHAIRPERSON: I'll allow you to put it  
 2 just once. The, you heard what counsel says. You've  
 3 discussed the dropping of pamphlets. You said if that  
 4 angers them then and they become wayward, things become  
 5 wayward the police would act, they would disarm and arrest,  
 6 it might well be that blood would be shed in consequence,  
 7 that's all said in the transcripts. That's what you said.  
 8 So Mr Mpofo is trying to tie those together and saying to  
 9 you that you were happy that the pamphlets should be,  
 10 agreed that pamphlets being dropped and you anticipated  
 11 that it was a possibility, you foresaw the possibility that  
 12 a chain of events would then be set in motion which might  
 13 end in blood being shed, is that your question, Mr Mpofo?  
 14 MR MPOFU: That's correct, Chairperson.  
 15 CHAIRPERSON: Alright. What's your  
 16 answer to that, do you agree with that? I understood you  
 17 to say you didn't want blood, blood was I think the last  
 18 thing you wanted to happen but Mr Mpofo accepts that and he  
 19 says but nevertheless you foresaw that it might be a  
 20 consequence of this chain of events that was being, might  
 21 be, would be set in motion. Do you agree with that  
 22 proposition?  
 23 GENERAL MBOMBO: Even in that case, Mr  
 24 Chair, I was not anticipating that there would be  
 25 bloodshed.

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1 MR MPOFU: Alright you, but you  
 2 anticipated that the police would shoot, correct?  
 3 GENERAL MBOMBO: Not that the police will  
 4 shoot but I knew that if we come into contact with them,  
 5 maybe by arresting them or disarming them something might  
 6 happen.  
 7 MR MPOFU: Correct, and, sorry.  
 8 CHAIRPERSON: So there might be blood  
 9 either way I take it, if the, it also might have been to  
 10 some extent a repetition of what happened on the 13th and  
 11 some police might have been injured or, fatally or  
 12 otherwise in the process, is that also something that you  
 13 foresaw might happen?  
 14 GENERAL MBOMBO: That as well, Mr Chair.  
 15 I was looking at it being –  
 16 MR MPOFU: Yes –  
 17 GENERAL MBOMBO: Able to happen.  
 18 MR MPOFU: Sorry, sorry.  
 19 GENERAL MBOMBO: Of that happening also.  
 20 MR MPOFU: Yes. But the dominant thing  
 21 that you foresaw was that the police would have to shoot,  
 22 correct?  
 23 GENERAL MBOMBO: Not that the police  
 24 alone would shoot, but I did expect some confrontation.  
 25 MR MPOFU: Alright so the purposes of

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1 this question not, that is not significant. In any event  
 2 whoever was shooting who your, you foresaw that there would  
 3 be bloodshed, people would be injured or killed on either  
 4 side, correct?  
 5 GENERAL MBOMBO: Yes, there was a  
 6 possibility of that happening.  
 7 MR MPOFU: And in fact on the side of the  
 8 police your view was that the, if it was not for the  
 9 irritation of the laws that prevent you from shooting you  
 10 would do that much earlier, correct?  
 11 GENERAL MBOMBO: What passage are you  
 12 referring to?  
 13 MR MPOFU: It's, no but first answer the  
 14 question, forget about the passage.  
 15 CHAIRPERSON: Please repeat the question  
 16 again.  
 17 [14:36] MR MPOFU: It was your view that were it  
 18 not for the irritation or impediment of the laws that  
 19 prevent the police from shooting you would have acted even  
 20 before the time that you contemplated the shooting would  
 21 happen, correct?  
 22 COMMISSIONER HEMRAJ: I'm not sure I  
 23 understand that question, Mr Mpofo, would you just mind  
 24 repeating it please?  
 25 MR MPOFU: Okay. Was it ever your view

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1 that if it was not for the laws that prevent the police  
 2 from just shooting then your actions might have happened  
 3 earlier?  
 4 GENERAL MBOMBO: No, it is not like that.  
 5 MR MPOFU: But isn't that the reason why  
 6 you said the police needs to bag the protestors first?  
 7 GENERAL MBOMBO: You must remember that  
 8 is our duty according to our prescripts.  
 9 MR MPOFU: Can you go to page 6 of  
 10 JJJ192?  
 11 CHAIRPERSON: What counsel is referring  
 12 is on the screen already. It's from line 11, "as I said  
 13 let us beg now because remember we are tied up by these new  
 14 amendments in our law which says we should not shoot, we  
 15 should not do this, you know these things. You know from  
 16 Tatane's incident and that." So what counsel is saying to  
 17 you is you regarded yourselves as being tied up by these  
 18 new amendments. That if these new amendments weren't in  
 19 the law he says, you would have then have acted earlier. I  
 20 think that's your – is that the summary –  
 21 MR MPOFU: That's correct, Chairperson.  
 22 CHAIRPERSON: Is that what you meant when  
 23 you said that or did you mean something else?  
 24 GENERAL MBOMBO: It would not have been  
 25 like that in the context that I put it, Mr Chair.

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1 MR MPOFU: General, no. Although there  
 2 is a new spelling there, what you are talking was the  
 3 Tatane incident where somebody was killed, correct?  
 4 GENERAL MBOMBO: That is so, yes.  
 5 MR MPOFU: And you say very clearly, once  
 6 again you use the word because to make it clear what the  
 7 context is. You said, "let us beg now because remember we  
 8 are tied up by these new amendments in our law which says  
 9 we should not shoot, we should not do this. You know these  
 10 things. You know from Tatane's incident and all that.  
 11 What – under context, what you are saying here I'm going to  
 12 argue that were it not for the laws that say you should not  
 13 shoot, you should not do this, you should not do that as  
 14 you put then you would have ordered the police to shoot  
 15 even earlier.  
 16 GENERAL MBOMBO: I do not agree with you  
 17 there.  
 18 CHAIRPERSON: What did you mean by saying  
 19 we're tied up by these new amendments? Now if the new  
 20 amendments hadn't been on the statute book and therefore  
 21 you weren't tied up by these new amendments what would you  
 22 have done?  
 23 GENERAL MBOMBO: Mr Chair, our prescripts  
 24 are clear as to what we should do. What I was trying to  
 25 say on this point is that we also had to look carefully at

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1 the new amendments that's there.  
 2 CHAIRPERSON: It is not clear to me, what  
 3 did you mean by the new amendments? What amendments were  
 4 you referring to?  
 5 GENERAL MBOMBO: I was referring to the  
 6 issue that we're not supposed to use live ammunition, we  
 7 should use rubber or reduced rubber.  
 8 MR MPOFU: Okay, but whatever instrument  
 9 was going to be used what you are saying is that you have  
 10 to beg, as you put it, the protestors because due to being  
 11 tied up by the new laws you could not just shoot them. In  
 12 other words were it not for the irritating new laws or the  
 13 laws that are tying you up you would simply shoot them.  
 14 GENERAL MBOMBO: I do not agree with  
 15 that.  
 16 CHAIRPERSON: I think you've put this  
 17 point several times to her. She doesn't agree. I don't  
 18 know how many sticks of dynamite you would require to get  
 19 her to change, I don't think you will be able to really.  
 20 MR MPOFU: No, Chairperson –  
 21 CHAIRPERSON: Her answer's on record what  
 22 she said to Mr Mokwena and the other people, it's also on  
 23 record. You can argue the matter at the end I think.  
 24 MR MPOFU: Yes.  
 25 CHAIRPERSON: I don't know if there's any

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1 - of getting any further material which will form the basis  
 2 of an argument, so I think you've got enough for your  
 3 purposes. Whether it will be enough in the end for your  
 4 argument to succeed is of course something we don't know  
 5 the answer to. But I suggest that you might like to move  
 6 on.

