

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 188

20 FEBRUARY 2014

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<p style="text-align: right;">Page 22741</p> <p>1 [PROCEEDINGS ON 20 FEBRUARY 2014] 2 [09:14] CHAIRPERSON: The Commission resumes. 3 Provincial Commissioner, you're still under oath. 4 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 5 CHAIRPERSON: Mr Semenya, are you ready 6 to re-examine? 7 RE-EXAMINATION BY MR SEMENYA SC: Indeed 8 I am, Chair. General, there are various aspects of the 9 cross-examinations which we will deal with other witnesses, 10 and maybe let us not touch that area for now. You do 11 recall, if we start from the end, that you were asked a 12 number of questions relating to the training of various 13 members who were deployed in Marikana. You recall that 14 line of questions? 15 GENERAL MBOMBO: I recall it, Mr Chair. 16 MR SEMENYA SC: And for illustration, if 17 we call up exhibit LLL19, this relates to the training 18 analysis of the TRT shooters. 19 CHAIRPERSON: Is it necessary for it to 20 be put on the screen? They seem to be having difficulty in 21 finding it. 22 MR SEMENYA SC: Do you have the document, 23 General? 24 GENERAL MBOMBO: Unfortunately not. 25 CHAIRPERSON: You've now got it in front</p>	<p style="text-align: right;">Page 22743</p> <p>1 GENERAL MBOMBO: I recall that. 2 MR SEMENYA SC: Now firstly let me ask 3 this; would there have been any human rights training in 4 the South African Police Service before 1994? Was there 5 any constitutional human rights environment pre-1994? 6 GENERAL MBOMBO: No, I have no knowledge 7 of that, Mr Chair. 8 MR SEMENYA SC: Well, I think it's common 9 cause we did not have a democratic constitution before 10 1994. We still had a Transkei and what Mr Mpofu calls an 11 apartheid era, right? 12 GENERAL MBOMBO: That is correct. 13 MR SEMENYA SC: And there was no human 14 rights environment in our law at that time as enshrined in 15 the Constitution today. 16 GENERAL MBOMBO: That is so, yes. 17 MR SEMENYA SC: So human rights training 18 would have happened under the new Constitution. 19 GENERAL MBOMBO: That is so. 20 MR SEMENYA SC: Now let us try and see 21 what basic training happens for members who joined the 22 police service after 1994, and can I ask that we go to 23 exhibit Q? And if we can go to slide 19 of that exhibit Q 24 and let us see what basic training entails. Do you see the 25 document, General?</p>
<p style="text-align: right;">Page 22742</p> <p>1 of you, is it? 2 MR SEMENYA SC: You have it, General? 3 GENERAL MBOMBO: That is so, yes. 4 MR SEMENYA SC: You will see according to 5 that document, as I say for illustration, it would tell us 6 that only two TRT people have undergone a human rights 7 training. Do you see that? That would be your fourth 8 column from the left of the document, you will see under 9 the - 10 GENERAL MBOMBO: Yes, I see it. 11 MR SEMENYA SC: - heading "Human rights," 12 there are only two people there. Do you see that? 13 GENERAL MBOMBO: I can see it, yes. 14 MR SEMENYA SC: So too the document would 15 tell us that that is in the period 2007 to 2012, right? 16 GENERAL MBOMBO: That is so, Mr Chair. 17 MR SEMENYA SC: And on the right half of 18 the document would be indications of those who would have 19 obtained that type of training in 2007. 20 GENERAL MBOMBO: That is correct. 21 MR SEMENYA SC: Or pre-2007. Now if one 22 went according to this document it would tell us that there 23 is no human rights training in the TRT group of any 24 significance and the percentage were explained in cross- 25 examination. You recall that?</p>	<p style="text-align: right;">Page 22744</p> <p>1 GENERAL MBOMBO: I see it, Mr Chair. 2 MR SEMENYA SC: It tells us that basic 3 police development, and says in crowd management the 4 trainees are also trained to understand the relevant 5 legislation. It then has there the Regulation of 6 Gatherings Act of 1993 together with Standing Orders G262 7 are discussed with the trainees. Do you see that? 8 GENERAL MBOMBO: I see it. 9 MR SEMENYA SC: Then it says, "A 10 reference is also made to sections 10," that would be the 11 right to dignity under the Constitution. Do you see that? 12 GENERAL MBOMBO: I see it. 13 MR SEMENYA SC: So too section 11. 14 GENERAL MBOMBO: I see it. 15 MR SEMENYA SC: So too section 12. 16 GENERAL MBOMBO: Yes, I see it. 17 MR SEMENYA SC: 16. 18 GENERAL MBOMBO: I see it. 19 MR SEMENYA SC: 17, 18, and 36 of the 20 Constitution. 21 GENERAL MBOMBO: I see the sections. 22 MR SEMENYA SC: I think we can accept as 23 common cause that those are the basic fundamental human 24 rights that are articulated in the Constitution, so people 25 can know about dignity, can know about the right to life,</p>

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1 etcetera.

2 GENERAL MBOMBO: That is so, yes.

3 MR SEMENYA SC: So too the right of

4 expression as we'd find in 16 for instance of the

5 Constitution.

6 GENERAL MBOMBO: That is correct.

7 MR SEMENYA SC: Can I then ask we go to

8 slide 9 of this exhibit? So the slide would tell us, and

9 this is the evidence we heard from Brigadier Mkhwanazi who

10 was giving evidence on the training of members of the South

11 African Police Service. The document tells us that, "On

12 completion of this basic training the learner will be able

13 to, (1), balance the constitutional and legal rights of

14 individuals with the competence to legally infringe those

15 rights in the service of maintaining a safe and secure

16 society; (2), evaluate policing principles and their

17 application in relation to the crime prevention; conduct a

18 criminal investigation by gathering information and

19 evidence; evaluate situations and select tactical

20 techniques and skills needed to perform policing duties and

21 maintain the safety of themselves and others." Do you see

22 that?

23 GENERAL MBOMBO: I see it.

24 MR SEMENYA SC: So is it possible for any

25 of the members of the police service to be in service

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1 without having undergone basic training?

2 GENERAL MBOMBO: It is not like that, Mr

3 Chair, except those who come laterally, but they are also

4 sent for training after they have arrived.

5 MR SEMENYA SC: Now the nature of human

6 rights training that is offered – and if you don't have the

7 answer you can say so, we'll use other witnesses to cover

8 this terrain – do you know who offered that training?

9 GENERAL MBOMBO: I am not sure, Mr Chair.

10 MR SEMENYA SC: Okay. But there would

11 not according to your evidence be individuals in the police

12 service post 1994 who have passed basic training but did

13 not obtain any training in relation to human rights?

14 GENERAL MBOMBO: According to my

15 knowledge I think there can't be somebody who did not pass.

16 MR SEMENYA SC: And that basic training,

17 as you say, would include human rights elements of the

18 rights of, the fundamental rights, that is.

19 GENERAL MBOMBO: That is so, yes.

20 MR SEMENYA SC: As I indicate, General,

21 we will use other witnesses to deal with the fiscal

22 implications, that is money implications and human resource

23 implications of getting the members of the South African

24 Police Service at a level that Mr White would have them.

25 Let's park the subject, but let me ask you this; your

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1 evidence was that there were 348 or so POP members in your

2 province.

3 GENERAL MBOMBO: That is so, yes.

4 MR SEMENYA SC: And then you told us how

5 they obtained this training from a national platform.

6 GENERAL MBOMBO: That is correct.

7 MR SEMENYA SC: And again if you do not

8 have answers to the next question, please tell us so. In

9 the past month how many incidents of public order

10 management challenges have been experienced in your

11 province?

12 GENERAL MBOMBO: If you're talking about

13 last month, Mr Chair, I cannot be sure.

14 MR SEMENYA SC: Just give us an

15 indication of stats that you know at least.

16 GENERAL MBOMBO: According to my

17 knowledge just in 2014 we are in the region of 600.

18 MR SEMENYA SC: Do you have the resources

19 sufficient to address all of these challenges, public order

20 management challenges in the province?

21 GENERAL MBOMBO: That is still our

22 problem, Mr Chair, we do not have enough.

23 MR SEMENYA SC: Both in terms of budget,

24 personnel, time?

25 GENERAL MBOMBO: Exactly like that, yes.

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1 MR SEMENYA SC: How many of these would

2 you be able to have them go for training?

3 GENERAL MBOMBO: Please repeat the

4 question.

5 MR SEMENYA SC: How many of these POP

6 members would you have them go for training as opposed to

7 the operational demands of deployment from day-to-day?

8 GENERAL MBOMBO: As I was saying, we

9 already have 130 that have been trained in the refresher

10 course and I'm not sure how many still need to go in this

11 financial year.

12 MR SEMENYA SC: General Naidoo is the

13 next witness who will tell the Commission that for instance

14 only this month with overtime the province has had to pay

15 more than a million rand of overtime, people don't have

16 time to be off, etcetera, etcetera. Would that resonate

17 well with your understanding of your province's problems?

18 GENERAL MBOMBO: I'm not sure, because of

19 the shortage of resources we had to pay the police officers

20 overtime in this year, financial year.

21 MR SEMENYA SC: Moving to another

22 subject, the question of in-service training and refresher

23 courses, you remember your evidence along that subject?

24 GENERAL MBOMBO: I remember it.

25 MR SEMENYA SC: And whether or not there

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1 is opportunity for continuous training. Remember that
 2 subject?
 3 GENERAL MBOMBO: Yes, I do.
 4 MR SEMENYA SC: Just to tidy up this
 5 area, refresher courses would relate to what?
 6 GENERAL MBOMBO: I do not have enough
 7 information, but I think they are refreshed as to how they
 8 should work as a Public Order Police.
 9 MR SEMENYA SC: And to that subject was
 10 added the question that the leadership of the South African
 11 Police Service, their POP training is outdated. Do you
 12 remember that?
 13 GENERAL MBOMBO: I remember that.
 14 MR SEMENYA SC: If you're able to tell
 15 us, do, but in what respect has the POP measures been
 16 changed from those that obtained about crowd management
 17 before? Do you know?
 18 GENERAL MBOMBO: No, I do not know.
 19 MR SEMENYA SC: Because Mr White doesn't
 20 tell us in what respect the knowledge is out of date and
 21 what techniques are applied today which are no longer
 22 operable, or operative. Can we now deal with this; there
 23 was a battery of questions put to you in relation to your
 24 decision to disarm the protesters if they were not going to
 25 surrender them peacefully. You recall that?

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1 GENERAL MBOMBO: I recall that.
 2 MR SEMENYA SC: And the criticism was
 3 also that when you made the decision you had not, you did
 4 not have knowledge on how that stage 3 would be
 5 implemented. You recall that?
 6 GENERAL MBOMBO: I remember.
 7 MR SEMENYA SC: Now when you give or make
 8 decisions of the type like that, do you have to know how
 9 the arrests would be done?
 10 [09:33] GENERAL MBOMBO: It is not always like
 11 that, Mr Chair.
 12 MR SEMENYA SC: Explain.
 13 GENERAL MBOMBO: I make a lot of
 14 decisions or give a lot of instructions even to
 15 investigators, not having the knowledge of the
 16 investigation, how to investigate. I give instructions to
 17 all sections under me, not necessarily knowing how they are
 18 going to go about doing it. All I have to do is ensure
 19 that it is done, or the instructions are carried out.
 20 MR SEMENYA SC: General Naidoo will be
 21 giving us his evidence after you, General, and will tell
 22 the Commission that standard operating procedures in the
 23 police service trains the police on how to effect an
 24 arrest. Would that be consonant with your understanding of
 25 how the police work?

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1 GENERAL MBOMBO: That is so, yes.
 2 MR SEMENYA SC: He will also tell us for
 3 instance that with Public Order management issues the POP
 4 elements are taught how to do the blocking. Would that be
 5 familiar to you?
 6 GENERAL MBOMBO: That is so, yes.
 7 MR SEMENYA SC: Dispersals?
 8 GENERAL MBOMBO: Yes, that is correct.
 9 MR SEMENYA SC: Arrests?
 10 GENERAL MBOMBO: That is correct.
 11 MR SEMENYA SC: Disarming of armed
 12 offenders?
 13 GENERAL MBOMBO: That is so.
 14 MR SEMENYA SC: Now there was also a
 15 flurry of questions put to you in relation to making the
 16 decision for the disarming of the strikers on an
 17 unconditional basis. You recall that?
 18 GENERAL MBOMBO: I remember that.
 19 MR SEMENYA SC: Now just for
 20 illustration, if you have reason to arrest me, as a member
 21 of the police service, do you have to say to an arresting
 22 officer effect that arrest on condition A, B, C, D?
 23 GENERAL MBOMBO: I don't remember there
 24 being anything that compels me to do that.
 25 MR SEMENYA SC: I think if I refresh our

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1 memories, the questions were really about you did not say
 2 to General Mpembe or to General Annandale that they can go
 3 to stage 3, but if this or that or that is not present then
 4 they don't have to do that. That was the thrust of the
 5 line of questions that were put to you. Do you recall
 6 that?
 7 GENERAL MBOMBO: I do, yes.
 8 MR SEMENYA SC: Now if to the considered
 9 opinion of the police – okay, let's take one step back. In
 10 relation to the implementation of stage 3, did you approve
 11 a plan on how the stage 3 was going to be implemented?
 12 GENERAL MBOMBO: No, I did not, Mr Chair.
 13 MR SEMENYA SC: Were you supposed to
 14 approve any plan in relation to how the stage 3 was to be
 15 implemented?
 16 GENERAL MBOMBO: There was nothing
 17 compelling me to do so. General Mpembe would have done the
 18 approval of such a plan, but if it was tabled to me I would
 19 have approved it together with him.
 20 MR SEMENYA SC: I'm just trying to
 21 understand, given your area of expertise in the police
 22 service; do you have the technical know-how of fully
 23 appreciating the implications of a tactical plan of that
 24 nature?
 25 GENERAL MBOMBO: Especially that of the

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1 Public Order, no I do not have.
 2 MR SEMENYA SC: And your evidence is that
 3 there were members around the operation in Marikana who had
 4 that tactical expertise?
 5 GENERAL MBOMBO: That is so, yes.
 6 MR SEMENYA SC: Now there was also a
 7 flurry of questions that were put to you in relation to
 8 whether or not you could foresee any injury or harm
 9 befalling some people in relation to the implementation of
 10 stage 3. You recall that?
 11 GENERAL MBOMBO: I do, yes.
 12 MR SEMENYA SC: Now, General, just step
 13 back for me a little while. Disabuse your mind, or forget
 14 the fact that you now know that 34 people were killed on
 15 the 16th of August 2012. Forget that for a while. When you
 16 made the decision to disarm the strikers, what harm did you
 17 foresee?
 18 GENERAL MBOMBO: Mr Chair, in truth I
 19 knew that the police would be able to deal with that
 20 situation. I did not expect any problems. I did not
 21 especially expect the problems that we did eventually
 22 encounter on that day.
 23 MR SEMENYA SC: Yes, but what did you
 24 foresee as a possible risk? I'm just trying to understand
 25 the scope, scale of the harm that you foresaw.