7 MR MPOFU: Thank you, Chairperson, I was  
 8 just following up on your question, Chairperson, on what  
 9 she meant by tied up, ja.

10 COMMISSIONER HEMRAJ: General, is one of  
 11 those amendments, would it be that the police were not  
 12 allowed to use rubber bullets anymore?

13 GENERAL MBOMBO: Mr Chair, we are now  
 14 allowed to use what we call reduced rubber. We are not  
 15 allowed to use live ammunition.

16 MR MPOFU: Okay, look in any event the  
 17 real point I'm making to you is this, you, General Mbombo,  
 18 were prepared to take a risk that these pamphlets might  
 19 anger the protestors and if they do you'd move in, into  
 20 your situation which might result in the police shooting  
 21 and bloodshed. And I'm saying that against this, on the  
 22 other side of the scale was a possibility of something  
 23 which would do the exact opposite. In other words we  
 24 should diffuse the situation. In fact there were two  
 25 things that were likely to diffuse the situation. One was

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1 the exhorting Lonmin to engage with the protestors which  
 2 you failed to do. The second one which you knew might  
 3 diffuse the situation and avoid the bloodshed by the  
 4 intervention of Mr Malema and both of those two things that  
 5 you knew were likely to resolve the situation you rejected.  
 6 And you embraced the one thing that is likely to result in  
 7 bloodshed which indeed it did result in bloodshed because  
 8 34 people died. Do you understand the proposition?

9 GENERAL MBOMBO: I hear what he says.

10 CHAIRPERSON: You hear what he says, but  
 11 what do you say about it. He says what you had on the  
 12 table in front of you is three possibilities. One, you go  
 13 to Lonmin and say look here stop your nonsense, start  
 14 negotiating with these people. You know unless you  
 15 negotiate this problem's going to go on. The second thing  
 16 you do is you say let's wait for Mr Malema to come because  
 17 what he did at Impala or let's even invite him to come to  
 18 repeat what he did at Impala. That's the second  
 19 possibility says Mr Mpofu. The third possibility was the  
 20 one you chose and what you chose was drop pamphlets on  
 21 them, it may set in motion a chain of events which may end  
 22 in bloodshed, but that's the one you chose. Now that's his  
 23 point, what do you say about it? That's his proposition.

24 GENERAL MBOMBO: Mr Chair, I did not  
 25 think of anything like that at that time.

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1 CHAIRPERSON: Do we know whether the  
 2 pamphlets were dropped? Perhaps Mr Van As can tell us. Mr  
 3 Van As?

4 MR VAN AS: They weren't, they weren't,  
 5 Mr Chairman.

6 CHAIRPERSON: They were not dropped.

7 MR VAN AS: No.

8 CHAIRPERSON: So in fact whatever led to  
 9 the trouble was not the pamphlets.

10 MR VAN AS: No, Mr Chairman.

11 CHAIRPERSON: Well we've got some  
 12 evidence which I take it we can accept. Mr Mpofu?

13 MR MPOFU: Ja well even I accept that,  
 14 Chairperson, that's not the point. The point obviously is  
 15 that this witness was prepared –

16 CHAIRPERSON: I understand, it relates to  
 17 her state of mind. I think –

18 MR MPOFU: It's important to know if it  
 19 in fact happened.

20 CHAIRPERSON: I think she's conceded it  
 21 and if it's a good point it's a good point, if it's a bad  
 22 point it's a bad point, it doesn't get better or worse by  
 23 being repeated. You've asked a question with a bit of help  
 24 from me, you've got the answer and that's it.

25 MR MPOFU: No I haven't got the answer.

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1 CHAIRPERSON: You accuse me of not  
 2 listening, Mr Mpofu.

3 MR MPOFU: Maybe you can remind, Chair.

4 CHAIRPERSON: It was put to her, it was  
 5 put to her that in relation to – you put it to her in  
 6 relation to dropping the pamphlets, it might anger them, it  
 7 might set in motion a chain of events and a possible  
 8 consequence at the end of that chain was bloodshed. And  
 9 she agreed with that, but she said that's not what she  
 10 wanted. But I understood her to concede. Did I understand  
 11 correctly, Provincial Commissioner? Do I understand  
 12 correctly?

13 GENERAL MBOMBO: That is so, Mr Chair.

14 CHAIRPERSON: There you are you see,  
 15 you've got the point now. So you've got the concession  
 16 that you wanted. It's qualified, of course, by her  
 17 statement that it's not what she wanted to happen, but she  
 18 conceded the foresight and the possibility and she conceded  
 19 the possibility of bloodshed at the end of the day. So  
 20 that's what you've been trying to for the last I don't know  
 21 how many minutes to –

22 MR MPOFU: No, no, Chairperson, I'm  
 23 afraid you are wrong, Chairperson. That concession yes I  
 24 got, I'm making a completely different proposition now.  
 25 I'm saying now that you've established that that



<p style="text-align: right;">Page 22544</p> <p>1 possibility would result in bloodshed. Now, what I'm  2 saying is that this witness and I want her comment, if she  3 had commented then I'm sorry, but as far as I'm concerned  4 she has not yet commented. I'm saying to her so you had  5 and the Chairperson did paraphrase my question, that she  6 faced with three possibilities, as the Chair says, one  7 would lead to bloodshed. The other, yes might lead to  8 bloodshed, but the other two will almost definitely lead to  9 no bloodshed because according to her evidence they, and we  10 went through this, this morning, they knew that if Mr  11 Malema had intervened the situation would be diffused. So  12 that equals no bloodshed. That's they even went to say you  13 remember in Impala he resolved it. So they actually did  14 not want the situation to be resolved, at least to be  15 resolved by him for whatever reason. We have gone through  16 all that, ja. All I'm interested in now is that one equals  17 no bloodshed, okay. So I'm saying that's the second  18 possibility. Then I said the third possibility, and again  19 I went through this last week, involves the interaction  20 which will please the strikers. That one also means no  21 bloodshed. So I'm saying when she has three things,  22 bloodshed, no bloodshed, no bloodshed, she went for option  23 one equals bloodshed. Does she have a comment on that,  24 yes, General.  25 GENERAL MBOMBO: I'm not sure if I</p>	<p style="text-align: right;">Page 22546</p> <p>1 say I rejected it, but let me just say whatever I rejected  2 I did not reject because I wanted bloodshed.  3 MR MPOFU: But do you understand the  4 notion of diffusing the situation meant the avoidance of  5 bloodshed, correct?  6 GENERAL MBOMBO: According to me that's  7 what I thought I was saying, yes.  8 MR MPOFU: Yes, that's what I'm saying.  9 So if you reject something that would be likely to diffuse  10 the situation you are rejecting something that is likely to  11 avoid bloodshed, correct.  12 GENERAL MBOMBO: Repeat please.  13 MR MPOFU: You and I have agreed that  14 diffusing the situation means avoidance of bloodshed. So  15 I'm saying if you therefore rejected or acted to prevent  16 anything that would diffuse the situation you were  17 therefore, thereby rejecting something that would avoid  18 bloodshed. That's seems obvious, correct?  19 GENERAL MBOMBO: I hear what you say now,  20 yes that is correct.  21 MR MPOFU: Okay, thank you. I think on  22 Friday you and I when we had to break because we had to go  23 the airport, someone had to go to the airport, on Friday I  24 was busy talking to you about the role of General  25 Annandale. I just want to round off that point. Who</p>
<p style="text-align: right;">Page 22545</p> <p>1 understood the question correctly.  2 MR MPOFU: Okay, I'll summarise it or the  3 Chairperson will help me if it's still not clear. I'm  4 saying to you, you were faced with three possibilities  5 which you could do something about. One was to take the  6 risk which would amount to bloodshed. We've gone through  7 all that and the Chairperson recorded finally you conceded  8 that it might have resulted in bloodshed. So let's call it  9 bloodshed, question mark. The other two possibilities were  10 likely to result in no bloodshed and I won't repeat what  11 they are because I've just done so now. But I'm saying now  12 faced with those three you chose to take the risk on the  13 one that might cause bloodshed. Would you like to comment  14 as to what informed your choice given that as a policeman  15 your job is to try and avoid bloodshed? Policewoman,  16 sorry. No I'm sorry, when I say policeman, I meant a  17 member of the police force.  18 GENERAL MBOMBO: I said it, Mr Chair,  19 that at that time I did not think these options would lead  20 to bloodshed.  21 MR MPOFU: But you did reject one option  22 which you knew would result in a solution and no bloodshed  23 and in fact that informed your reason to move quickly and  24 kill this thing, as you put it, correct?  25 GENERAL MBOMBO: I do not know when you</p>	<p style="text-align: right;">Page 22547</p> <p>1 called General Annandale to Marikana?  2 GENERAL MBOMBO: I don't know exactly who  3 called him.  4 MR MPOFU: Did you call for him or call  5 him?  6 GENERAL MBOMBO: I did not specifically  7 ask for him, I only asked for assistance.  8 MR MPOFU: From whom?  9 GENERAL MBOMBO: I think the  10 correspondence between Brigadier Calitz and NAT Joint was  11 asking for additional police.  12 MR MPOFU: Yes, no, no I understand the  13 additional police or as you call the additional resources,  14 but I'm asking did you directly or indirectly call for  15 somebody at the level of General Annandale effectively to  16 take over the operation or something or to be the number  17 two?  18 GENERAL MBOMBO: I did not do that, Mr  19 Chair.  20 MR MPOFU: So you did not know how  21 Annandale rocks up there. Well at least his evidence is  22 that nobody invited him, but you yourself did not know how  23 he got there, correct?  24 GENERAL MBOMBO: No I did not know.  25 MR MPOFU: And yet when it came to the</p>

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1 crucial issue of executing and I'm using that word  
 2 advisedly –  
 3 CHAIRPERSON: You mean implementing.  
 4 MR MPOFU: Of executing the operation,  
 5 you gave that important task to someone who's presence you  
 6 did not know or you could not explain.  
 7 GENERAL MBOMBO: Let me first say when he  
 8 was there, present, he was now part of the police who were  
 9 doing their job.  
 10 [14:56] And secondly to answer your question, I explained  
 11 that I spoke to someone who was in charge of the meeting.  
 12 MR MPOFU: Okay, so that's your evidence?  
 13 The most important decision, or the most important  
 14 instruction in your career you give to somebody, you say,  
 15 oh well, seeing that you're here do this operation, which  
 16 might result in so many deaths, and which did result in so  
 17 many deaths. Is that your evidence? Do you want us – are  
 18 you serious?  
 19 GENERAL MBOMBO: You must remember I'm  
 20 saying I was first given a report by General Mpembe.  
 21 General Mpembe was attending the meeting with me. So when  
 22 I came there and gave General Annandale, who was chairing  
 23 the meeting, they had there agreement with General Mpembe  
 24 as to how they were working, how they were doing their  
 25 work. I then saw no reason why I should not say that to

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1 the person who's chairing the meeting, who was going to  
 2 discuss it with the person in charge of the operation.  
 3 MR MPOFU: Okay. There is evidence, or  
 4 rather there will be evidence – I'm still working on it,  
 5 but if I succeed – which might suggest that the call from  
 6 Brigadier Pretorius, or rather a call from Brigadier  
 7 Pretorius was made a few minutes after 4 to IPID, so I'm  
 8 going to ask you a question, assume that I'll be able to  
 9 establish that.  
 10 CHAIRPERSON: It's been established that  
 11 there was a call. That's part of the telephone records.  
 12 MR MPOFU: Yes.  
 13 CHAIRPERSON: And I understand, I was  
 14 informed outside the chamber that the evidence leaders had  
 15 succeeded in obtaining the text of the SMS –  
 16 MR MPOFU: Good.  
 17 CHAIRPERSON: - which Brigadier Pretorius  
 18 sent to IPID -  
 19 MR MPOFU: Oh, great.  
 20 CHAIRPERSON: - which indicates that  
 21 there are injuries, bodies down, I think.  
 22 MR MPOFU: Yes.  
 23 CHAIRPERSON: The exact wording I would –  
 24 MR MPOFU: Yes. No, thank you very much,  
 25 Chairperson, because I was going to –

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1 CHAIRPERSON: Mr Budlender can give us,  
 2 save a bit of time. Mr Budlender, can you tell us, you did  
 3 indicate to me this evidence is going to be forthcoming.  
 4 MR BUDLENDER SC: Chair, we're waiting  
 5 for an affidavit from IPID confirming the text of the SMS,  
 6 but we are informed that it is an SMS which refers to  
 7 bodies or injuries, the situation is bad. That's the  
 8 nature –  
 9 CHAIRPERSON: I think she said IPID must  
 10 be involved, I think –  
 11 MR BUDLENDER SC: Well, it's to IPID  
 12 saying –  
 13 CHAIRPERSON: Yes, yes.  
 14 MR BUDLENDER SC: - you'll get involved.  
 15 CHAIRPERSON: So that's coming. So  
 16 apparently the SMS and apparently by some miracle I think  
 17 it wasn't deleted, it was still on the telephone of the  
 18 IPID member concerned, and that's going to be incorporated  
 19 in the affidavit. So –  
 20 MR MPOFU: Thank you.  
 21 CHAIRPERSON: I think - the evidence is  
 22 not before us yet, but it will be and I think you can  
 23 proceed with your questioning on the basis that that's  
 24 something which in all likelihood will be established.  
 25 MR MPOFU: Thank you, Chairperson. Thank