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1 GENERAL MBOMBO: What I thought, Mr
 2 Chair, what I think the generals also thought was that
 3 there might be people who'd refuse to hand over their
 4 weapons. That is why the police saw it fit to have the TRT
 5 to help in that situation. That would have caused now a
 6 confrontation, but I never expected that there could be
 7 this harm that took place on that day.
 8 MR SEMENYA SC: Well, I can ask the
 9 question differently. If you foresaw that 34 people were
 10 going to be shot dead, would you have implemented the
 11 arrest procedure as you decided it in relation to Marikana?
 12 GENERAL MBOMBO: Mr Chair, it never
 13 occurred to me that people could die there. So according
 14 to me there were regulations in plan to disarm and arrest
 15 people as it was expected. I'm sure, Mr Chair, we would
 16 not have proceeded with this operation if we foresaw the
 17 death of 34 people.
 18 MR SEMENYA SC: And when you speak about
 19 bloodshed - and it's no different I suspect when General
 20 Mpembe speaks about bloodshed - what did you have in mind
 21 when you were using those words?
 22 GENERAL MBOMBO: The main thing, Mr
 23 Chair, is that we did not want to see any bloodshed. We do
 24 not want to see anyone die.
 25 MR SEMENYA SC: Was there a mental

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1 picture you had of scores of people being injured with the
 2 implementation of stage 3?
 3 GENERAL MBOMBO: Not in stage 3, Mr
 4 Chair, but these people were armed; they had already killed
 5 certain people. We were not wishing to experience any
 6 further bloodshed.
 7 MR SEMENYA SC: You'd recall my learned
 8 colleague Mr Mpofu was exploring with you three options,
 9 two of which he called peaceful and the other one that held
 10 a risk of some harm. You recall those questions?
 11 GENERAL MBOMBO: I recall them.
 12 MR SEMENYA SC: Again I invite you to
 13 tell us what you saw as a possible harm in relation to the
 14 implementation of stage 3.
 15 GENERAL MBOMBO: I only thought of one
 16 thing, Mr Chair, that there might be people who would not
 17 voluntarily hand over their weapons and those people might
 18 want to fight and so the police would have means to deal
 19 with that.
 20 MR SEMENYA SC: If I give you this
 21 example and invite your opinion on it, if the police have
 22 reason to believe that I must be arrested for one or other
 23 offence and they have information that I'm going to resist
 24 that arrest, what happens? Do you have a choice not to do
 25 the arrest because of the possible resistance?

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1 GENERAL MBOMBO: No, it is not like that,
 2 Mr Chair.
 3 MR SEMENYA SC: What happens?
 4 GENERAL MBOMBO: At times when we have to
 5 effect arrests we do anticipate resistance, but the fact is
 6 we still have to do our job. The person effecting the
 7 arrest has to have means in dealing with the resistance.
 8 MR SEMENYA SC: You would remember there
 9 were a number of questions put to you that at the time that
 10 you made the decision to disarm the strikers you did not
 11 have some intelligence information. You recall those
 12 questions?
 13 GENERAL MBOMBO: I remember that.
 14 MR SEMENYA SC: Now again I invite your
 15 comment to this. If you knew that the armed strikers were
 16 going to resist being disarmed, is that sufficient basis
 17 for you to not disarm the people?
 18 GENERAL MBOMBO: No, it is not, Mr Chair.
 19 As I've answered that question earlier on, I said
 20 intelligence only assists us in preparing to do the
 21 operation, but it does not necessarily stop us in doing
 22 that.
 23 MR SEMENYA SC: And if you had the
 24 intelligence that is documented that the police had at the
 25 time, would you have made the decision or not to have them

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1 disarmed if they did not surrender their arms voluntarily?
 2 GENERAL MBOMBO: That is correct. That
 3 is so.
 4 MR SEMENYA SC: The other area that was
 5 covered in cross-examination related to whether or not the
 6 plan was in a written form or not. Do you remember that?
 7 GENERAL MBOMBO: I remember that.
 8 MR SEMENYA SC: Now if you cannot help us
 9 we'll ask the questions to General Naidoo as well. Where
 10 Standing Order 262 requires a plan to be in writing, do you
 11 know what is the spectrum of information that is included
 12 in that type of plan?
 13 GENERAL MBOMBO: At the moment I'm not
 14 sure about that.
 15 MR SEMENYA SC: General Naidoo will tell
 16 us later that it would be information relating to the
 17 various stakeholders. Does that accord with whatever you
 18 know of the subject?
 19 GENERAL MBOMBO: That is so, yes.
 20 MR SEMENYA SC: And those stakeholders
 21 may be people outside the police service like who are the
 22 marchers. Would that accord with your understanding of the
 23 plan?
 24 GENERAL MBOMBO: That is correct.
 25 MR SEMENYA SC: It would include

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1 information about what the traffic implications are around
 2 a particular march, for argument sake?
 3 GENERAL MBOMBO: That is correct.
 4 MR SEMENYA SC: What direction the
 5 marchers would take.
 6 GENERAL MBOMBO: That is so, yes.
 7 MR SEMENYA SC: And he will also tell us
 8 that that type of plan doesn't talk about how you do the
 9 blocking or how you do the dispersal though.
 10 GENERAL MBOMBO: I think that is also the
 11 case there, yes.
 12 MR SEMENYA SC: But we will take it with
 13 him and he will give us a greater understanding of that.
 14 There was also the question of what was actually presented
 15 at the 13:30 JOCCOM meeting of the 16th of August 2012. You
 16 remember that's the meeting you attended?
 17 GENERAL MBOMBO: I remember it, yes.
 18 MR SEMENYA SC: And if I understood your
 19 evidence, you had left that meeting before Colonel Scott
 20 could present any particular plan, right?
 21 GENERAL MBOMBO: That is correct, yes.
 22 MR SEMENYA SC: So you can't help us in
 23 terms of your actual knowledge what was or was not
 24 presented to them. You were also asked with reference to
 25 Mr White that the plan that was implemented was not

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1 interrogated by those who were present there. Remember
 2 that line of questions?
 3 GENERAL MBOMBO: Yes, I remember.
 4 MR SEMENYA SC: Again given your limited
 5 knowledge on operational issues, have you been able to
 6 glean from that plan what is missing.
 7 [09:53] What would have been included had there been a
 8 further interrogation because even Mr White doesn't tell us
 9 that?
 10 GENERAL MBOMBO: No, I did not do that.
 11 MR SEMENYA SC: Okay. You also would
 12 recall there was the question that Bishop Seoka would have
 13 introduced a peaceful resolution if he was offered a
 14 chance. Do you recall that?
 15 GENERAL MBOMBO: I remember that, yes.
 16 MR SEMENYA SC: Do you know what
 17 resolution he would have introduced?
 18 GENERAL MBOMBO: I do not know, Mr Chair.
 19 MR SEMENYA SC: Did he tell any of the
 20 police officers what solution he had in mind?
 21 GENERAL MBOMBO: I do not remember, at
 22 least not to me.
 23 MR SEMENYA SC: Do you remember anybody
 24 telling you what Bishop Seoka had as a peaceful resolution
 25 of the problem?

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1 GENERAL MBOMBO: Not from the officers
 2 I've spoken to, Mr Chair, no.
 3 MR SEMENYA SC: Well I don't recall even
 4 his evidence telling us how his solution would have been
 5 peaceful and the outcome peaceful, but –
 6 MR MPOFU: Chairperson, I must object to
 7 that question. There is undisputed evidence, I think it's
 8 paragraph 12 of the Bishop's evidence that A, he approached
 9 the management with what solutions he had and B, that he
 10 told the witness those two things. The water and
 11 addressing the people and that was not disputed with the
 12 Bishop.
 13 CHAIRPERSON: Is that a basis for
 14 objecting to the question? It may be that any answer that
 15 is given to the question, if it's contrary to the point
 16 that you are making may lack weight. I have difficulty to
 17 understand on what basis you can object to the question
 18 being asked.
 19 MR MPOFU: No, Chairperson, that's
 20 impossible. If there was such a possible answer then that
 21 answer would have been put to the Bishop. That's the point
 22 I'm making. If it was disputed –
 23 CHAIRPERSON: No, I'm sorry, Mr Mpofo,
 24 that's a point of weight, the question is asked, it may be
 25 the answer will be lacking in weight for reasons that

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1 you've mentioned because other questions weren't asked of
 2 the Bishop and so on, but it's not a basis for ruling the
 3 question inadmissible. Your objection is overruled.
 4 Please proceed, Mr Semenya.
 5 MR SEMENYA SC: Asked differently, do you
 6 know how the water was going to peacefully resolve the
 7 strikers from disarming peacefully?
 8 GENERAL MBOMBO: No I do not know, Mr
 9 Chair.
 10 CHAIRPERSON: Was there a chance that the
 11 Bishop's intervention might have led to a peaceful
 12 resolution of the problem without any blood being shed?
 13 GENERAL MBOMBO: I do not know about
 14 that, Mr Chair.
 15 MR SEMENYA SC: Allied to that, the
 16 questions asked about Mr Malema with the history that his
 17 intervention in Impala helped resolve that impasse there.
 18 Do you remember those questions?
 19 GENERAL MBOMBO: I do, yes.
 20 MR SEMENYA SC: When you made the
 21 decision to implement stage 3 did you know what, if at all,
 22 Mr Malema would have had as a solution to the problem?
 23 GENERAL MBOMBO: I did not think about
 24 that, Mr Chair, I did not even know whether he could have a
 25 solution to the problem.

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1 MR SEMENYA SC: When you decided to
 2 implement stage 3, I mean that people will be disarmed were
 3 you aware what different solution Mr Godi would have an
 4 opposition MP?
 5 GENERAL MBOMBO: No I did not know, Mr
 6 Chair.
 7 MR SEMENYA SC: What normally happens
 8 with these type of police operations? If you have a
 9 situation do you got to would be politicians, Mr Malema to
 10 go and ask whether or not they can resolve the police
 11 problem that you're facing?
 12 CHAIRPERSON: I don't understand, if I
 13 heard correctly, why Mr Malema is described as a would be
 14 politician. I think he's a politician. Some people, even
 15 some of those present, may support him, some people may not
 16 support him, but he's a politician in any definition of the
 17 word.
 18 MR SEMENYA SC: Well, Chair, let me
 19 withdraw that. It's not the focus of my question, General,
 20 I just want to find whether in police operations do the
 21 police go to politicians, if we use that word, to go and
 22 find that if they have a possible solution to a particular
 23 impasse?
 24 GENERAL MBOMBO: We personally do not go
 25 to politicians, Mr Chair.

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1 MR SEMENYA SC: Was there any connection
 2 that Mr Godi had in relation to the problems that you
 3 experienced in Marikana?
 4 GENERAL MBOMBO: Not according to my
 5 knowledge.
 6 MR SEMENYA SC: To the knowledge of the
 7 police, do you know?
 8 GENERAL MBOMBO: I do not think that is
 9 the case, Mr Chair.
 10 MR SEMENYA SC: There was a reference to
 11 the various emails that Mr Ramaphosa made to the Minister,
 12 etcetera, do you recall that?
 13 GENERAL MBOMBO: I recall it, yes.
 14 MR SEMENYA SC: Now, General, the other
 15 who made –
 16 CHAIRPERSON: It wasn't an email Mr
 17 Ramaphosa sent to the Minister. The emails that were
 18 before us which were referred to were all exchanged between
 19 Mr Ramaphosa and officials of Lonmin. They did refer to
 20 communications to the Minister. To two ministers in fact,
 21 but there were no emails to the Minister at all that were
 22 put before us. I don't know whether Mr Ramaphosa even sent
 23 emails to the Minister. We may discover that in due
 24 course.
 25 MR SEMENYA SC: I accept the correction,

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1 Chair. Do you remember that evidence though?
 2 GENERAL MBOMBO: I do remember.
 3 MR SEMENYA SC: Now, General, you made
 4 the decision that the people must be disarmed.
 5 GENERAL MBOMBO: That is correct, yes.
 6 MR SEMENYA SC: You can tell us whether
 7 you felt any political pressure to come to the conclusion
 8 that you did, correct?
 9 GENERAL MBOMBO: That is so.
 10 MR SEMENYA SC: Were you under any
 11 political pressure when you made the decision that you did?
 12 GENERAL MBOMBO: Not at all, Mr Chair.
 13 MR SEMENYA SC: Have there been previous
 14 incidents where you made an operational decision based on
 15 any political pressure?
 16 GENERAL MBOMBO: I don't remember, not a
 17 single one in my career as a police officer or a provincial
 18 commissioner.
 19 MR SEMENYA SC: In your communication
 20 with General Mpembe were there any political pressures
 21 issues mentioned in relation to the operation in Marikana?
 22 GENERAL MBOMBO: I did not have such a
 23 discussion with them and I don't remember him telling me
 24 such a thing.
 25 MR SEMENYA SC: In your conversation and

<p style="text-align: right;">Page 22765</p> <p>1 discussion with General Annandale relating to the disarming 2 of the strikers was there any discussion of political 3 pressure being brought to bear on that operation at all? 4 GENERAL MBOMBO: I never had such a 5 discussion, Mr Chair. 6 MR SEMENYA SC: In the communication that 7 you had with the Minister, the telephone conversation of 8 the Sunday of the 12th, do you remember that? 9 GENERAL MBOMBO: I remember. 10 MR SEMENYA SC: What, if anything, did 11 the Minister say to you that was operational? 12 GENERAL MBOMBO: Except for saying please 13 follow that up and I responded by saying we're dealing with 14 it. 15 MR SEMENYA SC: Is there anything 16 discussed about how? 17 GENERAL MBOMBO: I also did not. 18 MR SEMENYA SC: Has it ever happened that 19 she would tell you about how the policing should be done? 20 GENERAL MBOMBO: I don't remember that 21 happening. 22 MR SEMENYA SC: What do you mean you 23 don't remember? 24 GENERAL MBOMBO: It has never happened, I 25 don't remember it happening.</p>	<p style="text-align: right;">Page 22767</p> <p>1 MR SEMENYA SC: Can I ask you to look at 2 JJJ177? Yes, that would give us the people who were in 3 attendance there. 4 MR MPOFU: Chairperson, sorry just before 5 we go to this, I don't want to interrupt my learned friend. 6 I'm just confused a little bit whether Mr Semenya's cross- 7 examining his own witness. If she says she doesn't 8 remember, she doesn't remember. 9 CHAIRPERSON: It doesn't sound like 10 cross-examination – 11 MR MPOFU: But it does to me. If she 12 says she doesn't remember, she doesn't remember. He can't 13 prompt her to say something else, that's cross-examination. 14 CHAIRPERSON: Yes, but you can jog a 15 witness's memory sometimes by showing the witness a 16 document. I don't have a problem with that. He can carry 17 on. 18 MR MPOFU: Okay, no, Chairperson, I'm 19 sorry I think there is confusion. No it's not about the 20 document. I'm saying when the witness says I don't 21 remember, Mr Semenya says what do you mean you don't 22 remember and I think that's cross-examination. He must 23 accept the answer from his own witness. 24 CHAIRPERSON: It may be, but I'm prepared 25 to allow it on this particular occasion, but the point you</p>
<p style="text-align: right;">Page 22766</p> <p>1 MR SEMENYA SC: I think it was Mr Burger 2 who dealt with you about senior police officers who did not 3 include in their statements the happenings of the 4 extraordinary session obtained after the National 5 Management Forum meeting was concluded. Do you remember 6 that? 7 GENERAL MBOMBO: I remember it. 8 MR SEMENYA SC: In any event there were 9 in that session a number of provincial commissioners. 10 GENERAL MBOMBO: That is so, yes. 11 MR SEMENYA SC: If you have an instant 12 recollection and I just want to use this as an example, 13 there would have been the Provincial Commissioner for 14 KwaZulu Natal. 15 GENERAL MBOMBO: There was one, yes. 16 MR SEMENYA SC: Do you know if he had 17 made a statement in relation to the events of Marikana? 18 GENERAL MBOMBO: No I do not remember, Mr 19 – 20 MR SEMENYA SC: I don't understand what 21 you mean you don't remember. Have you seen a statement by 22 the Provincial Commissioner KwaZulu Natal in relation to 23 the event in Marikana? 24 GENERAL MBOMBO: No I haven't seen it, Mr 25 Chair.</p>	<p style="text-align: right;">Page 22768</p> <p>1 make, of course, is not lacking validity that re-examiners 2 shouldn't cross-examine the people they're re-examining. 3 And if something serious of that kind happens I will stamp 4 it out. Thank you for reminding me of my duties in that 5 regard. 6 MR MPOFU: Thank you, Chairperson, thank 7 you. 8 MR SEMENYA SC: Do you see, General, we 9 have that exhibit indicating the attendance in that 10 extraordinary session? 11 GENERAL MBOMBO: I see it, Mr Chair. 12 MR SEMENYA SC: At a glance, who among 13 those people made statements in relation to the matters in 14 Marikana? 15 GENERAL MBOMBO: Do you mean that day in 16 relation to the meeting? 17 MR SEMENYA SC: The meeting happened, I'm 18 asking you now if you look at the list of people who are 19 there, do you know how many of those have made statements 20 relating to – for the Commission, or made statements to the 21 Commission relating to the events in Marikana. 22 GENERAL MBOMBO: No I do not know, Mr 23 Chair. I do not know of anyone who might have made a 24 statement about that. 25 CHAIRPERSON: What about the National</p>

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1 Commissioner? She was at the meeting, she made a statement
2 didn't she? She gave evidence in fact. So how can you say
3 nobody there, sorry Mr Mpofo would regard that as cross-
4 examination, but never mind, I'll allow it. What's your
5 answer?

6 GENERAL MBOMBO: Maybe I did not
7 understand the question, Mr Chair.

8 CHAIRPERSON: You said that no one at
9 that meeting made statements. I'm saying to you that the
10 National Commissioner did. So how can you tell us that no
11 one at that meeting made a statement before this
12 Commission? Not only did the National Commissioner make a
13 statement, she came and gave oral evidence. So the answer
14 you gave to the question Mr Semanya asked you clearly
15 requires revision and correction, would you agree?

16 GENERAL MBOMBO: I agree, Mr Chair. As
17 I'm saying, I did not understand the question. I did not
18 know if counsel was referring it was made here in the
19 Commission or a media statement or what. If we're talking
20 about statements that were given here in the Commission,
21 yes the National Commissioner made a statement. I also
22 made a statement.

23 MR SEMENYA SC: I think, yes the thrust
24 of the line of questioning there was that the senior police
25 officials in South African Police Service attended this

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1 auspicious meeting and discussed this issue but never
2 tabled statements to the Commission. That was the thrust
3 of the line of questions, do you recall that?

4 GENERAL MBOMBO: I recall it.

5 MR SEMENYA SC: Now again I invite you.
6 If you have a look at that list of people who were in
7 attendance there, how many of those attended Roots?

8 GENERAL MBOMBO: Of those people it's me
9 who went to Roots. I went for two days, the National
10 Commissioner went for one day, the Deputy National
11 Commissioner of that time went to Roots, I don't know how
12 many times. Divisional Commissioner Mawela also went, I do
13 not know how many times.

14 MR SEMENYA SC: Okay let's address
15 another subject. You were asked a number of questions
16 whether or not the police took the opportunity, senior
17 police officials took the opportunity to persuade Lonmin
18 into going to the koppie to talk to the strikers, you
19 remember that?

20 GENERAL MBOMBO: I recall that.

21 MR SEMENYA SC: Can I invite you to look
22 at the transcript and to go to day 77, page 8216? And if
23 you go around, maybe if you start at the page before so
24 that we can – yes from line 16 says Major-General Annandale
25 there.

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1 [10:13] Chairperson, the part that I attended had to do
2 with the Lonmin management. One of the two people, they
3 were supplementing one another in terms of getting an
4 overview. They were basically indicating again the two
5 groupings in terms of AMCU and NUM. They mentioned the
6 wage agreement that was in place for two years. They
7 confirmed that there was a specific demand from the rock
8 drill operators. They said that they do not have specific
9 detail in terms of any of the people. I might just add
10 that earlier in the first briefing General Mzembe showed
11 some photos to the national commissioner in terms of people
12 that were identified during the incident that he had
13 earlier the day and there was a discussion of these people
14 are specifically known to Lonmin management. They
15 indicated that they are not familiar with the individuals.
16 Then there was a discussion in terms of the national
17 commissioner appealed that there should be constructive
18 negotiation between Lonmin as the employer and the
19 respective union leadership and that there should be a
20 partnership between the police and themselves in terms of
21 sharing of intelligence and information. Now, were you in
22 this meeting?

23 GENERAL MBOMBO: I was present, yes.

24 MR SEMENYA SC: What was the national
25 commissioner saying to Lonmin about their role in relation

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1 to the resolution of the programmes there?

2 GENERAL MBOMBO: She said, Mr Chair, it
3 was important that they tell us who their people are
4 according to the photos that Mzembe had. She stressed the
5 point that Lonmin management should do everything in their
6 power to find a solution to this problem. She also said we
7 as the police also had to do everything in our power to
8 ensure that there was peace at Lonmin.

9 MR MPOFU: Chairperson, I wish to object
10 to that question.

11 CHAIRPERSON: What's the basis of the
12 objection?

13 MR MPOFU: Yes, thanks. The basis of my
14 objection is that re-examination is based on issues raised
15 in cross-examination. If that question is based on my
16 cross-examination on this topic then I wish to point out
17 the following two things.

18 CHAIRPERSON: There were also cross-
19 examiners who also raised the question of Lonmin not
20 negotiating, not being prepared to negotiate with the rock
21 tool operators.

22 MR MPOFU: Ja, they may well –

23 CHAIRPERSON: They weren't prepared to go
24 to the scene and negotiate, not being prepared to receive
25 them except through the trade union and the recognised

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1 structures.

2 MR MPOFU: Yes.

3 CHAIRPERSON: So the point was covered in

4 cross-examination.

5 MR MPOFU: Ja, but what I'm going to say

6 is – ja.

7 CHAIRPERSON: And the police not urging

8 Lonmin to do something so that negotiations, meaningful

9 negotiations, could take place between Lonmin and the

10 strikers.

11 MR MPOFU: Ja.

12 CHAIRPERSON: It's all covered in cross-

13 examination.

14 MR MPOFU: Well, that's – thank you,

15 Chairperson, you've assisted me even further. The problem

16 with all that cross-examination had to – at least my cross-

17 examination through the prompting of the chair made it

18 specific that with the exception of General Mpembe the

19 second point is that none of the cross-examination, either

20 mine or anybody's, had anything to do with what is being

21 put which is negotiation with union leaders. As the

22 chairperson has correctly put it was – it regarded

23 negotiation with the protestors. What is in that thing on

24 the screen now says that there should be –

25 CHAIRPERSON: A few lines above what

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1 we're now –

2 MR MPOFU: Yes, appeal that there should

3 be concerted negotiation between Lonmin as the employer and

4 the respective union leadership. None of the cross-

5 examination covered that.

6 CHAIRPERSON: In exercising my discretion

7 I allow the question to be asked even if they are new

8 matter, even if they cover new matter. Carry on,

9 Mr Semenya.

10 MR SEMENYA SC: Thank you, Chair.

11 General, can I ask we look at exhibit 004 which is a

12 transcript of the – between General Mpembe, the unions, I

13 mean the union leaders and Lonmin and we go to page 27 of

14 that document. And we look at from line 17 of the

15 document.

16 CHAIRPERSON: - finally get it in a

17 legible form, Mr Mpofo, because that – sorry, Mr Semenya,

18 because that would be the objection to this line of cross-

19 examination that I might have to uphold if documents aren't

20 legible.

21 MR SEMENYA SC: Are we able to see it in

22 a legible format?

23 CHAIRPERSON: - will find the answer.

24 MR SEMENYA SC: Page 27.

25 CHAIRPERSON: Eleven pages. I don't know

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1 what's going to happen when we get to page 27. According

2 to the note at the top of the screen. They told us first

3 to move to trash. I don't know whether we've moved it.

4 There's certainly not a page 27 that's available. Now

5 we've got 25. I see.

6 MR SEMENYA SC: That top of the page –

7 CHAIRPERSON: Yes, but the page we're

8 looking at on the screen has got a 25 on it so if it's the

9 way it's been done on, put on – I see. So I'm instructed

10 it's been opened in another format, so anyway, as soon as

11 we find the passage you want to refer to, Mr Semenya, we

12 will be able to proceed. Are we there yet?

13 MR SEMENYA SC: It is a line starting,

14 "Our position, General, is" –

15 CHAIRPERSON: Sorry, I didn't hear. How

16 does the line begin?

17 MR SEMENYA SC: It is not on the screen

18 but it would commence reading, "Our position, General."

19 CHAIRPERSON: Oh, I see. How the line

20 begins or the paragraph begins? Maybe if you could

21 identify the beginning of the paragraph.

22 MR SEMENYA SC: It's the bold, it's the

23 bold paragraph with Mr Mokwena speaking.

24 CHAIRPERSON: Yes, I understand, but how

25 does the paragraph begin? What are the opening words of

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1 the paragraph?

2 MR SEMENYA SC: "Our position."

3 CHAIRPERSON: Okay. Thank you.

4 MR SEMENYA SC: If we can go to the top

5 of the page and we see number 27 then we are on the right

6 page.

7 CHAIRPERSON: I think we must go down.

8 As far as I can remember from the document Mr Mokwena spoke

9 towards the end of that discussion and previously Mr

10 Mathunjwa had quite a lot to say and I think the section

11 we've got at the moment deals with Mr Mathunjwa's

12 discussion with General Mpembe. It's the section where

13 General Mpembe talks to Lonmin that's relevant.

14 MR SEMENYA SC: From the bottom of that

15 document it would be page 5 I'm told.

16 CHAIRPERSON: Do you understand. You go

17 to the bottom of the document, Mr Operator, and then go

18 backwards.

19 MR SEMENYA SC: Sorry.

20 CHAIRPERSON: We found it now. Mr

21 Mokwena says, "Our position, General, is that Lonmin's

22 management, our position is as follows. "We're willing to

23 engage our employees within the structures that are known

24 in a very safe environment where there are no weapons. So

25 we are willing to meet our employees through their

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1 structures, through their leaders to discuss any issue not
 2 when they're armed, not when they're actually outside the
 3 Lonmin property. So when the workers are back disarmed
 4 tomorrow or tonight through their leaders we will meet
 5 them. That is our position. So we're not against meeting
 6 and discussing issues with their employees." I take it
 7 this should be I. "Through their right structures we are
 8 prepared to do that." And then the facilitator says, "All
 9 right, I think it's clear." That's the passage to which
 10 you refer, Mr Semenya?
 11 MR SEMENYA SC: Indeed, Chair. Now, if
 12 Mr Mokwena was expressing a Lonmin position in those terms
 13 what opportunity was still there for the police to persuade
 14 them to go to the koppie?
 15 GENERAL MBOMBO: I do not know, Mr Chair,
 16 because I think that was enough.
 17 MR MPOFU: Chairperson, I'm sorry but I
 18 have to object again. What is happening now? Is Mr
 19 Semenya contradicting his own opening statement? In his
 20 own opening statement –
 21 CHAIRPERSON: Mr Mpofu, I'm sorry to
 22 interrupt you. There's no rule of the law of evidence that
 23 I'm aware of which says that a question which a witness
 24 asks, which the witness is asked by counsel which
 25 contradicts the opening statement or the particular claim

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1 of the party represented by that counsel is thereby
 2 rendered inadmissible.
 3 MR MPOFU: No –
 4 CHAIRPERSON: It's not a basis for
 5 disallowing a question.
 6 MR MPOFU: No, Chairperson, with the
 7 greatest respect there must be a rule of evidence or logic
 8 that says that we are entitled to know what the case of the
 9 police is. If it is their case that the Lonmin despite – I
 10 hope I am paraphrasing correctly – persuasions by senior
 11 officers and warra, warra and all those things, then Lonmin
 12 failed in their duty to - as it is reflected in the
 13 statement. Then that's their case. If it is their case
 14 now or they've changed their case to say that that
 15 situation did not happen because Lonmin made their position
 16 clear then those are two different things. I'm afraid we
 17 at least if no one else is entitled we are entitled to know
 18 what the police case is.
 19 CHAIRPERSON: There are two rules that
 20 are relevant in the context of this objection which I'm
 21 asked to rule on. The first is that a party is entitled in
 22 litigation to know the case that it is supposed to meet and
 23 that is normally done through the exchange of pleadings in
 24 litigation. This is not litigation. This is a commission
 25 which because of the nature of the terms of reference the

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1 way they are framed is at this stage being conducted in a
 2 quasi-adversarial fashion.
 3 But the other rule which applies is that there
 4 are limited bases on which questions asked can be
 5 disallowed. The two rules cover different terrains. If it
 6 is desired by a party who feels that the police are
 7 changing their ground and changing their case it's open to
 8 them to address an inquiry to the police to ascertain what
 9 the case is that they are expected to meet, but it is not a
 10 basis for objecting to questions which are being asked by
 11 the police counsel. The objection is accordingly
 12 overruled. Mr Semenya, please proceed.
 13 MR SEMENYA SC: The question, General,
 14 was that if Mr Mokwena was expressing the true position of
 15 Lonmin in that paragraph that was read what opportunity
 16 still was there for the police to persuade the Lonmin
 17 management to go to the koppie?
 18 GENERAL MBOMBO: I do not think there was
 19 any other possibility or a need or there was any other
 20 option for the police.
 21 MR SEMENYA SC: Option for the police to?
 22 GENERAL MBOMBO: To persuade them
 23 further.
 24 MR SEMENYA SC: Would this be an
 25 appropriate stage for the comfort break, Chair?