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1 you very much.  
 2 COMMISSIONER HEMRAJ: The text message is  
 3 not from the service provider, it's from the recipient?  
 4 MR BUDLENDER SC: From the recipient,  
 5 yes.  
 6 CHAIRPERSON: I understand the service  
 7 providers can't provide text messages, SMSs –  
 8 MR BUDLENDER SC: That's also my  
 9 understanding, Chair.  
 10 CHAIRPERSON: Sorry?  
 11 MR BUDLENDER SC: My understanding is  
 12 that the service providers don't themselves have record.  
 13 MR MPOFU: Yes, the contract doesn't  
 14 allow them to do so.  
 15 CHAIRPERSON: Anyway, be that – well, if  
 16 the contract doesn't allow them, subpoenas can overcome  
 17 that, but I understand –  
 18 MR BUDLENDER SC: - some people in the  
 19 United States have them all.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: Well, that's the subject of  
 22 another matter which is before a court, we're not  
 23 concerned –  
 24 MR MPOFU: A separate enquiry.  
 25 CHAIRPERSON: The point is this

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1 particular message was retrieved from the mobile phone of  
2 the –  
3 MR MPOFU: IPID member.  
4 CHAIRPERSON: - IPID member. So you can  
5 accept that in all likelihood that will be evidence before  
6 us and you can proceed with your questioning based on that.  
7 MR MPOFU: Thank you, Chairperson. Now  
8 General, the long and short of that evidence would be that  
9 a few minutes after 4 when you were at or near the JOC the  
10 – or rather, Brigadier Pretorius was already indicating to  
11 IPID that there were bodies down and people injured. Would  
12 you accept that?  
13 GENERAL MBOMBO: As it said, there is  
14 such a thing, Mr Chair, yes.  
15 MR MPOFU: Now what I want – the only  
16 thing I want to put to you is just a question of what we  
17 will argue at the end, and as I say because when all this  
18 is unravelled we don't want to have to recall you, so I'm  
19 just going to ask you one or two questions. That would  
20 indicate that the JOC in the person of Brigadier Pretorius  
21 was already aware, so much aware that they had taken the  
22 extra step of informing IPID, wherever IPID might have been  
23 at that stage. That's logical, correct?  
24 GENERAL MBOMBO: That's how I understand  
25 it, Mr Chair.

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1 MR MPOFU: And you being the most senior  
2 person in charge, I'm going to argue that that information  
3 would have been relayed to you by that stage. What will  
4 you say to that?  
5 GENERAL MBOMBO: It's possible that it  
6 was supposed to be the case, but I did not get it.  
7 CHAIRPERSON: That was covered very fully  
8 by Mr Budlender in his cross-examination of the witness.  
9 MR MPOFU: Well, okay, well I didn't know  
10 anyone knew about this SMS before I raised it now, but it  
11 looks like –  
12 CHAIRPERSON: Mr Budlender –  
13 MR MPOFU: - prophetically someone did.  
14 CHAIRPERSON: No, Mr Budlender did it on  
15 the basis that there was an SMS.  
16 MR MPOFU: Exactly.  
17 CHAIRPERSON: That was on telephone  
18 records. At that stage it wasn't known what the SMS was  
19 about.  
20 MR MPOFU: Exactly.  
21 CHAIRPERSON: But he put to the witness  
22 that realistically speaking there could have been only one  
23 subject for an SMS to IPID at that time and that was what  
24 we now know it was, and on the basis of that the witness  
25 was asked about it and she said what she's now told you,

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1 she didn't know about it, she wasn't told, and Mr Budlender  
2 went into great detail who should have told her, and it was  
3 disgraceful they didn't tell her, and that was fully dealt  
4 with in the cross-examination.  
5 MR MPOFU: So, Chairperson, even in the  
6 advent of the SMS one should not touch the subject because  
7 Mr Budlender dealt with it without knowing about the SMS?  
8 CHAIRPERSON: Mr Budlender asked  
9 questions on the assumption, which he suggested was a  
10 realistic one and turned out to be correct, that that was  
11 the subject of the SMS. So the questions that you are  
12 asking at the moment are repetition of the ones that Mr  
13 Budlender asked.  
14 MR MPOFU: Now, General, I'm now going to  
15 deal with my final topic, and that is you remember that I –  
16 CHAIRPERSON: I'm sorry, Mr Mpofu, how  
17 long is the topic – I know it's difficult to predict, but  
18 how long do you think the topic will be?  
19 MR MPOFU: Chairperson, I'm sorry, it's  
20 one of those that I can't say. So it's in relation to tea,  
21 Chairperson?  
22 CHAIRPERSON: Yes, that's why I'm asking  
23 the question.  
24 MR MPOFU: No, it will certainly be – it  
25 would necessitated the tea adjournment right now.

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1 CHAIRPERSON: Well, I like that word  
2 "necessitate". We'll take the tea adjournment.  
3 MR MPOFU: Thank you.  
4 [COMMISSION ADJOURNS COMMISSION RESUMES]  
5 [15:23] CHAIRPERSON: The Commission resumes.  
6 Provincial Commissioner, you're under oath still.  
7 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
8 CHAIRPERSON: Mr Mpofu.  
9 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
10 Thank you, Chairperson. Sorry, General, you know what  
11 happens when there's a break; minds are changed. So I just  
12 want to put one proposition before we go to the last topic.  
13 You remember that whole discussion about the three options?  
14 I don't want us to go back to that. Remember the  
15 discussion you and I had about you chose this over this,  
16 and so on?  
17 GENERAL MBOMBO: I remember that,  
18 Chairperson.  
19 MR MPOFU: Yes, I just wanted to round  
20 off that point by – one of the things I'm going to put at  
21 the end is that you also, in the face of possible solutions  
22 you chose a route that involved the risk of deploying  
23 members of the police who, because of what they had gone  
24 through, might have been trigger-happy and not follow  
25 discipline or follow instructions, which would also lead to

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1 bloodshed. What would be your comment to that?  
 2 GENERAL MBOMBO: I am not quite certain  
 3 which day you are referring to now.  
 4 MR MPOFU: No, I'm still referring to the  
 5 14th. I'm saying, effectively what I'm saying is that – and  
 6 I think I did put it to you in a different context – what  
 7 I'm saying to you is knowing that these people might have  
 8 been emotionally affected, knowing that emotions were high,  
 9 as you said, and knowing that that might result in many  
 10 people being killed, you nevertheless chose that route over  
 11 the other possible solutions?  
 12 CHAIRPERSON: I'm sorry, hasn't that  
 13 question been put before?  
 14 MR MPOFU: Yes, that's what I've just  
 15 said.  
 16 CHAIRPERSON: So why –  
 17 MR MPOFU: I put it in another –  
 18 CHAIRPERSON: So why put –  
 19 MR MPOFU: - to her in another context.  
 20 CHAIRPERSON: But why put it again?  
 21 MR MPOFU: No, because that's not the  
 22 question. Chairperson, I'm making a different point today.  
 23 CHAIRPERSON: Alright.  
 24 MR MPOFU: I asked it on Thursday. I'm  
 25 now saying I'm juxtaposing that against –