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1 CHAIRPERSON: I received an earlier
 2 request along the same lines. I'm prepared to grant the
 3 request. We'll now take a comfort break.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [10:48] CHAIRPERSON: The Commission resumes.
 6 Provincial Commissioner, you're still under oath.
 7 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
 8 CHAIRPERSON: Mr Semenya, do you have
 9 anymore questions in re-examination?
 10 RE-EXAMINATION BY MR SEMENYA SC (CONTD.):
 11 I do, Chair, thank you. Relating to the subject that we
 12 were dealing with before the adjournment, you recall there
 13 were questions asked of you that Mr Mokwena opened the door
 14 when he said he will take advice or counsel from you as the
 15 police? Remember that?
 16 GENERAL MBOMBO: I remember that.
 17 MR SEMENYA SC: And the line of questions
 18 were that that would have been an opportunity for the
 19 police to propose a different resolution to Lonmin. You
 20 remember that?
 21 GENERAL MBOMBO: I do, Mr Chair.
 22 MR SEMENYA SC: Was it your view that the
 23 advice they sought from the police would change their
 24 stance, that is Lonmin, from the position that they would
 25 only talk through official channels and through official

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1 structures with the strikers?
 2 GENERAL MBOMBO: No, it was not my view,
 3 Mr Chair.
 4 MR SEMENYA SC: If we deal with the next
 5 subject, it dealt with a whole number of questions around
 6 the decision you made to implement stage 3 and whether or
 7 not at that time you were aware that Mr Mathunjwa was still
 8 attempting to speak to the strikers. Remember those
 9 questions?
 10 GENERAL MBOMBO: I remember the
 11 questions.
 12 MR SEMENYA SC: And those questions,
 13 their point was that Mr Mathunjwa's initiative was still
 14 active whilst you took the decision that you did. Remember
 15 that?
 16 GENERAL MBOMBO: I do.
 17 MR SEMENYA SC: And that according to the
 18 information you had at the time, negotiations with the
 19 strikers was exhausted. That's what you knew to be the
 20 case.
 21 GENERAL MBOMBO: That is so, Mr Chair.
 22 MR SEMENYA SC: According to the
 23 information placed to you was stage 3 implemented before or
 24 after Mr Mathunjwa's effort to engage with the strikers was
 25 exhausted, as you know now?

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1 GENERAL MBOMBO: Can you repeat the
 2 question?
 3 MR SEMENYA SC: By the time stage 3 was
 4 implemented was there still an active opportunity still
 5 there for Mr Mathunjwa to speak to the strikers?
 6 GENERAL MBOMBO: According to me no,
 7 there was no opportunity.
 8 MR SEMENYA SC: There was also your
 9 evidence in relation to negotiations, whether you were or
 10 you were not interested. You remember that?
 11 GENERAL MBOMBO: I do.
 12 MR SEMENYA SC: Please help clarify that
 13 aspect of your disinterest. What are you conveying with
 14 that sentiment?
 15 GENERAL MBOMBO: I was trying to say, Mr
 16 Chair, the explanation I had, had no explanation of
 17 conditions, so I do not know what conditions there were for
 18 him to go to the koppie.
 19 MR MPOFU: Sorry, I think the witness
 20 said negotiations.
 21 GENERAL MBOMBO: Negotiations, yes. I
 22 did not know what the negotiations he was talking about had
 23 to with him going to the koppie.
 24 MR SEMENYA SC: Okay. Mr Mpofo puts it
 25 at this level that all the strikers at the koppie wanted

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1 was to speak to the employer, that they wanted no more.
 2 Was that how you understood the situation as you were
 3 discussing with the various stakeholders?
 4 GENERAL MBOMBO: I only heard about that
 5 on Monday when they were talking to General Mpmembe.
 6 MR SEMENYA SC: What were their demands?
 7 Do you know?
 8 GENERAL MBOMBO: When they were talking
 9 to General Mpmembe they said they wanted the employer to
 10 come and talk to them; that was in relation to the money
 11 that they wanted.
 12 MR SEMENYA SC: There was also another
 13 area dealt with you in relation to the instruction to go
 14 tactical. It was put to you that had you not made the
 15 decision, 34 lives would have been saved on the 16th of
 16 August 2012. Remember that?
 17 GENERAL MBOMBO: I do.
 18 MR SEMENYA SC: On the other side of that
 19 coin, are you able to tell us what would have happened if
 20 the strikers did not attack the police? How many lives
 21 would have been lost?
 22 GENERAL MBOMBO: I did not get the
 23 question.
 24 MR SEMENYA SC: Had the strikers not
 25 decided to attack the police, as our case is they did, and

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1 it may –
 2 CHAIRPERSON: Sorry, Mr Semenya, I think
 3 that you know it's an area of dispute at the moment whether
 4 the strikers were actually attacking the police or simply
 5 endeavouring to get through to Nkaneng. So I think you
 6 can't put the question on the basis that it's an
 7 established fact. I know it's part of the police case, one
 8 of the matters that will be argued at the end, one of the
 9 matters on which we have to make a finding, but I think the
 10 question has got to be reformulated to allow for the fact
 11 that it's not an established fact or admitted fact at this
 12 stage.
 13 MR SEMENYA SC: Thank you, Chair. If as
 14 the police contend is the case and the Commission
 15 ultimately finds to be the case that the strikers, the
 16 militant strikers, attacked the police, absent that
 17 element, would there have been fatalities if they hadn't
 18 done so?
 19 GENERAL MBOMBO: I think there wouldn't
 20 have been fatalities, Mr Chair.
 21 MR SEMENYA SC: There is also the aspect
 22 that dealt with you in relation to the encircling of the
 23 strikers in the morning, as opposed to the dispersal
 24 operation that you ultimately authorised. You remember
 25 that?

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1 GENERAL MBOMBO: I remember it.
 2 MR SEMENYA SC: Now according to the
 3 information that was available to the police and the
 4 intelligence that was available there, was it known that
 5 the militant group was sleeping at koppie 3?
 6 GENERAL MBOMBO: Not according to my
 7 knowledge, Mr Chair.
 8 CHAIRPERSON: Were you aware of the
 9 intelligence information at that stage relating to that
 10 matter? Was that a detail of which you were aware at the
 11 time?
 12 GENERAL MBOMBO: Not according to my
 13 knowledge at that time, Mr Chair, no.
 14 MR MPOFU: Chairperson, I must again
 15 object to that question.
 16 CHAIRPERSON: You're objecting to my
 17 question?
 18 MR MPOFU: No, no, Mr Semenya –
 19 CHAIRPERSON: He asked a question, he got
 20 an answer. I then asked the follow-up question which
 21 effectively indicated, as I understood her, that she didn't
 22 have any knowledge about the intelligence information at
 23 the time anyway. So the point falls away. So –
 24 MR MPOFU: Well, you haven't even heard
 25 what I'm going to say, Chairperson.

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1 CHAIRPERSON: No, I know, but I –
 2 MR MPOFU: So can I say it first?
 3 CHAIRPERSON: Before you can say it
 4 first –
 5 MR MPOFU: Then you can overrule me, ja.
 6 CHAIRPERSON: Or uphold you, as the case
 7 may be.
 8 MR MPOFU: Ja, thank you, Chairperson.
 9 Firstly I'm instructed to object to this use of the so-
 10 called militant group. We don't know where this comes
 11 from. I've been asked to stop referring to the massacre as
 12 a massacre and politely, even though we still believe that
 13 it was a massacre, we have decided to refrain from doing
 14 that. This militant group thing has been so well accepted
 15 in this Commission and one doesn't even know what its
 16 origin is.
 17 Secondly, there was no evidence or questions
 18 under cross-examination that the so-called militant group
 19 slept over at the mountain. This is new. So the question
 20 is wrong both in its premise and also in its language.
 21 Thank you.
 22 CHAIRPERSON: In relation to the second
 23 point raised by Mr Mpofu, the point falls away in the light
 24 of the answer the witness gave to me. In relation to the
 25 first point, there was a lot of evidence about the strikers

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1 constituting two groups, the group on the koppie and
 2 another group who were described as more militant on what
 3 one can call the plain in front of the koppie. I accept
 4 that it would be inappropriate to refer to the group on the
 5 plain as the militant group, but I think the reference to
 6 so-called saves the situation and is merely a shorthand way
 7 of referring to that group in front of the koppie on the
 8 plain. It doesn't imply any finding that they were
 9 militant. It merely indicates that that's how they're
 10 being called by the police witnesses. So I don't think
 11 there is any problem in relation to that usage.
 12 MR MPOFU: Well –
 13 CHAIRPERSON: And I so rule.
 14 MR MPOFU: Well, thank you, Chairperson,
 15 but as long as you're mindful of – that's exactly what I'm
 16 saying. The "so-called" was mine. Nobody else has used
 17 it.
 18 CHAIRPERSON: Yes, as I say you don't –
 19 MR MPOFU: We're saying in the future it
 20 must be used.
 21 CHAIRPERSON: You don't have to give a
 22 concurring judgment every time I uphold you –
 23 MR MPOFU: No –
 24 CHAIRPERSON: - or consenting judgment
 25 every time I rule against you.

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1 MR MPOFU: No, Chairperson, this is a
 2 serious matter.
 3 CHAIRPERSON: No, I know it's a serious
 4 matter, but you don't have to remind me to be mindful of
 5 things. I will be, and so will my colleagues. Let's
 6 proceed, Mr Semenya.
 7 MR MPOFU: No, Chairperson, I'm sorry –
 8 CHAIRPERSON: Mr Mpofu, please don't –
 9 MR MPOFU: No, I just want to understand
 10 the ruling, Chairperson. I want to understand –
 11 CHAIRPERSON: My ruling is –
 12 MR MPOFU: Is the ruling that in the
 13 future there must be a preface "so-called"? If that is the
 14 ruling then I understand it, otherwise –
 15 CHAIRPERSON: I gave you my ruling.
 16 MR MPOFU: Thank you.
 17 CHAIRPERSON: The expression "so-called"
 18 was used. I said that saved the question from being
 19 disallowed because –
 20 MR MPOFU: It was not used by Mr Semenya.
 21 That's the point I'm making.
 22 CHAIRPERSON: Yes.
 23 MR MPOFU: It was not.
 24 CHAIRPERSON: He said "so-called," Mr
 25 Mpofu.

<p style="text-align: right;">Page 22789</p> <p>1 MR MPOFU: He didn't. I said "so-</p> <p>2 called." He said militant group. I'm objecting exactly to</p> <p>3 that. That's what I'm trying to explain to you.</p> <p>4 CHAIRPERSON: Alright, okay. Mr Mpofu,</p> <p>5 if that is the basis, I understood it incorrectly. To</p> <p>6 refer to the militant group is exactly like the other point</p> <p>7 that I raised in respect of the so-called attack, where</p> <p>8 "so-called" wasn't used and the fact, the allegation that</p> <p>9 the group were attacking the police was put as an</p> <p>10 established fact. Now I intervened and stopped that and if</p> <p>11 the word "so-called" wasn't used in front of militant, I</p> <p>12 accept what you say, then I should have made the same point</p> <p>13 again and I apologise to you for having disallowed an</p> <p>14 objection which if I had understood it correctly, I would</p> <p>15 have upheld.</p> <p>16 MR MPOFU: Thank you, Chairperson,</p> <p>17 apology accepted.</p> <p>18 MR SEMENYA SC: General, we were talking</p> <p>19 about the smaller group then as opposed to the group of</p> <p>20 3 000-odd. That was the reference in that question.</p> <p>21 General, let's address another subject. The evidence you</p> <p>22 gave, and I think that that of the National Commissioner as</p> <p>23 well, General Annandale too, was that as the police service</p> <p>24 you took the decision not to do a debriefing within the</p> <p>25 contemplation of 262 and the basis for that decision was</p>	<p style="text-align: right;">Page 22791</p> <p>1 GENERAL MBOMBO: I do.</p> <p>2 MR SEMENYA SC: Has the group of people</p> <p>3 who attended that meeting every sat again?</p> <p>4 GENERAL MBOMBO: Not them as they</p> <p>5 constituted the meeting on that day, no.</p> <p>6 MR SEMENYA SC: So the minute of that</p> <p>7 meeting never served before the group again?</p> <p>8 GENERAL MBOMBO: No.</p> <p>9 MR SEMENYA SC: General, I know that you</p> <p>10 were not there when scene 1, as we now know it, happened,</p> <p>11 and I know that you have been asked a whole number of</p> <p>12 questions in relation to that, including what was called</p> <p>13 the problem with command and control. Remember that?</p> <p>14 GENERAL MBOMBO: I do.</p> <p>15 MR SEMENYA SC: To the extent that you</p> <p>16 are able to help us, how are command structures structured</p> <p>17 in the police service? How do they work?</p> <p>18 GENERAL MBOMBO: In a situation like</p> <p>19 this, Mr Chair, Brigadier Calitz is the operational</p> <p>20 commander. He then would have commanders of the different</p> <p>21 sections present in that operation. He as the operational</p> <p>22 commander would talk only with the section commanders.</p> <p>23 It's actually the section commanders who are supposed to</p> <p>24 give instructions to their members.</p> <p>25 MR SEMENYA SC: Yes, are you aware since</p>
<p style="text-align: right;">Page 22790</p> <p>1 that you would await the outcome of the Commission. You</p> <p>2 remember that?</p> <p>3 GENERAL MBOMBO: I remember that.</p> <p>4 MR SEMENYA SC: At the time the decision</p> <p>5 is made, what was expected to be the life of the</p> <p>6 Commission?</p> <p>7 GENERAL MBOMBO: At that time, Mr Chair,</p> <p>8 we were told it was four months.</p> <p>9 MR SEMENYA SC: Do you now know what is</p> <p>10 going to be the life of the Commission?</p> <p>11 GENERAL MBOMBO: No, I do not know. I'm</p> <p>12 not sure, Mr Chairperson.</p> <p>13 MR SEMENYA SC: The decision to take</p> <p>14 whatever disciplinary steps that may be warranted in</p> <p>15 respect of certain individuals was also deferred to the end</p> <p>16 of the life of the Commission. Is that right?</p> <p>17 GENERAL MBOMBO: At that time, yes.</p> <p>18 MR SEMENYA SC: Is that still the</p> <p>19 position?</p> <p>20 GENERAL MBOMBO: We haven't sat and</p> <p>21 looked at it and see a need to change it yet.</p> <p>22 MR SEMENYA SC: Okay, the extraordinary</p> <p>23 meeting of, that was the extraordinary session that was</p> <p>24 held after the meeting of the National Management Forum,</p> <p>25 remember that?</p>	<p style="text-align: right;">Page 22792</p> <p>1 the events have happened that there was a break in command</p> <p>2 in relation to the section commanders and the members who</p> <p>3 fell under that section?</p> <p>4 [11:08] GENERAL MBOMBO: I only know from what he</p> <p>5 says when he's explaining what happened there at scene 2.</p> <p>6 It then appears as if there was that breakdown,</p> <p>7 communication breakdown.</p> <p>8 MR SEMENYA SC: Give us a little more</p> <p>9 detail, General.</p> <p>10 GENERAL MBOMBO: According to him he did</p> <p>11 not give any command to the section commanders who were</p> <p>12 there, which he was not aware of their presence there.</p> <p>13 MR SEMENYA SC: Okay, yes, we'll deal</p> <p>14 with General Naidoo on that subject. The question of the</p> <p>15 video recording, or the radio recordings, do you keep radio</p> <p>16 recordings at all of the deliberations that happen in the</p> <p>17 JOC and JOCCOM?</p> <p>18 GENERAL MBOMBO: If they are available,</p> <p>19 there's nothing preventing us from keeping them.</p> <p>20 MR SEMENYA SC: As a matter of routine,</p> <p>21 do you record them?</p> <p>22 GENERAL MBOMBO: It is clear that in my</p> <p>23 province we don't normally record them because of lack of</p> <p>24 infrastructure.</p> <p>25 CHAIRPERSON: I understand that. The</p>