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1 CHAIRPERSON: Alright, okay. What's your  
 2 answer, Provincial Commissioner?  
 3 GENERAL MBOMBO: Chairperson, I have  
 4 explained this in this transcript that we were expecting  
 5 the arrival of a number of other policemen, I have  
 6 explained, Chairperson, that those policemen that had  
 7 emotions were given the right to go if they felt not fit to  
 8 take part.  
 9 MR MPOFU: Okay, alright. Now let's go  
 10 to the topic I wanted to discuss with you. I have  
 11 previously accused you, or at least alluded to the fact  
 12 that the discussions with the Minister regarding the  
 13 political intervention were being concealed by many people,  
 14 including you. You remember that discussion?  
 15 GENERAL MBOMBO: I remember you saying  
 16 so, Chair.  
 17 MR MPOFU: And for the record, you denied  
 18 that. Now I want to talk to you about the, in the same  
 19 vein about something that I will argue was also being  
 20 concealed had it not come to light, namely the meeting of  
 21 the ad hoc session of the National Management Forum. You  
 22 understand the proposition? You might not agree with it.  
 23 GENERAL MBOMBO: I hear you say so.  
 24 MR MPOFU: Yes, now the – well, let's get  
 25 one thing straight. This was a meeting of that group of

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1 people, correct?  
 2 GENERAL MBOMBO: Yes, Sir.  
 3 MR MPOFU: And at that meeting you, there  
 4 were deliberations initiated by you, or rather led by you.  
 5 GENERAL MBOMBO: As I have already  
 6 explained, yes, Sir.  
 7 MR MPOFU: And you then made certain  
 8 proposals.  
 9 GENERAL MBOMBO: I made a report about  
 10 what was happening and the decision that I'd taken.  
 11 MR MPOFU: Did you make certain proposals  
 12 regarding that decision you had taken?  
 13 GENERAL MBOMBO: I don't remember of  
 14 proposals. What I do remember is that I told them, I  
 15 mentioned to them that if we do not succeed in getting a  
 16 voluntary handing over of the weapons from these people,  
 17 this is what I was going to do.  
 18 MR MPOFU: Fine, and the meeting endorsed  
 19 your decision.  
 20 GENERAL MBOMBO: They agreed with my  
 21 decision, Chairperson.  
 22 MR MPOFU: Yes. Now both in her evidence  
 23 and in her statement the National Commissioner did not  
 24 refer to this meeting. Do you know that? I'm sure you've  
 25 seen her statement.

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1 MR SEMENYA SC: Chair, this question was  
 2 asked and answered even by Mr Budlender.  
 3 CHAIRPERSON: Many times over. It was  
 4 exhaustively covered in Mr Budlender's cross-examination,  
 5 and you've touched on it also, but it sounds to me as if  
 6 the points you are making now are points that have already  
 7 been established and covered.  
 8 MR MPOFU: Chairperson, no, I'm sorry, it  
 9 might well be so but – and that's why I prefaced this by  
 10 making it clear that I'm talking about the issue of active  
 11 concealment.  
 12 CHAIRPERSON: Even that point was dealt  
 13 with by Mr Budlender not only in relation to what happened  
 14 on Wednesday night at the National Management Forum, but  
 15 also what happened at Roots, because there were people at  
 16 Roots who knew about it –  
 17 MR MPOFU: Yes.  
 18 CHAIRPERSON: - and kept quiet as well  
 19 and this witness said she forgot to mention it and it was  
 20 then pointed out a number of other people at Roots had  
 21 knowledge of it. She obviously couldn't say whether they'd  
 22 forgotten, she couldn't explain why they didn't mention it.  
 23 So this point was covered very thoroughly from every  
 24 conceivable angle.  
 25 MR MPOFU: Chairperson, if you can just –

<p style="text-align: right;">Page 22560</p> <p>1 I mean I know JJJ192 was also covered by Mr Budlender, but  2 I've managed to cross-examine on it and come up with quite  3 – even if I say so myself – substantial points. So if you  4 allow me to just ask one or two questions –  5 CHAIRPERSON: One or two questions, one  6 or two literally, hey.  7 MR MPOFU: Yes. Essentially what I want  8 to put to you is that what happened at the meeting, the  9 reason why you were all hiding this meeting is because in  10 that, one of the issues that informed the decision that you  11 took was what you and I discussed this morning, namely the  12 political pressure that was being put to bear on the senior  13 police leadership. What will you say to that?  14 GENERAL MBOMBO: No, there I do not agree  15 with you, Sir.  16 MR MPOFU: And that you knew, or you  17 know, as you and I established last week, that the taking  18 into account of political considerations on a matter such  19 as such this would be grossly improper and grossly  20 irregular, as you confirmed last week, correct?  21 GENERAL MBOMBO: There you are telling  22 the truth, yes.  23 MR MPOFU: So what I want –  24 CHAIRPERSON: You asked your one or two  25 questions, but I'll allow you to ask two more.</p>	<p style="text-align: right;">Page 22562</p> <p>1 that that was not correct, it was a law and order matter,  2 and that she undertook to raise it with the Minister of  3 Police, Safety &amp; Security at the cabinet meeting, who she  4 was meeting him at the cabinet meeting later that day and  5 she undertook to raise it with him. But the evidence  6 doesn't go as far as dealing with, indicating that the  7 matter was discussed by the cabinet or referred to the  8 President, but in relation to the first two points, namely  9 that Mr Ramaphosa spoke to the Minister of Mineral  10 Resources and she undertook to speak to the Minister  11 Mthethwa, I'll allow the question.  12 MR MPOFU: Yes, thank you, Chairperson.  13 Well, then I'm afraid we have to go and show that my  14 version is correct. Can you go to BBB4, which is one of  15 the documents that I asked you to read last night. Sorry,  16 BBB4.  17 GENERAL MBOMBO: I have it, Sir.  18 MR MPOFU: You do have it, yes. It's one  19 of the documents I asked you to read last night. Can you  20 go to page 289(e) of that document?  21 GENERAL MBOMBO: I have it.  22 MR MPOFU: Yes, you see that this is an  23 email, it's the last of this series of emails about 3PM.  24 This is a series of emails which started at 1AM in the  25 morning. This one is 3PM from Mr Cyril Ramaphosa to those</p>
<p style="text-align: right;">Page 22561</p> <p>1 MR MPOFU: Thank you, Chairperson. The  2 decision that you took, the decision that you had – we've  3 gone through this, I'm not going to go through it again.  4 The decision that you had taken on the 14th to move on the  5 15th was clearly motivated by political considerations. I'm  6 not going to canvass that with you. The proposition that  7 I'm putting to you now is that because of what we know -  8 which mercifully doesn't involve you - of what happened on  9 the 15th, namely that there was more interaction with the  10 Minister, apart from your one of the 12th, there was even  11 interaction with another minister and the matter was even  12 referred up to the cabinet and the President, no less than  13 the President, that those additional events, which  14 obviously you couldn't have known when you were talking to  15 Mr Mokwena, came to your attention either directly from the  16 Minister or from the National Commissioner or whoever, and  17 that those were directly used to make the decision on the  18 15th that the 16th was D-day.  19 CHAIRPERSON: Before the witness answers  20 I want to point out that the evidence so far doesn't deal  21 with a decision, a discussion or decision by the cabinet,  22 nor does it deal with the matter being referred to the  23 President. What we have is some emails which indicate that  24 Mr Ramaphosa spoke to the Minister of Mineral Resources,  25 who had previously described it as a wage dispute, told her</p>	<p style="text-align: right;">Page 22563</p> <p>1 people indicated there, and he says, "I have just had a  2 discussion with Susan Shabangu in Cape Town" –  3 CHAIRPERSON: I'm sorry, we haven't got  4 that one on the screen.  5 MR MPOFU: Oh, sorry, Chairperson.  6 CHAIRPERSON: That's the one we now have  7 on the screen?  8 MR MPOFU: Yes, it's the one below. Yes,  9 there are two on that page, sorry. And he says, "She  10 agrees that what we are going through is not a labour  11 dispute but a criminal act. She will correct her  12 characterisation of what we are experiencing. (2), She is  13 going into cabinet and will brief the President as well."  14 You see that part?  15 GENERAL MBOMBO: I see it, Chair.  16 CHAIRPERSON: Sorry, you were correct in  17 one respect and I'm correct in the other.  18 MR MPOFU: Yes.  19 CHAIRPERSON: She was going into cabinet,  20 not –  21 MR MPOFU: Fair enough.  22 CHAIRPERSON: It doesn't follow it would  23 be discussed by the cabinet, but you are correct when you  24 say she will brief the President and get the Minister to  25 act in a more pointed way. So on that part you are</p>