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1 question related to radio recordings and I think that's a
 2 mistake. I think what counsel meant is tape recordings,
 3 tape recordings of discussions at the JOCCOM. Is that what
 4 you understand the question to relate to?
 5 GENERAL MBOMBO: I think so, Mr Chair.
 6 CHAIRPERSON: Now what infrastructure do
 7 you need to tape record discussions at the JOCCOM? Tape
 8 recorder, presumably even some cellular phones can be used
 9 to record discussions, can they not?
 10 GENERAL MBOMBO: Initially we did not
 11 have the machines that were needed during a JOC meeting,
 12 but after this incident of Marikana we have bought the
 13 necessary machines.
 14 CHAIRPERSON: But there are cellular
 15 phones that can be used to make tape recordings too, aren't
 16 there?
 17 GENERAL MBOMBO: Yes, there are.
 18 CHAIRPERSON: Do you know whether any of
 19 the cellular phones that were in the room at the time could
 20 have been used for that purpose?
 21 GENERAL MBOMBO: No, I do not know, Mr
 22 Chair.
 23 CHAIRPERSON: So you don't really know
 24 whether the infrastructure was available or not, do you?
 25 GENERAL MBOMBO: The State-provided

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1 infrastructure was not there, Mr Chair, but as you say it's
 2 possible that the cell phones were available.
 3 MR SEMENYA SC: And that related also to
 4 the question of the voice log. It's called a voice log.
 5 GENERAL MBOMBO: Of the radios, yes.
 6 MR SEMENYA SC: You were also quizzed,
 7 General, about whether or not the decision as important as
 8 was going to stage 3 was entered in your diary. You
 9 remember that?
 10 GENERAL MBOMBO: I remember that.
 11 MR SEMENYA SC: Was there a part of you
 12 that wanted to conceal, to hide the fact that you took the
 13 decision?
 14 GENERAL MBOMBO: I never had such
 15 intentions, Mr Chair.
 16 MR SEMENYA SC: Is the OB entry you made
 17 signed by you, as we see in the transcript?
 18 GENERAL MBOMBO: That is so, yes.
 19 CHAIRPERSON: That's the one on the
 20 Monday, is it? That's the OB entry relating to the Monday?
 21 MR SEMENYA SC: That's correct, Chair.
 22 CHAIRPERSON: Ja, the 13th. The actual
 23 decision to proceed with the tactical option which was
 24 taken, I think your –
 25 MR SEMENYA SC: On the Tuesday.

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1 CHAIRPERSON: - the police case is on the
 2 Wednesday evening, is recorded in the OB in an entry, I
 3 think just after 3 o'clock, made by Brigadier Pretorius,
 4 according to her affidavit while Major Annandale was
 5 standing over her and after he had insisted that it be
 6 recorded. There's no entry signed by the witness that I'm
 7 aware of in the OB on the Thursday in which the instruction
 8 is recorded. Am I correct?
 9 GENERAL MBOMBO: Yes, on the 16th, but I
 10 signed the one of the 13th, Mr Chair.
 11 CHAIRPERSON: That in fact related to the
 12 situation as you found it on the Monday when you got there,
 13 in particular in relation to the group of people who were
 14 coming back from the Karee Mine Shaft. Is that right?
 15 GENERAL MBOMBO: That is so, yes.
 16 CHAIRPERSON: It doesn't relate to the
 17 operation that took place on the 16th. That's correct too,
 18 isn't it?
 19 GENERAL MBOMBO: That is so, yes.
 20 MR SEMENYA SC: Chair, I want to deal
 21 with another aspect. I see that it is teatime.
 22 CHAIRPERSON: Well, I'm interested to see
 23 that you're interested in, that we observe such important
 24 events as teatime, and your application for us to adjourn
 25 for tea will, in the absence of opposition, be granted.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
 2 [12:00] CHAIRPERSON: The Commission resumes.
 3 During the adjournment, in fact we came back later than we
 4 intended to because we were asked to do so, during the
 5 adjournment we were given copies of the supplementary
 6 statement by Mr X which is not yet signed. But we were
 7 told that the witness is going to be referred to certain
 8 passages in it. The circumstances, I think, is a matter of
 9 prudent housekeeping, we should give it an exhibit number.
 10 I understand, because it's as yet unsigned it may be replaced
 11 by a slightly different version, signed. But that's a
 12 bridge we'll cross if and when we reach it. But I think we'd
 13 better give it an exhibit number in a moment. So Mr
 14 Semanya what do you suggest?
 15 MR SEMENYA SC: That would be LLL29.
 16 CHAIRPERSON: Is it not LLL26?
 17 MR BUDLENDER SC: I think that's right,
 18 Chair, 26.
 19 CHAIRPERSON: If we give it a wrong
 20 number it will cause a lot of confusion later and people
 21 would be looking for the ones in between when they aren't
 22 there. So it's Supplementary Statement by Mr X, I'll call
 23 it unsigned. I think that's more accurate, Unsigned
 24 Supplementary Statement by Mr X and I've marked LLL26. I
 25 understand copies have been circulating, so the other

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1 parties have got it, is that right?
 2 MR SEMENYA SC: Electronically, Chair.
 3 CHAIRPERSON: Electronically, I see. We
 4 are in a privileged position, we've got hard copies.
 5 MR BUDLENDER SC: I don't think that it
 6 has gone out yet, but I think we should proceed in any
 7 event. This is re-examination in any event.
 8 CHAIRPERSON: I'm looking and no one is
 9 raising a hand and saying no, no, no we'd like it first
 10 before the re-examination continues.
 11 MR SEMENYA SC: I'll try to couch my
 12 questions in a manner that doesn't provoke prejudice.
 13 CHAIRPERSON: Yes, yes are you suggesting
 14 that some of your other questions have been so designed?
 15 Provincial Commissioner, I understand you've had an
 16 opportunity to read certain passages in the exhibit to
 17 which I have just referred, the unsigned supplementary of
 18 Mr X. Is that correct?
 19 GENERAL MBOMBO: It is correct,
 20 Chairperson.
 21 CHAIRPERSON: Sorry, I forgot to remind
 22 you you're still under oath. I take it your answer's still
 23 the same.
 24 GENERAL MBOMBO: Correct, Chair.
 25 CHAIRPERSON: Mr Semenya.

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1 MR SEMENYA SC: Thank you, Chair.
 2 General, we also dealt with the question whether your
 3 decision to implement stage 3 was dealt with at Roots. Do
 4 you remember that?
 5 GENERAL MBOMBO: I remember that, Chair.
 6 MR SEMENYA SC: Can I attempt to jog your
 7 memory with reference to exhibit L slide 174? You will see
 8 the date there is the 16th of August, General, do you see?
 9 GENERAL MBOMBO: I see, Chairperson, yes.
 10 MR SEMENYA SC: The last bullet point
 11 reads this way. "After evaluating the situation and from
 12 reports on the ground the Provincial Commissioner
 13 instructed Major-General Annandale to proceed with the
 14 implementation of stage 3 of the operational plan.
 15 Dispersion into smaller groups encirclement and disarming."
 16 Do you see that?
 17 GENERAL MBOMBO: I see, Chairperson.
 18 MR SEMENYA SC: Where would the Roots
 19 group have that information from?
 20 GENERAL MBOMBO: Mr Chairperson, they
 21 must have obtained this from the minutes and –
 22 CHAIRPERSON: From the minutes, sorry I
 23 didn't hear correctly. You say they must have obtained it
 24 from the minutes.
 25 GENERAL MBOMBO: Yes, Chair, the minutes,

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1 Chairperson. Another thing, General Mzembe who was at
 2 Roots who had also briefed me. They could have got this
 3 from him.
 4 MR SEMENYA SC: Okay. There was also the
 5 question relating to the incident 1 that was relayed to the
 6 JOC, remember, about bodies down or when incident 1
 7 happened. Do you remember those questions?
 8 GENERAL MBOMBO: I remember those
 9 questions.
 10 MR SEMENYA SC: And it was put to you
 11 that it was disgraceful for General Annandale not to
 12 communicate that information to you, do you remember that
 13 line of questions?
 14 GENERAL MBOMBO: I do, Chairperson.
 15 MR SEMENYA SC: Do you know what his
 16 reasons are or were for not telling you about it at that
 17 time?
 18 GENERAL MBOMBO: I said at the time I did
 19 not know, Chairperson.
 20 CHAIRPERSON: Are we now going to have
 21 some hearsay as to what General Annandale has since told
 22 the witness?
 23 MR SEMENYA SC: Not quite, Chair, but
 24 you'd recall –
 25 CHAIRPERSON: If Annandale – sorry,

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1 hearsay can in certain circumstances be received. But, of
 2 course, the questions of weight that apply, anyway I'm just
 3 asking are you going to lead hearsay from her what General
 4 Annandale told her.
 5 MR SEMENYA SC: Well, Chair, I seek to do
 6 no more than to one, make the observation that it was not
 7 even put to Annandale, General, Annandale that his conduct
 8 was disgraceful. He could have dealt –
 9 CHAIRPERSON: The record reveals that,
 10 but of course the record also does not reveal that the
 11 witness was sitting outside and that she wasn't aware of
 12 the information that General Annandale had. But General
 13 Annandale's evidence is in any event different that he only
 14 heard at about 4:30 I think that this had happened. Where
 15 it now appears that the evidence is that he heard earlier.
 16 So it wasn't possible to put anything of that kind to him.
 17 But the record for what it's worth you don't even have to
 18 ask this witness. The record for what it's worth reflects
 19 that the point was never put to General Annandale, but it
 20 also reflects the other factors that I've mentioned.
 21 MR SEMENYA SC: Also, General, in your
 22 evidence you tell us that you take responsibility for
 23 police operations that happened under your province or
 24 within your province. Can you explain that a little bit
 25 more, what do you mean?

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1 GENERAL MBOMBO: Chairperson, what I'm
2 trying to say is in terms of the Police Act and also in
3 terms of the Constitution I am given the powers to be in
4 charge of the province. The duty being put upon me is that
5 all the needs of the police and all the manners in which
6 they work according to the job given to me by the
7 Constitution they do that, they do it. That is why I say,
8 Chairperson, the police whatever they do, whatever job they
9 do in the province this should be under my observation,
10 under my eye. Even if, Chairperson, they are conducting
11 jobs or operations which would they have not been given
12 where the instructions does not come from me personally I
13 take it, Chairperson, that they are working under me
14 because that person giving instructions is also working
15 under me.

16 MR SEMENYA SC: For argument's sake, do
17 you take personal responsibility for criminal conduct by
18 members of the South African Police in your province?

19 GENERAL MBOMBO: Yes it so, Chairperson,
20 because there is this saying "we are responsible, but we
21 account individually." So if a member of my staff commit
22 something, even if it's criminal I, as the person who is in
23 charge takes responsibility until that matter has been
24 corrected in terms of prescript.

25 MR SEMENYA SC: Okay. You're also teased

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1 about whether it would have been appropriate for the police
2 to form a filtering line as opposed to the DDA as it's now
3 described. Do you remember?

4 GENERAL MBOMBO: I remember that,
5 Chairperson.

6 MR SEMENYA SC: But it is your evidence
7 that you were not part of the planning of how the DDA was
8 to happen.

9 GENERAL MBOMBO: It is correct,
10 Chairperson.

11 MR SEMENYA SC: Mr White, for
12 completeness of record tells us that he does not criticise
13 the fact, but there was no proper debriefing within the
14 meaning of standing order 262. Are you aware of that
15 opinion he holds?

16 GENERAL MBOMBO: I do remember it, yes.

17 MR SEMENYA SC: In the meeting of 13:30
18 chaired by General Annandale the 16th of August 2012 what
19 role was General Mpenbe?

20 GENERAL MBOMBO: General Mpenbe was still
21 the overall commander.

22 MR SEMENYA SC: Whose responsibility
23 would it have been, according to your understanding, to
24 implement the decision made regarding stage 3.

25 GENERAL MBOMBO: It is correct, yes.

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1 MR SEMENYA SC: Sorry I'm saying whose
2 responsibility would that have been to carry out the
3 decision.

4 GENERAL MBOMBO: According to me,
5 Chairperson, it was supposed to General Mpenbe.

6 MR SEMENYA SC: It was put to you several
7 times that the implementation of stage 3 of disarming the
8 strikers was reckless given the risks that are associated
9 with its implementation, remember?

10 GENERAL MBOMBO: I remember that,
11 Chairperson.

12 MR SEMENYA SC: To those who would have
13 resisted being disarmed how else were those arms going to
14 be retrieved from them?

15 GENERAL MBOMBO: According to the
16 explanation given to me in terms of the plan, those were
17 the people who were to encircled into smaller groups in
18 order to be disarmed with the help of the support group
19 which was present.

20 MR SEMENYA SC: Okay. The role of
21 tactical units, TRT, NIU, STF, according to your
22 understanding, did their role have anything to do with the
23 dispersal elements of that operation?

24 GENERAL MBOMBO: Not according to the
25 explanation given to me.

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1 MR SEMENYA SC: Tell us.

2 GENERAL MBOMBO: Their job, according to
3 the explanation given to me, Chairperson, was that after
4 the dispersal had taken place they would then get into the
5 koppie to check whatever weapons had been left there and
6 any other objects that could have been left in the koppie.

7 MR SEMENYA SC: Okay. The statement of
8 Mr X has to it the following and I want us to discuss some
9 aspects to it. If his evidence is to be believed the
10 Makarapas as they're described would have had as a
11 rendezvous koppie 3. Was that known to the police during
12 that time?

13 GENERAL MBOMBO: Not according to my
14 knowledge, Chairperson.

15 MR SEMENYA SC: The plan to encircle the
16 strikers would have been at which koppie, if you know?

17 GENERAL MBOMBO: According to me and the
18 explanation given to me this would have taken at the first
19 koppie where we would have come into contact with them.

20 MR SEMENYA SC: He will tell the
21 Commission at the appropriate stage that according to
22 instructions given to them by the Nyangas one of those was
23 that for the muti to work there must be the first offensive
24 act by the police. Was that known to you at the time as
25 the police service?