<p style="text-align: right;">Page 22564</p> <p>1 correct.</p> <p>2 MR MPOFU: Thank you, Chairperson.</p> <p>3 CHAIRPERSON: I'll allow you to put that</p> <p>4 part as your question as well. It's not an indication it</p> <p>5 actually took place, but it's presumably a fair inference</p> <p>6 that it did.</p> <p>7 MR MPOFU: Yes, it is, Chairperson. I</p> <p>8 think, unless if we really want to gild the lily, as they</p> <p>9 say.</p> <p>10 CHAIRPERSON: Yes, it's a fair inference</p> <p>11 that it happened. He says that she said she'd do that and</p> <p>12 there's no reason to think that (a), she didn't say it; and</p> <p>13 (b), she didn't do what she said she'd do.</p> <p>14 MR MPOFU: Yes.</p> <p>15 CHAIRPERSON: And when Mr Mthethwa comes</p> <p>16 he will presumably tell us –</p> <p>17 MR MPOFU: And Shabangu, or Mr Ramaphosa,</p> <p>18 yes, I accept that.</p> <p>19 CHAIRPERSON: Yes, if Mr Ramaphosa and</p> <p>20 the Minister come – I can't remember whether the Minister</p> <p>21 of Mineral Resources is coming, but anyway, Mr Mthethwa</p> <p>22 will be able to deal with it.</p> <p>23 MR MPOFU: Yes, Chair, anyone of the</p> <p>24 people mentioned here, Chairperson, will help, assist us</p> <p>25 hopefully. I've even forgotten the point now. Now the</p>	<p style="text-align: right;">Page 22566</p> <p>1 MR MPOFU: Yes, okay, but if the Minister</p> <p>2 had promised Mr Ramaphosa – or let me put it this way. If</p> <p>3 the Minister said well, we're going to act in a more</p> <p>4 pointed way - and I'm not saying whether that happened or</p> <p>5 did not happen – that would mean the National Commissioner</p> <p>6 and yourself, among others, because he was not going, he</p> <p>7 himself, to go and shoot the people, correct? Or conduct</p> <p>8 the operation, sorry.</p> <p>9 GENERAL MBOMBO: Just repeat your</p> <p>10 question again.</p> <p>11 MR MPOFU: Sorry, sorry, ja it was a bit</p> <p>12 convoluted. I'm saying any undertaking by the Minister to</p> <p>13 act in a more pointed way, and I'm putting aside whether</p> <p>14 that undertaking was made or was not made will be answered</p> <p>15 by the Minister, but any such undertaking would have</p> <p>16 involved that those actions, those pointed actions being</p> <p>17 taken by people such as the National Commissioner and</p> <p>18 yourself rather than by the Minister himself, correct?</p> <p>19 GENERAL MBOMBO: Procedurally yes, that</p> <p>20 would have been so.</p> <p>21 MR MPOFU: Thank you. And I think the</p> <p>22 Minister says himself that whenever he received these</p> <p>23 "concerns" he would transmit them to the police via the</p> <p>24 National Commissioner and I suppose via yourself, correct?</p> <p>25 GENERAL MBOMBO: He sometimes comes to me</p>
<p style="text-align: right;">Page 22565</p> <p>1 point I was –</p> <p>2 CHAIRPERSON: What Mr Mpofo is putting to</p> <p>3 you is an extra reason why the decision was, you made that</p> <p>4 decision or alternatively made that proposal at the meeting</p> <p>5 on the Wednesday night, was where the events which are</p> <p>6 dealt with in this email we just looked at had taken place</p> <p>7 earlier that day on the Wednesday afternoon and he wants</p> <p>8 your comment on that. Am I putting your question too</p> <p>9 weakly for you, Mr Mpofo? That's the way you want it put?</p> <p>10 MR MPOFU: No, Chairperson, I think</p> <p>11 that's sufficient. The Chairperson is correct; all I'm</p> <p>12 saying is that the discussion you're having with Mr Mokwena</p> <p>13 was referring to something milder than what happened on the</p> <p>14 15th, namely the telephone call that you had received from</p> <p>15 the Minister. I'm saying by the 15th something bigger had</p> <p>16 happened, which is a repeat of the interaction with the</p> <p>17 Minister, so we can take that as a neutral fact. But in</p> <p>18 addition to that there was further interaction with the</p> <p>19 Minister of Minerals and she had possibly briefed no less</p> <p>20 than the President of the country on the issue. That's, as</p> <p>21 the Chairperson puts it, I'm saying there was a further and</p> <p>22 bigger reason for you and the National Commissioner to feel</p> <p>23 the political pressure from above.</p> <p>24 GENERAL MBOMBO: At that time, Mr</p> <p>25 Chairperson, I had no idea of this discussion.</p>	<p style="text-align: right;">Page 22567</p> <p>1 if he has not come into contact with the National</p> <p>2 Commissioner.</p> <p>3 [15:43] MR MPOFU: Yes. So had he not been</p> <p>4 bluffing, had he meant his promise to act in a more pointed</p> <p>5 way, the logical people to have transmitted that evidence –</p> <p>6 sorry, that message to would have been either yourself or</p> <p>7 the National Commissioner.</p> <p>8 GENERAL MBOMBO: It is so, yes.</p> <p>9 CHAIRPERSON: Just to correct it; this</p> <p>10 email doesn't indicate that the Minister of Police had</p> <p>11 promised to act in a more pointed way. What Mr Ramaphosa</p> <p>12 says is that the Minister of Mineral Resources, that's</p> <p>13 Minister Shabangu had said she would get the Minister of</p> <p>14 Police to act in a more pointed way, but it doesn't affect</p> <p>15 the validity of the –</p> <p>16 MR MPOFU: Ja, that's so, that's enough</p> <p>17 for –</p> <p>18 CHAIRPERSON: - of the main thrust of the</p> <p>19 question.</p> <p>20 MR MPOFU: Ja, it doesn't – I don't</p> <p>21 think –</p> <p>22 CHAIRPERSON: And one must assume that if</p> <p>23 Minister Shabangu did what she said she would do and</p> <p>24 succeeded in persuading the Minister of Police to act in a</p> <p>25 more pointed way, the Minister of Police would have done</p>