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1 GENERAL MBOMBO: I personally did not
 2 have any knowledge of that.
 3 MR SEMENYA SC: And when he testifies he
 4 will convey the sense that elements such as teargas,
 5 rolling out of the barbed wire were exactly the type of
 6 offensive actions that would have them attack the police.
 7 Was that known to you at the police?
 8 GENERAL MBOMBO: According to me, no,
 9 Chairperson, I did not have that knowledge.
 10 MR BUDLENDER SC: Chairperson, could we
 11 just be clear that whether the witness is speaking only of
 12 her personal knowledge or whether she's purporting to speak
 13 on behalf of everyone who was involved.
 14 MR SEMENYA SC: You have no personal
 15 knowledge. Has it come to you though, that any of the
 16 members of the police were aware of that fact?
 17 GENERAL MBOMBO: I have not heard any of
 18 this, Chairperson.
 19 MR SEMENYA SC: Okay. You have already
 20 told us as well that the decision to disperse, disarm and
 21 arrest was communicated to the extraordinary session the
 22 15th.
 23 [12:19] GENERAL MBOMBO: That is correct,
 24 Chairperson.
 25 MR SEMENYA SC: But the reason it didn't

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1 happen on, earlier was because of the negotiations that
 2 were happening before, before the 16th?
 3 GENERAL MBOMBO: Are you referring why it
 4 did not happen on the 15th or the 16th?
 5 MR SEMENYA SC: 14, 15.
 6 GENERAL MBOMBO: That is correct,
 7 Chairperson, that is correct, Chairperson, that on the 15th
 8 there was still the negotiations taking place between
 9 General Mpembe and the leaders and also on the 16th. We
 10 agreed that we give Mr Mathunjwa some chance.
 11 MR SEMENYA SC: Yes. Now that we know
 12 that the incident in Marikana was in your province and that
 13 we know that various other units were sourced from around
 14 the country did that make the operation a provincial
 15 operation or a national operation?
 16 GENERAL MBOMBO: Because of the members
 17 of the police that came from all the different parts of the
 18 country, Chairperson, it makes the operation look as though
 19 it was national. But it was a provincial operation.
 20 MR SEMENYA SC: Okay. Finally the threat
 21 to General Mpembe on the 13th, Monday the 13th of August
 22 2012 you say you only got to know about it when, if he was
 23 ever threatened?
 24 GENERAL MBOMBO: Late that day,
 25 Chairperson, when he gave me the briefing.

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1 MR SEMENYA SC: How did he come to know
 2 of it?
 3 GENERAL MBOMBO: I overheard police
 4 members who were seated in one side of the place where we
 5 were talking about this. I questioned him about it, Sir.
 6 That's when he told me that he personally, because
 7 according to him he was, he did not hear this, nobody told
 8 him about this and he did not have any suspicion that such
 9 a thing was being planned.
 10 MR SEMENYA SC: Chair, those are the
 11 questions we have for the witness.
 12 CHAIRPERSON: Thank you. In your
 13 conversation with Mr Mokwena, some of his colleagues from
 14 Lonmin which is exhibit JJJ192 you referred as we heard on
 15 several occasions to the fact that Mr Malema had come to
 16 Impala with the Provincial Premier and had spoken to the
 17 people there and as a result of that according to what you
 18 told Mr Mokwena and his colleagues the matter was diffused.
 19 Now can you please tell us to what extent the situation at
 20 Impala resembled the position at Lonmin with which you were
 21 faced at the time of your conversation with Mr Mokwena and
 22 his colleagues?
 23 GENERAL MBOMBO: Chairperson, what I was
 24 trying to explain here was at Impala, although Mr Malema
 25 together with our Premier came to our assistance but also

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1 the management at that place was trying everything possible
 2 to be of assistance. I possibly did not say it fully in
 3 the transcript, Chairperson, but what I was saying was, is
 4 that they had a responsibility to help us. It was
 5 incumbent upon them to see how much power they have to
 6 bring about a solution.
 7 CHAIRPERSON: You haven't answered my
 8 question. I repeat it. Can you tell, because you mention
 9 it clearly because it was relevant, what I want to know
 10 from you is in what respect did the - or to what extent did
 11 the situation at Impala resemble the situation which you
 12 were dealing at Lonmin at the time of your conversation
 13 with Mr Mokwena and his colleagues?
 14 GENERAL MBOMBO: I understand that,
 15 Chairperson. I was saying this because even at Impala,
 16 Chairperson, the problems started there with the RDOs
 17 wanting an increase in salaries.
 18 CHAIRPERSON: I'm sorry to interrupt, do
 19 you know what increase they wanted?
 20 GENERAL MBOMBO: I am not sure of that.
 21 CHAIRPERSON: They wanted an increase,
 22 presumably quite a substantial increase, was it?
 23 GENERAL MBOMBO: It is so, Chairperson.
 24 CHAIRPERSON: I see, so the, so they
 25 were at that point in resemblance, the problem started with

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1 the RDOs wanting a substantial increase, yes. Was there
 2 also thereafter an unprotected strike?
 3 GENERAL MBOMBO: It is so, Chairperson.
 4 CHAIRPERSON: Was the unprotected, were
 5 attempts made to enforce the unprotected strike by violence
 6 and intimidation?
 7 GENERAL MBOMBO: At times, yes,
 8 Chairperson.
 9 CHAIRPERSON: Were people killed?
 10 GENERAL MBOMBO: Though I would not
 11 compare it with the killings at Lonmin, Chairperson, there
 12 were people who from time to time were found killed.
 13 CHAIRPERSON: Yes, and the police were
 14 clearly endeavouring to bring the situation, to restore
 15 peace to the situation, is that correct?
 16 GENERAL MBOMBO: It is correct,
 17 Chairperson.
 18 CHAIRPERSON: Were there any other
 19 points of resemblance, between the situation at Impala and
 20 the situation at Lonmin before Mr Malema arrived on the
 21 scene?
 22 GENERAL MBOMBO: Not that I know or I
 23 remember, Chairperson.
 24 CHAIRPERSON: I take it there's one
 25 other resemblance and that the police weren't able until Mr

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1 Malema arrived to restore peace, that's why you told Mr
 2 Mokwena that Mr Malema had diffused the situation, is that
 3 correct?
 4 GENERAL MBOMBO: That is correct, Chair.
 5 CHAIRPERSON: Now what exactly did Mr
 6 Malema do, how did, what did he do to diffuse the situation
 7 at Impala?
 8 GENERAL MBOMBO: Actually, Chairperson, I
 9 wouldn't say that he did diffuse, as I was talking to the
 10 people at Lonmin I did not say it exactly that way.
 11 Because what happened is that he did in fact come and speak
 12 to the workers. He mentioned that they should demand their
 13 rights and he mentioned that this should be done within the
 14 limits of the law as this was also done by our Premier,
 15 Chairperson.
 16 CHAIRPERSON: You did use the word
 17 diffuse at page of exhibit JJJ192 in this context and you
 18 also said "that after he came and had spoken to the people
 19 the police were able, managed to manage the situation", is
 20 that correct, isn't it?
 21 GENERAL MBOMBO: I said so, Chairperson.
 22 I agree –
 23 CHAIRPERSON: Now what did he, I'm
 24 sorry, forgive me, carry on.
 25 GENERAL MBOMBO: Like I was trying to

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1 explain there, Sir. Was that after their talk and the
 2 endeavours of the management there brought down the
 3 violence, the violent, the strike, brought down the
 4 violence that was contained in the strike.
 5 CHAIRPERSON: What exactly did he say to
 6 the people at the Rock Drill Operators and the other
 7 strikers at Impala which made a difference?
 8 GENERAL MBOMBO: Although I'm not very
 9 certain of his exact words, Chairperson. I do remember
 10 that he said that they should not apologise for demanding
 11 their rights but that they should do all this within the
 12 law. I would not be able to say exactly each and
 13 everything that he said, he said quite a number of things,
 14 Chairperson.
 15 CHAIRPERSON: Did he tell them to accept
 16 less than they were demanding or did he tell them to be
 17 prepared to accept less than they were demanding?
 18 GENERAL MBOMBO: I don't remember,
 19 Chairperson.
 20 CHAIRPERSON: Anyway is it correct that
 21 as a result of his address to the strikers their attitude
 22 did change, I know there were other factors that you've
 23 mentioned but is it correct that after his address the
 24 attitude of the strikers changed?
 25 GENERAL MBOMBO: It wouldn't be all

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1 together correct, Chairperson, because he was not the only
 2 person addressing them. As I said, the Premier also had a
 3 lot to say to them, pleading with them, the management was
 4 also on their part making certain endeavours. It is
 5 unfortunate, Chairperson, that I did not say go deeply into
 6 what I was trying to explain.
 7 CHAIRPERSON: Now, Mr Budlender and Mr
 8 Mpfu dealt with what you said at page 10 of the transcript
 9 and you were asked why the possibility that Mr Malema might
 10 come and once again help to diffuse the situation
 11 introduced what you described in your own words as a
 12 serious political connotation such that you told your
 13 commanders as you put it, to quote "kill this thing soon"
 14 now I didn't understand, fully understand your answer to
 15 that question, why the possibility that Mr Malema might
 16 come and do what he had done at Impala introduced a serious
 17 political connotation such that you told your commanders
 18 they had to kill this thing soon. Would you please explain
 19 fully what you, what your answer is to that question.
 20 GENERAL MBOMBO: Chairperson, I've
 21 already said, Chairperson, what I was trying to explain
 22 exactly there that I was saying this matter is a matter
 23 that involves the employer and employees which has brought
 24 about instability, that we get involved, Chairperson. What
 25 I was saying there is that we, as police should try make

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1 all endeavours, that this thing should not escalate. Doing
 2 this together with the Lonmin people.
 3 CHAIRPERSON: Is that your, that's your
 4 answer to the question you were asked?
 5 GENERAL MBOMBO: That's correct,
 6 Chairperson.
 7 CHAIRPERSON: Why would Mr Malema's
 8 return, why would visits by Mr Malema to the scene and a
 9 speech along the lines that he, of the speech that he made
 10 to Impala have made the situation worse?
 11 GENERAL MBOMBO: I don't understand the
 12 question clearly, Sir.
 13 CHAIRPERSON: I understood you to say
 14 that you told your commanders to act fairly quickly so that
 15 the situation wouldn't get worse, was in the context of
 16 that they acting before Mr Malema could come, because I
 17 quoted what your words were. What I'm asking you is why
 18 would a visit by Mr Malema, a speech along the lines that
 19 he made at Impala, why would that have made the situation
 20 worse, why would it have aggravated the situation? Is that
 21 something that one can regard as something that was
 22 reasonably foreseeable in the circumstances? So what's
 23 your answer to that?
 24 GENERAL MBOMBO: No, Chairperson. His
 25 speech or the offer that he was going to make I did not

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1 think that his speech or his talk would aggravate the
 2 situation there. What I foresaw could possibly be, create
 3 a problem is that when we allow people to come in and talk
 4 people that we do not know, some of them could say things
 5 that would aggravate the situation.
 6 CHAIRPERSON: Yes. That didn't seem to
 7 apply to Mr Malema if one were to judge by his previous
 8 conduct in helping to diffuse the situation at Impala, is
 9 that a fair statement?
 10 GENERAL MBOMBO: It is so, Mr
 11 Chairperson, I did not judge him that way. I was giving
 12 people this talk and giving examples.
 13 CHAIRPERSON: I'm sorry I have to repeat
 14 the question again because I still don't understand your
 15 answer. What you said at page 10 was that the possibility
 16 of Mr Malema coming there and speaking the way he did at
 17 Impala introduced what you described as a serious political
 18 connotation such that you told your commanders that they
 19 must kill this thing soon, you didn't finish the sentence
 20 but Mr Mokwena added the word immediately and you then
 21 agreed and in fact said they must act the following day.
 22 So I'll repeat the question then why did you say the
 23 possibility of Mr Malema might come and once again diffuse
 24 the situation in the manner he had done at Impala
 25 introduced a "serious political connotation" such that you

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1 told your commanders to again, to use your words "kill this
 2 thing soon" what's your answer to that?
 3 GENERAL MBOMBO: Chairperson, the, my
 4 talk there was intended to see to it that this thing is
 5 attended to in the manner in which it appeared. Not that I
 6 was against any person who could come there with any help,
 7 that person would not be allowed to. But the truth is from
 8 time to time when we have such situations it is something
 9 that we always wish to know the person that is coming to
 10 know what the intentions of that person, whether that
 11 person is bringing about any help.
 12 CHAIRPERSON: That's your answer to the
 13 question?
 14 GENERAL MBOMBO: That's correct,
 15 Chairperson.
 16 CHAIRPERSON: Thank you. Let me move
 17 onto another topic.
 18 [12:39] You told the Commission that the decision to
 19 launch the tactical option operation was yours as it was
 20 within you prerogative as Provincial Commissioner. Do I
 21 understand you correctly to say that?
 22 GENERAL MBOMBO: That is so, Mr Chair.
 23 CHAIRPERSON: And it follows I take it
 24 from that that it wasn't a decision of the National
 25 Management Forum?

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1 GENERAL MBOMBO: No, that is not correct,
 2 Mr Chair.
 3 CHAIRPERSON: You agree with me, I take
 4 it, it wasn't the decision of the National Management
 5 Forum.
 6 GENERAL MBOMBO: It wasn't.
 7 CHAIRPERSON: All right. No I understand
 8 that to be your evidence. Now technically that may be
 9 correct because what would you say to this proposition? If
 10 one looks at it realistically what one sees is the
 11 following. The matter was discussed, I think you said for
 12 something almost up to an hour, by the Forum, is that
 13 correct?
 14 GENERAL MBOMBO: I said less than an
 15 hour, but I'm not sure exactly –
 16 CHAIRPERSON: And several people there
 17 spoke.
 18 GENERAL MBOMBO: That is so.
 19 CHAIRPERSON: Several of the generals
 20 present actually spoke.
 21 GENERAL MBOMBO: That is correct.
 22 CHAIRPERSON: And so we must also bear in
 23 mind that operations of this kind are not something that
 24 you have much specialised knowledge of. Through no fault
 25 of your own, you're a financial expert and that presumably

<p style="text-align: right;">Page 22817</p> <p>1 was the particular talent that caused you to appointed to 2 the position you hold. Is that fair? 3 GENERAL MBOMBO: I think so, yes. 4 CHAIRPERSON: Now there were people, 5 however, who were present at the Management Forum who had 6 that operational experience that you lacked, is that also 7 correct? 8 GENERAL MBOMBO: That is correct. 9 CHAIRPERSON: People, I don't know 10 exactly who was there, but I take it someone like 11 Provincial Commissioner Petros would have had that sort of 12 experience. Is that right? 13 GENERAL MBOMBO: As well as General 14 Masemola, Mr Chair. 15 CHAIRPERSON: There were others as well, 16 probably General Mawela I take it. 17 GENERAL MBOMBO: Yes, Mawela as well. 18 CHAIRPERSON: Now if any of them had 19 expressed doubts as to the appropriateness of the action 20 that you were proposing should take place, I take you would 21 have taken it very seriously. 22 GENERAL MBOMBO: Is that a question, Mr 23 Chair, I did not get it. 24 CHAIRPERSON: Well let me repeat. If any 25 of the people who spoke had expressed doubts as to the</p>	<p style="text-align: right;">Page 22819</p> <p>1 members available you would not have gone ahead. Is that 2 fair. 3 GENERAL MBOMBO: It is so, Chair. 4 CHAIRPERSON: Never mind the 5 technicalities, from a practical point of view the decision 6 you made, had communicated to those present bore the 7 approval of the members of the Management Forum who were 8 present during that extraordinary session. Is that 9 correct? 10 GENERAL MBOMBO: As you're putting it, 11 Chair. But they mentioned that they supported. 12 CHAIRPERSON: Yes thank you. I have no 13 more questions, but my colleague, Commissioner Hemraj has. 14 COMMISSIONER HEMRAJ: Commissioner, at 15 the time on the 16th when you gave the instructions for the 16 tactical phase to be implemented were there any 17 reservations either on your part or on the part of any of 18 the other commanders about the time-frames available for 19 the operation to be carried out given the logistical 20 implications of it? 21 GENERAL MBOMBO: There was nothing that 22 was said to me, Chairperson. And I must also mention that 23 there was nothing stopping them from raising certain issues 24 if they had any to raise. 25 COMMISSIONER HEMRAJ: And you yourself</p>
<p style="text-align: right;">Page 22818</p> <p>1 appropriateness of the action that you proposed you would 2 have taken that seriously. 3 GENERAL MBOMBO: Certainly, yes. 4 CHAIRPERSON: And even if they had not 5 expressed doubts as to the appropriateness of the action 6 that you proposed, but had expressed doubts as to what you 7 proposed as to when it should happen you would also have 8 taken that seriously. 9 GENERAL MBOMBO: That is correct, 10 Chairperson. 11 CHAIRPERSON: And if any of them had 12 refused to make staff members available from his or – I 13 take it there are only men who are the other commissioners, 14 from his province then you would also have taken that 15 seriously. 16 GENERAL MBOMBO: That's correct, 17 Chairperson. 18 CHAIRPERSON: So what seems clear is what 19 was discussed amounted to an approval by all persons who 20 spoke of what you had suggested you were going to do or 21 what you had said you were going to do. Is that fair? 22 GENERAL MBOMBO: I'd say so, yes, Chair, 23 because they supported me. 24 CHAIRPERSON: Because if anyone had 25 disagreed with your approach and refused to make his</p>	<p style="text-align: right;">Page 22820</p> <p>1 had no reservations about the time-frames. 2 GENERAL MBOMBO: No, I had no 3 reservations. 4 COMMISSIONER HEMRAJ: Thank you, Ma'am. 5 CHAIRPERSON: I take it things were 6 getting a bit tight weren't they? I mean it was winter, it 7 was August, it was already half past one, it would have 8 taken some time to get everything in position for the 9 operation to be launched. Is that right? 10 GENERAL MBOMBO: It is so, Chairperson. 11 CHAIRPERSON: The operation would have 12 taken some time, right? 13 GENERAL MBOMBO: It is so. 14 CHAIRPERSON: Did you know at what time 15 the sun was likely to set? 16 GENERAL MBOMBO: I'm not sure of that. 17 CHAIRPERSON: Would it be fair to say 18 that things were getting a bit tight? I mean you couldn't 19 have waited much longer could you? 20 GENERAL MBOMBO: The question again, 21 Chairperson. 22 CHAIRPERSON: Things were getting a bit 23 tight, you couldn't have waited much longer. If you'd 24 waited say until, to take an example until 4 o'clock to 25 give the instruction, then other things would have had to</p>

<p style="text-align: right;">Page 22821</p> <p>1 happen. Briefings would have to be done, various things, 2 barbed wire would have to uncoiled and so on. So before 3 the actual dispersal operation could begin it would have 4 been dark wouldn't it? 5 GENERAL MBOMBO: It is correct, 6 Chairperson. 7 CHAIRPERSON: So that's why you more or 8 less had to give the instruction at half past one. If 9 you'd waited much longer the operation couldn't have been 10 carried out that afternoon with any degree of safety. Is 11 that right? 12 GENERAL MBOMBO: It is so, Chairperson. 13 CHAIRPERSON: Does anyone wish to ask any 14 questions arising from the questions which were asked my 15 colleague Commissioner Hemraj and myself? Provincial 16 Commissioner, thank you for your evidence. You're excused 17 on the usual basis on which we excuse witnesses that if it 18 becomes necessary for us to call you back to put something 19 that's arisen since you've been here, you will be prepared 20 to come back and answer such questions. I take it you 21 accept that condition. 22 GENERAL MBOMBO: I do accept it, 23 Chairperson. 24 CHAIRPERSON: On that basis then you're 25 excused. You can stay if you like, but you're not obliged</p>	<p style="text-align: right;">Page 22823</p> <p>1 adjournment. 2 GENERAL MBOMBO: I've finished, 3 Chairperson. 4 CHAIRPERSON: Well in view of the fact 5 that you've finished, it's not necessary for us to take the 6 adjournment. As I said you're excused. Mr Semenya I take 7 it that you would like a short adjournment in any event to 8 enable you to be in a position to lead your next witness. 9 [NO FURTHER QUESTIONS – WITNESS EXCUSED] 10 MR SEMENYA SC: With your permission, 11 Chair, can we start with that after lunch with the evidence 12 of General – 13 CHAIRPERSON: We will recommence then at 14 quarter to two. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [13:55] CHAIRPERSON: The Commission resumes. Mr 17 Semenya? 18 MR SEMENYA SC: I beg leave to call 19 General Naidoo, Chair. 20 CHAIRPERSON: General Naidoo, would you 21 please stand up? If I administer an oath to you, will that 22 be binding on your conscience? Are you prepared to take 23 the oath? 24 GENERAL NAIDOO: [Microphone off, 25 inaudible]</p>
<p style="text-align: right;">Page 22822</p> <p>1 to stay. 2 GENERAL MBOMBO: I thank you, 3 Chairperson. If I could be just given one minute to say 4 something, Chairperson. 5 CHAIRPERSON: Well I'm not quite sure 6 what you'll say but I'll give you one minute all the same. 7 GENERAL MBOMBO: First of all I want to 8 thank the Commission, the Chairperson and the Commission 9 and thank every person who participated in my giving 10 evidence. I also want to mention to all the residents of 11 the Republic of South Africa and all the people who lost 12 their loved ones starting from the days before this 13 incident and those who suffered injuries, Chairperson, to 14 say to them that the police have got a responsibility to 15 protect people. And that to kill people is not the 16 intention of the police. My plea to all the people of the 17 country, Chairperson, that they should not turn their backs 18 against the police. Another plea to the residents of the 19 country is that we should help one another, to help and 20 assist the police when they encounter such problems, we all 21 suffered – 22 CHAIRPERSON: People who are leaving the 23 chamber must please be as quiet as possible. I don't want 24 disturbances of this kind. There's one lady who's overcome 25 by what's happened. I think we will take a short</p>	<p style="text-align: right;">Page 22824</p> <p>1 CHAIRPERSON: Would you please, do you 2 swear the evidence you will give before this Commission 3 will be the truth, the whole truth, and nothing but the 4 truth? Will you please raise your right hand and say, "I 5 swear, so help me God." 6 GANASEN NAIDOO: I swear, so help me God. 7 CHAIRPERSON: Thank you, you may be 8 seated. Yes, Mr Semenya. 9 EXAMINATION BY MR SEMENYA SC: General, 10 you'll find it easy if you just keep your light on. It's 11 not a problem if there are two. General, you'll find in 12 front of you two documents I want us to use. They would be 13 marked exhibit DD and exhibit JJJ108. Do you have those? 14 GENERAL NAIDOO: I have those. 15 MR SEMENYA SC: Speak into the – 16 GENERAL NAIDOO: Yes, I do have them, 17 thank you. 18 MR SEMENYA SC: Okay. If you look at 19 exhibit DD you will see it is dated 7 November 2012 on the 20 last page. 21 GENERAL NAIDOO: Yes, I do. 22 MR SEMENYA SC: There is a signature 23 there, the very first one. Do you recognise that one? 24 GENERAL NAIDOO: It is mine. 25 MR SEMENYA SC: With exhibit JJJ108 you</p>

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1 will also see at the last page there is a date stamp there
 2 of 6th of September 2013. Do you see that?
 3 GENERAL NAIDOO: Yes, yes.
 4 MR SEMENYA SC: The page before that,
 5 that is page 14 bears a signature at the bottom of that
 6 document. Do you recognise it?
 7 GENERAL NAIDOO: Yes, it's mine.
 8 MR SEMENYA SC: Whose signature is that?
 9 GENERAL NAIDOO: It is mine.
 10 MR SEMENYA SC: Right, can we through
 11 reference to JJJ108 do a number of things, General? You
 12 have stated that your career in the police service stands
 13 somewhat 30-odd years?
 14 GENERAL NAIDOO: That is correct.
 15 MR SEMENYA SC: Having started in 1983 as
 16 a constable.
 17 GENERAL NAIDOO: Yes, that's correct.
 18 MR SEMENYA SC: But just doing as a
 19 functional police official at that time.
 20 GENERAL NAIDOO: That's correct.
 21 MR SEMENYA SC: Having completed your
 22 basic training?
 23 GENERAL NAIDOO: Yes.
 24 MR SEMENYA SC: Right, and it is in 1987
 25 when you are reassigned to the Divisional Head Office, Port

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1 Natal in Durban?
 2 GENERAL NAIDOO: That is correct.
 3 MR SEMENYA SC: There you were holding
 4 now various ranks over the period from constable, lance
 5 sergeant, and sergeant later.
 6 GENERAL NAIDOO: That is correct.
 7 MR SEMENYA SC: It is in 1991, you tell
 8 us, that you are promoted to the rank of warrant officer.
 9 GENERAL NAIDOO: Correct, Chair.
 10 MR SEMENYA SC: That too is at the Durban
 11 North Police Station.
 12 GENERAL NAIDOO: Correct.
 13 MR SEMENYA SC: You proceeded to be
 14 promoted as lieutenant, this is now in 1992.
 15 GENERAL NAIDOO: That is correct, Chair.
 16 MR SEMENYA SC: And up to the rank of
 17 captain, this is what you do, being responsible to conduct
 18 all uniform policing duties.
 19 GENERAL NAIDOO: That is correct, Chair.
 20 MR SEMENYA SC: You explain that those
 21 included the planning and execution of actions for policing
 22 of serious and violent crime incidents.
 23 GENERAL NAIDOO: That is correct.
 24 MR SEMENYA SC: Strikes.
 25 GENERAL NAIDOO: Correct, Chair.

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1 MR SEMENYA SC: Marches.
 2 GENERAL NAIDOO: That's correct, Chair.
 3 MR SEMENYA SC: Demonstrations.
 4 GENERAL NAIDOO: That is correct, Chair.
 5 MR SEMENYA SC: And mass political
 6 gatherings.
 7 GENERAL NAIDOO: That's correct, Chair.
 8 MR SEMENYA SC: And you say too conflict
 9 of various political parties which are characteristic of
 10 the time and that area.
 11 GENERAL NAIDOO: That is correct, Chair.
 12 MR SEMENYA SC: And in that period there
 13 were instances where you were placed in command of
 14 multidisciplinary forces.
 15 GENERAL NAIDOO: That is correct, Chair.
 16 MR SEMENYA SC: Can you just give us a
 17 little bit of details, what type of – this is now pre-
 18 elections of 1994 –
 19 GENERAL NAIDOO: That is pre-elections
 20 running up to the period of the election, Chair.
 21 MR SEMENYA SC: Yes. What type of crime
 22 incidents are you referring to there, just so that you give
 23 us a clearer picture?
 24 GENERAL NAIDOO: Chair, in addition to
 25 crimes of robbery and murder, citizens on each other, there

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1 were also inter-political conflict where we had groupings
 2 of the various political parties in KwaZulu-Natal with a
 3 very low tolerance threshold and then a tendency firstly of
 4 attacking each other in their designated areas, as well as
 5 whenever meetings, rallies, gatherings were held by either
 6 party, it would normally be attacked by the other party and
 7 in terms of policing we had to keep those people – there
 8 were also mobilisation of the democratic movements who were
 9 starting to hold marches and rallies and mobilise people
 10 moving towards the election, and we had to ensure that
 11 these were held in a safe and secure condition so that it
 12 would be conducive for the election.
 13 MR SEMENYA SC: Just so that we gather
 14 some clarity, these strikes would involve what type of
 15 numbers of people?
 16 GENERAL NAIDOO: Chair, it would vary,
 17 from small, 2, 300 people related to taxi violence and taxi
 18 conflict, to larger, 5, 10 000 people with the mobilisation
 19 of communities for various issues that were raised at the
 20 time running up to the first democratic elections in South
 21 Africa, Chair.
 22 MR SEMENYA SC: Any of those that
 23 included people with arms?
 24 GENERAL NAIDOO: Yes, Chairperson,
 25 invariably we had a problem, people were normally carrying

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1 concealed firearms or, as KwaZulu-Natal is notably known at
 2 that period, a lot of traditional weapons, assegais,
 3 kieres, etcetera.
 4 MR SEMENYA SC: Some of those resulting
 5 in any fatalities?
 6 GENERAL NAIDOO: Yes, Chair, there were a
 7 number of instances where we had to intervene where there
 8 were fatalities between the group fighting where we had to
 9 separate and there were fatalities as a result.
 10 MR SEMENYA SC: Attacks on the police?
 11 GENERAL NAIDOO: Yes, Chair, there were
 12 numerous attacks on police where policemen were killed
 13 whilst on duty, as well as whilst at home at their
 14 residences, as it was common at that stage to target police
 15 officials, especially those who were in possession of
 16 firearms, etcetera, to remove firearms from them. That was
 17 commonplace, Sir.
 18 MR SEMENYA SC: Okay, and you tell us
 19 that you would be in command at times of multidisciplinary
 20 forces. You mention them there, your K9s, your specialised
 21 police units, your POP, reaction units, detectives,
 22 intelligence, emergency services, and at times the
 23 involvement of the South African National Defence Force
 24 members.
 25 GENERAL NAIDOO: That is correct. At

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1 that time the capacity of the station on its own could not
 2 deal with most of the issues that we were confronted with,
 3 Chair, and they had to be supplemented invariably by these
 4 specialised units, especially the Public Order Police
 5 units. At that time they were known as the Internal
 6 Stability unit of the South African Police and the South
 7 African Defence Force played a large role in supporting us
 8 in most of these operations as well.
 9 MR SEMENYA SC: Just to give us a deeper
 10 understanding, how would these multidisciplinary units work
 11 in a single operation?
 12 GENERAL NAIDOO: Yes, Chair, it was an
 13 integrated, normally integrated planning. We had an
 14 integrated operation. We ran, we managed it from a command
 15 centre with the various disciplines having specific
 16 responsibilities, but functioning in a coordinated way.
 17 For an example if we had a cordon and search we used to use
 18 the SANDF to do the outer cordon and use other disciplines
 19 to do searches, etcetera, within the cordon, as an example,
 20 Chair.
 21 MR SEMENYA SC: With or without the
 22 involvement of Public Order Police?
 23 GENERAL NAIDOO: Both with and without,
 24 Chair.
 25 MR SEMENYA SC: And you say at paragraph

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1 8, last sentence there, you say that the highlight of your
 2 service at that time was that you were responsible for the
 3 planning and operational command and execution of security
 4 of the democratic elections of this country where former
 5 President Nelson Mandela cast his vote in Inanda.
 6 GENERAL NAIDOO: That is correct, Chair.
 7 I was the operation officer for the station responsible for
 8 policing and we were happy to have the former president
 9 coming to vote there, but with it came these challenges
 10 because of the political tensions and the current situation
 11 in KwaZulu-Natal at that stage. So obviously a lot of
 12 detail went into planning and the fact that it was
 13 successful was a highlight for us.
 14 MR SEMENYA SC: Just again a broader
 15 understanding, what would be into the planning of something
 16 like that?
 17 GENERAL NAIDOO: Chair yes, firstly
 18 intelligence would be required on what are the potential
 19 threats. At that stage we had to liaise with the detail
 20 that was responsible for the protection of the former
 21 president. They were not part of the statutory forces
 22 then, they were still part of the ANC security. The SAP
 23 security apparatus, such as the VIP Protection unit, which
 24 was the formal structure, and as well as Public Order
 25 Policing had to develop an integrated plan so that we on