<p style="text-align: right;">Page 22568</p> <p>1 something in order to comply with what he'd been requested 2 to do in that regard. That's your point, is it? But the 3 witness, Provincial Commissioner, you don't know anything 4 about this. No-one got hold of you and said look here, the 5 Minister of Police says you must act in a more pointed way. 6 You didn't receive any message of that kind. Is that 7 correct? 8 GENERAL MBOMBO: No, I did not, 9 Chairperson. No, I did not. 10 CHAIRPERSON: Did you get any 11 communication from 2:58PM on the Wednesday afternoon – I 12 take it that time you were already at the management forum, 13 were you? 14 GENERAL MBOMBO: It is so, Chairperson. 15 CHAIRPERSON: Did you get any 16 communication from outside, as it were, apart from your 17 discussions with Major General Mpmembe did you get any 18 communications from outside, as it were, about what was 19 happening and what was going to happen and what should 20 happen at Marikana in relation to the problem with which 21 you were confronted? 22 GENERAL MBOMBO: I do not remember, Mr 23 Chairperson. 24 MR MPOFU: Okay, well then let's go to a 25 situation which is more direct. Can you go to page 289(c)?</p>	<p style="text-align: right;">Page 22570</p> <p>1 remind you just now of some of them – regarding your own 2 actions or inactions, and if it's necessary I'll separate 3 which ones are actions and which ones are omissions, we 4 have been instructed that one of the recommendations we 5 should make to the Commission is that certain persons 6 should be recommended for a charge of murder and we have 7 drawn a list of such people, and given all these things 8 that I've canvassed with you, your name appears as accused 9 number 4 on that list of those people, for the reasons 10 which I'll summarise just now, and some of which we have 11 gone through. You remember the discussions on the first 12 day about where I would put something and then say that 13 that would justify a charge at least, not necessarily a 14 conviction, of murder? 15 GENERAL MBOMBO: I hear what you say, 16 Sir. 17 MR MPOFU: And as I say, I can't go 18 through all those things, but essentially it's your 19 personal responsibility or accountability would attach to 20 you insofar as you from all our discussions clearly foresaw 21 the eventuation of bloodshed and despite that foresight 22 acted in such a way that it would result in the end, which 23 it did. Do you understand that, even if you don't agree 24 with it? 25 GENERAL MBOMBO: I hear what you're</p>
<p style="text-align: right;">Page 22569</p> <p>1 GENERAL MBOMBO: I have it. 2 MR MPOFU: At the bottom, the bottom 3 email says that "The terrible events that have unfolded 4 cannot be described as a labour dispute [we know that]. 5 They are plainly dastardly criminal and must be 6 characterised as such. In line with this characterisation" 7 – this is Mr Ramaphosa – "there needs to be concomitant 8 action to address this situation." Once again would you 9 agree that if such concomitant action were to be taken it 10 would not be taken by the Minister himself but would have 11 been transmitted via the National Commissioner or yourself? 12 GENERAL MBOMBO: Procedurally I said yes, 13 that is so. 14 MR MPOFU: Yes, now go to the next page. 15 Mr Ramaphosa says, "You are absolutely correct in insisting 16 that the Minister, and indeed all government officials need 17 to understand that we are essentially dealing with a 18 criminal act. I have said as much to the Minister of 19 Safety &amp; Security." That would be Minister Mthethwa, 20 correct? 21 GENERAL MBOMBO: I think so. 22 MR MPOFU: Yes, and I don't have to ask 23 you the question again as to the people who that would be 24 transmitted to. Okay, so all in all then, General Mbombo, 25 I want to put to you that for all these reasons – and I'll</p>	<p style="text-align: right;">Page 22571</p> <p>1 saying, yes, as you say it. 2 MR MPOFU: Secondly, I will argue that 3 that recommendation should be made in your case because 4 according to the evidence and what you and I have 5 discussed, you had foreseen that a less bloody route, 6 namely encirclement, would have assisted and you neglected 7 it in favour of a bloodier route. Do you understand the 8 proposition? 9 GENERAL MBOMBO: I hear your proposition, 10 yes. 11 MR MPOFU: Thirdly, I will base that 12 recommendation on what you and I have discussed today, 13 namely that you actively took steps to prevent events, or 14 actions that would have eliminated or might have eliminated 15 the eventuation of bloodshed in favour of a situation 16 where, (a), bloodshed was foreseeable; and (b), more 17 particularly because of the emotional state of the 18 policemen involved it was even for that reason more 19 predictable. You understand the proposition? 20 GENERAL MBOMBO: I hear your proposition. 21 MR MPOFU: I will also put to you that 22 you should be so charged because by your own admissions to 23 take into account political considerations would have been 24 something that is prohibited by the prescripts, and despite 25 that knowledge you decided on the timing of the operation</p>

<p style="text-align: right;">Page 22572</p> <p>1 exactly because – underline because – of those political 2 considerations and for that reason you should be guilty, or 3 charged, correct? 4 GENERAL MBOMBO: I believe that all those 5 things that you have mentioned, those are things we'll 6 discuss with Mr Semenya. 7 MR MPOFU: Yes, I will also say that the 8 recommendation should be made because you acted recklessly, 9 and that's a legal term which simply means that when you 10 appreciate something you act in accordance with that 11 appreciation or against the appreciation, and the 12 recklessness element will come as follows. I will argue 13 that when there was an option of taking action when there 14 were fewer number of people when predictable fatalities, 15 even if they occurred, might have been fewer. You took a 16 decision to do the operation when there was the highest 17 number of people and that situation was caused by the fact 18 that there was this interest in the report-back that Mr 19 Mathunjwa had promised to bring the following day. But 20 forget the Mr Mathunjwa thing, but you knew that there were 21 quite a large number of people on the koppie at that time. 22 GENERAL MBOMBO: It's correct, I knew. 23 MR MPOFU: Then on the side of omissions 24 I will then say that you knew or ought to have known that 25 Mr Mathunjwa's peace mission was still ongoing, because</p>	<p style="text-align: right;">Page 22574</p> <p>1 GENERAL MBOMBO: I hear what you say, 2 though I do not agree with you, Sir. 3 MR MPOFU: Just to round off that point, 4 your evidence was that General Mpembe gave you a full 5 account of what happened on the 13th. Is that correct? 6 GENERAL MBOMBO: He gave me a report, 7 Chairperson, yes. 8 MR MPOFU: And that included the fact 9 that the violence of that day was sparked by the teargas 10 from the police, correct? 11 GENERAL MBOMBO: I don't remember him 12 saying it exactly as you say it. 13 MR MPOFU: And were you aware of the 14 controversy or disagreement that happened among the police, 15 some of them saying General Mpembe gave the instruction and 16 him saying he had not given the instruction? You remember 17 the Chairperson read it out, it ended up with some threats 18 being made between the General and Lieutenant Colonel 19 Vermaak about him being arrested for intimidation? Were 20 you aware of that? 21 GENERAL MBOMBO: I did not know it at 22 that time, Mr Chairperson, but now that I've seen the 23 statements I've become aware of it. 24 MR MPOFU: And I will also be arguing 25 that for the reasons I did not canvass this with you fully</p>
<p style="text-align: right;">Page 22573</p> <p>1 after all, Mr Mathunjwa in front of you had said he was 2 going to the koppie using his own vehicle, but you did not 3 care about the fate of that mission which would have 4 prevented the bloodshed and you nevertheless gave the 5 instruction, knowing that it might result in deaths and 6 injuries. Understand? 7 GENERAL MBOMBO: I hear what you're 8 saying as you're putting it, but I do not agree with you, 9 Sir. 10 MR MPOFU: Yes, yes, and I will also 11 argue that once again you omitted to take an opportunity 12 presented by the Bishop to you when he explained that he 13 had been sent on a mission as well with two demands or 14 requests, one being for an engagement with management and 15 the other one being for water to be brought to the people 16 who were sitting at the koppie and you rejected that 17 mission as well which had the potential of avoiding 18 bloodshed. Understand, and do you agree? 19 GENERAL MBOMBO: I hear what you say, but 20 again I disagree with you. 21 MR MPOFU: And I will say that for the 22 reasons that you and I agreed that had you not given the 23 instruction on the 16th and had you not given the 24 instructions on the 13th, those 39 persons who died on those 25 two days might still have been alive today. Remember that?</p>	<p style="text-align: right;">Page 22575</p> <p>1 is because it has been canvassed exhaustively with other 2 witnesses, but I did touch on it, namely that your actions 3 and your own collusion with Lonmin, more particularly Mr 4 Mokwena, as evidenced by JJJ192, is clear evidence that, 5 (1), you and him regarded this as a joint operation between 6 Lonmin and SAPS by using the words that I pointed you to, 7 "We must do this," "Our deployment," this, all those words. 8 Would you accept that? 9 GENERAL MBOMBO: I have explained, 10 Chairperson, again I did not agree with you there. 11 MR MPOFU: Again she said she does not 12 agree with me entirely. "Kwapela." 13 MR MAHLANGU: I'm sorry. 14 GENERAL MBOMBO: I do not agree with you 15 entirely. 16 MR MPOFU: Yes, and that, as I say I 17 won't go into the other factors which I've canvassed with 18 other witnesses, but that a general reading, without going 19 to specific passages, a general reading of the conversation 20 between you and Mr Mokwena I will argue is evidence enough 21 of the toxic collusion on which we premise this part of our 22 argument, on which we premised it when we were doing our 23 opening address, that those two entities, SAPS and Lonmin 24 in combination – well, separately and in combination are 25 responsible for the deaths, that the starkest evidence of</p>



<p style="text-align: right;">Page 22576</p> <p>1 that toxic collusion is your discussions with Mr Mokwena.  2 GENERAL MBOMBO: Again here I do not  3 agree with you in totally. I do not agree with you  4 entirely.  5 MR SEMENYA SC: Sorry, Mr Interpreter, is  6 it entirely or –  7 MR MPOFU: Entirely.  8 MR SEMENYA SC: - or at all?  9 GENERAL MBOMBO: Entirely.  10 MR MAHLANGU: Entirely, confirmed by the  11 General.  12 MR MPOFU: Thank you. No, the witness  13 has just assisted. Thank you. "Kwapela." You just said  14 entirely, General, didn't you?  15 MR MAHLANGU: That is what the General  16 explains, Sir, that where she says [African language]  17 "kwapela," not as used before, but this time it means  18 altogether.  19 CHAIRPERSON: Don't agree at all.  20 GENERAL MBOMBO: I don't agree with you  21 at all.  22 MR MPOFU: Well, did you just say to Mr  23 Mahlangu now the word "entirely"?  24 GENERAL MBOMBO: I was saying that  25 thinking that "entirely" means altogether.</p>	<p style="text-align: right;">Page 22578</p> <p>1 CHAIRPERSON: I understood you to put  2 them a few minutes ago in the context of your argument  3 which you will address to this Commission in due course,  4 that we recommend that this witness be prosecuted on a  5 charge of murder and you set out –  6 MR MPOFU: Yes.  7 CHAIRPERSON: - in painstaking, in  8 conscientious detail the factors upon which you rely.  9 MR MPOFU: Yes. Yes, and now,  10 Chairperson, I thought instead of [inaudible] I would get  11 the – what I'm trying to do is to deal with the issue of  12 toxic collusion in the most summarised fashion by simply  13 not going through all those –  14 CHAIRPERSON: Let's summarise quickly.  15 MR MPOFU: Yes.  16 CHAIRPERSON: Most summarised fashion.  17 MR MPOFU: Thank you, Chairperson, yes.  18 The point I'm making, General, is that all these – I won't  19 go through the list again – all these and other pointers  20 will be used by me in evidence to support as the first  21 direct –  22 [16:02] CHAIRPERSON: [Microphone off, inaudible]  23 MR MPOFU: - in argument, yes, to support  24 as a first direct evidence of the collusion, toxic  25 collusion between Lonmin and SAPS. What will you say to</p>
<p style="text-align: right;">Page 22577</p> <p>1 MR MPOFU: Well, okay look, fortunately  2 I'm a bit tired now; I don't want us to go back to that  3 debate, but the point I'm making really is that whether you  4 look at the issue of the alignment, the so-called alignment  5 of the plans, whether you look at the issue of your  6 suggestions around no-work-no-pay, whether you look at the  7 issue of Mr Sinclair talking about deployment of people on  8 horseback, whether you look at your informing Mr Mokwena  9 about the political pressure, which you did not even inform  10 your generals about –  11 CHAIRPERSON: Mr Mpofo, you've made all  12 those points to the witness already. If they're good  13 points, they're good points, but not made any better by  14 repeating them, and if they're bad points they're not  15 improved by repeating them.  16 MR MPOFU: No, Chairperson, I'm sorry –  17 CHAIRPERSON: You have put all these  18 points about the deployment and the we and all those  19 factors you've just listed now, you have put them before –  20 MR MPOFU: Yes, but I'm making a  21 completely different proposition about murder, Chairperson,  22 a very serious matter of murder –  23 CHAIRPERSON: I understood –  24 MR MPOFU: I did not make those  25 propositions in relation to that.</p>	<p style="text-align: right;">Page 22579</p> <p>1 that?  2 GENERAL MBOMBO: I think Mr Semenya will  3 dispute that.  4 MR MPOFU: Thank you, Chairperson, I have  5 nothing further.  6 CHAIRPERSON: Thank you very much, Mr  7 Mpofo. I understand Mr Budlender has some questions to ask  8 but I'm sure he'll be content to ask them tomorrow and then  9 I understand Adv Le Roux will be here on behalf of the  10 Human Rights Commission and she will ask questions as well.  11 I understand, Provincial Commissioner, that you have  12 received a copy of the documents upon which the Human  13 Rights Commission will rely in cross-examining you. I  14 don't know if you've had a chance to read them yet, but if  15 you haven't I suggest that this evening you spend some time  16 reading them, as I will be reading them also, and we will  17 both be well informed tomorrow.  18 GENERAL MBOMBO: Thank you, Chairperson,  19 thank you.  20 CHAIRPERSON: We'll now adjourn until  21 tomorrow morning 9 o'clock.  22 MR MPOFU: Thank you, General.  23 [COMMISSION ADJOURNED]  24 .  25 .</p>

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