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1 one side allowed for the process of the voting to be
 2 visible, but at the same time ensure that there was a ring
 3 of security because it would have not been a good start
 4 should an incident occur at the first vote that was being
 5 cast in KwaZulu-Natal at the first democratic election. So
 6 we used all the role players that we had available to
 7 ensure that such an operation went off smoothly without
 8 incident.
 9 MR SEMENYA SC: At that time there would
 10 have been various threats that would have been analysed and
 11 contingency measures put in place to address them if they
 12 arise?
 13 GENERAL NAIDOO: That is correct, Chair.
 14 MR SEMENYA SC: And then you later come
 15 to Pretoria. This is now in 1996.
 16 GENERAL NAIDOO: That is correct, Chair.
 17 MR SEMENYA SC: As a work-study officer.
 18 GENERAL NAIDOO: That is correct, Chair.
 19 MR SEMENYA SC: Conducting, as you say,
 20 organisational development activities in the operational
 21 environment of the police. So what does that entail?
 22 GENERAL NAIDOO: Chair, yes, in 1996 the
 23 new South African Police Service was evolving. There was
 24 new structures. The amalgamation process commenced and
 25 there was a requirement for people with operational

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<p>1 experience to be recruited in the organisational</p> <p>2 development environment to help develop and roll out the</p> <p>3 new structures in line with the new policies that were</p> <p>4 established, and that primarily was my role in the</p> <p>5 organisational development, looking at the functioning of</p> <p>6 units such as the Border Police units. The Public Order</p> <p>7 Police units formed part of the area that we dealt with; I</p> <p>8 didn't deal with it directly. We looked at high-risk</p> <p>9 policing as well as the functioning of police stations.</p> <p>10 MR SEMENYA SC: It is the year following</p> <p>11 '96 that you then get promoted to the rank of</p> <p>12 superintendent.</p> <p>13 GENERAL NAIDOO: That is correct, Chair.</p> <p>14 MR SEMENYA SC: Doing the same work that</p> <p>15 you've just now described.</p> <p>16 GENERAL NAIDOO: That is correct, Chair.</p> <p>17 MR SEMENYA SC: And you become a senior</p> <p>18 superintendent in the year 2000?</p> <p>19 GENERAL NAIDOO: That is correct, Chair.</p> <p>20 MR SEMENYA SC: That year though you then</p> <p>21 get seconded to the VIP Protection Services as a deputy</p> <p>22 head there.</p> <p>23 GENERAL NAIDOO: That is correct, Chair.</p> <p>24 MR SEMENYA SC: You then get promoted to</p> <p>25 the following year of 2001 as a director of those services,</p>	<p>1 GENERAL NAIDOO: That was retained,</p> <p>2 captain.</p> <p>3 CHAIRPERSON: So did they have even in</p> <p>4 the demilitarised period –</p> <p>5 GENERAL NAIDOO: The captain –</p> <p>6 CHAIRPERSON: - they still had the ranks</p> <p>7 of lieutenant and captain. Is that correct?</p> <p>8 GENERAL NAIDOO: No, Chair, the rank of</p> <p>9 lieutenant fell away; the entry rank into the officer cadre</p> <p>10 was captain.</p> <p>11 CHAIRPERSON: I see.</p> <p>12 GENERAL NAIDOO: The two ranks fell away,</p> <p>13 that was lieutenant and major.</p> <p>14 CHAIRPERSON: I see. So it was captain</p> <p>15 and then it was superintendent –</p> <p>16 GENERAL NAIDOO: Correct.</p> <p>17 CHAIRPERSON: - which was lieutenant</p> <p>18 colonel.</p> <p>19 GENERAL NAIDOO: Yes.</p> <p>20 CHAIRPERSON: Senior superintendent was</p> <p>21 colonel.</p> <p>22 GENERAL NAIDOO: That's correct.</p> <p>23 CHAIRPERSON: Director was brigadier.</p> <p>24 GENERAL NAIDOO: That's correct.</p> <p>25 CHAIRPERSON: And if you had reached the</p>
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<p>1 VIP Protection Services.</p> <p>2 GENERAL NAIDOO: That is correct, Chair.</p> <p>3 CHAIRPERSON: Sorry, just to remind me,</p> <p>4 when they remilitarised the police service and introduced –</p> <p>5 well, as an outward manifestation of the remilitarisation</p> <p>6 of the police service they brought back military ranks.</p> <p>7 What was your position as director, became what?</p> <p>8 GENERAL NAIDOO: Brigadier.</p> <p>9 CHAIRPERSON: Brigadier. So –</p> <p>10 GENERAL NAIDOO: That's correct.</p> <p>11 CHAIRPERSON: So just to go through it,</p> <p>12 so when you were a director you became brigadier when they</p> <p>13 reintroduced military ranks.</p> <p>14 GENERAL NAIDOO: That is correct, Chair.</p> <p>15 CHAIRPERSON: When you were a senior</p> <p>16 superintendent, was that a colonel?</p> <p>17 GENERAL NAIDOO: You were a full colonel,</p> <p>18 yes.</p> <p>19 CHAIRPERSON: Yes, and superintendent was</p> <p>20 a lieutenant colonel?</p> <p>21 GENERAL NAIDOO: That is correct.</p> <p>22 CHAIRPERSON: And a major?</p> <p>23 GENERAL NAIDOO: That rank fell away with</p> <p>24 the new structure of the SAPS.</p> <p>25 CHAIRPERSON: I see, and captain?</p>	<p>1 rank of major general before the remilitarisation of the</p> <p>2 ranks, what would your rank have been?</p> <p>3 GENERAL NAIDOO: You would be an</p> <p>4 assistant commissioner. I was appointed –</p> <p>5 CHAIRPERSON: Oh, assistant commissioner.</p> <p>6 GENERAL NAIDOO: Assistant commissioner.</p> <p>7 CHAIRPERSON: I see. Thank you. That's</p> <p>8 paragraph 11. Yes, I see, thank you.</p> <p>9 MR SEMENYA SC: So General, you say as a</p> <p>10 director, at that time during your service to additional</p> <p>11 normal police functions you ensured the development and</p> <p>12 provision of generic support services in the component.</p> <p>13 GENERAL NAIDOO: That is correct, Chair.</p> <p>14 MR SEMENYA SC: Okay. In 2004, though,</p> <p>15 you are then appointed the assistant commissioner to the</p> <p>16 division Protection and Security Services -</p> <p>17 GENERAL NAIDOO: That is –</p> <p>18 MR SEMENYA SC: - responsible for</p> <p>19 operational support.</p> <p>20 GENERAL NAIDOO: That's correct, Chair.</p> <p>21 MR SEMENYA SC: And that you're a part of</p> <p>22 a team responsible for the enhancement, re-establishment,</p> <p>23 and implementation of various policing functions in the</p> <p>24 SAPS. Can you elaborate there?</p> <p>25 GENERAL NAIDOO: That's correct. Chair,</p>

<p style="text-align: right;">Page 22837</p> <p>1 an example of the re-establishment of functions, in South 2 Africa we had the railway police, which was disbanded in 3 1986, and from 1986 there was a gradual erosion of the 4 security as far as the rail commuter section was concerned 5 and there was engagement at government level that something 6 should be done about the rail commuters' safety because we 7 wanted to get people back onto trains and onto public 8 transport. So one of the major issues was security and I 9 was responsible for conducting the study for the re- 10 establishment of the railway police, which we established 11 in 2004 and it's now a fully functional activity of the 12 South African Police Service. We have a permanent 13 deployment in the rail environment, as an example of one of 14 the re-establishment functions.</p> <p>15 MR SEMENYA SC: Yes, and you were 16 deployed operationally, you say, for the planning and 17 execution of various operations –</p> <p>18 GENERAL NAIDOO: That is correct.</p> <p>19 MR SEMENYA SC: - both abroad and 20 locally.</p> <p>21 GENERAL NAIDOO: That is correct, Chair.</p> <p>22 MR SEMENYA SC: Tell us more.</p> <p>23 GENERAL NAIDOO: Chair, with the VIP 24 Protection Service, initially I was deployed to the 25 division Protection Security Service, to the VIP Protection</p>	<p style="text-align: right;">Page 22839</p> <p>1 the fighters into normal civilian life, using the 2 experience that we had gained in the South African Police 3 Service with the amalgamation of various forces.</p> <p>4 MR SEMENYA SC: And this you do together 5 with the United Nations, as you tell us?</p> <p>6 GENERAL NAIDOO: Yes, part of the United 7 Nations. We were not part of the United Nations, we were a 8 South African delegation but we functioned with the United 9 Nations, yes.</p> <p>10 MR SEMENYA SC: And you also have 11 experience around the presidential inaugurations of 2004 12 and that of 2009?</p> <p>13 GENERAL NAIDOO: Yes, Chair. Well, 14 invariably the division I function in was responsible for 15 the hosting of most of the major events. We did the 16 security planning, especially VIP Protection Security, and 17 including events such as the world summit on sustainable 18 development, as well as the two inaugurations I referred to 19 in 2004 and 2009.</p> <p>20 MR SEMENYA SC: Did all of these 21 operations include planning that goes with them?</p> <p>22 GENERAL NAIDOO: Yes, Chair, it included 23 planning from scratch, resourcing, deployment of resources, 24 and operational coordination until the closure of the 25 operation, debriefing, yes.</p>
<p style="text-align: right;">Page 22838</p> <p>1 – I'm sorry, Chair – and that formed the foundation for the 2 division Protection & Security Service.</p> <p>3 [14:14] The activities we were engaged in involved South 4 Africa's involvement firstly abroad in a lot of mediation 5 efforts and assistance to African countries. I have 6 indicated in my statement two examples, assistance we 7 rendered to the Democratic Republic of Congo with regard to 8 the re-establishment of policing function where we went and 9 assessed their needs as a South African Police Service and 10 assisted them with the retraining of police officials in 11 various functions.</p> <p>12 My primary focus at that stage was a re- 13 establishment of some form of VIP Protection Service so 14 that the political role players where, at that stage there 15 was very low trust among them. We had to create conditions 16 that were conducive for free political activity and we used 17 the VIP Protection Service structures as a mechanism for 18 doing that.</p> <p>19 Similarly I was deployed to the Ivory Coast on a 20 similar operation during the attempt to overthrow the 21 government there. We initially were assisting with the 22 establishment of a security structure and after the 23 planning was finalised we were also then deployed as 24 unarmed mediators to facilitate the process which led to 25 the demobilisation, disarmament and the re-integration of</p>	<p style="text-align: right;">Page 22840</p> <p>1 MR SEMENYA SC: And things, as you refer 2 us to 2010 and the World Cup that year, all these police 3 operations would involve, did they not involve 4 multidisciplinary units to make them work?</p> <p>5 GENERAL NAIDOO: That is correct, Chair. 6 I think one of the largest events that we, after the world 7 summit on sustainable development was the Soccer World Cup 8 and it was a purely multidisciplinary, both within 9 government as well as a private sector operation.</p> <p>10 MR SEMENYA SC: Would they for instance 11 entail the establishment of joint operation centres?</p> <p>12 GENERAL NAIDOO: Invariably, yes. We had 13 to have coordinating mechanisms from the various sites. We 14 even had a national coordinating centre for the entire 15 country, so it was on a massive scale.</p> <p>16 MR SEMENYA SC: And deal with public 17 order management issues in relation to this event?</p> <p>18 GENERAL NAIDOO: Most of the events, an 19 example being the world summit on sustainable development 20 again where we established platforms where protesters could 21 come, unlike what we've seen in some other countries where 22 the protesters, you know, have a free reign and cause 23 general disorder, we came to an agreement with various 24 groups and established a particular place where they could 25 have their protests and still be seen and heard, and that</p>

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1 worked in our favour in terms of having a successful event
 2 that time as well.
 3 MR SEMENYA SC: Mercifully some of these
 4 events did not have the difficulties of the Marikana.
 5 GENERAL NAIDOO: Fortunately not.
 6 MR SEMENYA SC: Ja. In paragraph 13 you
 7 then tell us your academic life there where you started
 8 with the national diploma in police administration. What
 9 do that entail?
 10 GENERAL NAIDOO: National diploma in
 11 police administration was at that time, Chair, the entrance
 12 exam in terms of police officials wishing to qualify in a
 13 policing qualification other than a degree. It was
 14 conducted by the Technikon South Africa at that stage.
 15 Initially it started off as an internal exam through the
 16 Department of Education and later was taken over by the
 17 Technikon South Africa and had subjects such as police
 18 administration, investigation of crime, criminal procedure,
 19 criminal law, subjects which would, were necessary for
 20 effective policing as well as police management and
 21 administration.
 22 MR SEMENYA SC: Okay, and then you do a
 23 Bachelor of Arts in police science next.
 24 GENERAL NAIDOO: That is correct.
 25 MR SEMENYA SC: What does that entail?

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1 GENERAL NAIDOO: I majored in police
 2 science, criminology, and industrial psychology. All
 3 subjects were relevant to my work in my environment.
 4 MR SEMENYA SC: Your Masters Degree in
 5 public administration, was it one with a course work only
 6 or with thesis or –
 7 GENERAL NAIDOO: No, Chair, it entailed
 8 both course work as well as a dissertation, yes.
 9 MR SEMENYA SC: Dissertation.
 10 GENERAL NAIDOO: That's correct.
 11 MR SEMENYA SC: And what course work was
 12 involved there?
 13 GENERAL NAIDOO: Course work included
 14 public administration, public management, public finance
 15 and public entrepreneurship, to list some of the subjects,
 16 urban development, rural development, which were subjects
 17 that I had done.
 18 MR SEMENYA SC: The dissertation?
 19 GENERAL NAIDOO: The dissertation I did
 20 for my Masters was an analysis of the disciplinary
 21 management system of the South African Police Service at
 22 that time by analysing challenges and problems.
 23 MR SEMENYA SC: And you also did a
 24 Doctorate in public administration?
 25 GENERAL NAIDOO: That is correct.

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1 MR SEMENYA SC: What was the subject
 2 there?
 3 GENERAL NAIDOO: I did a research
 4 doctorate on the transformation of the South African Police
 5 Service between 1994 and 2006.
 6 MR SEMENYA SC: Just a broad stroke, what
 7 did that - tell us what –
 8 GENERAL NAIDOO: Well Chair, the
 9 assessment was basically looking at what we started off to
 10 do in 1994 for the South African Police Service and assess
 11 that period that I mentioned to see whether we have
 12 achieved those objectives or not, and obviously make some
 13 recommendations which could address any shortcomings that
 14 we identified.
 15 MR SEMENYA SC: With which –
 16 CHAIRPERSON: Sorry, forgive me, you did
 17 say but I didn't hear correctly. Your BA you obtained from
 18 which university?
 19 GENERAL NAIDOO: University of South
 20 Africa.
 21 CHAIRPERSON: South Africa, and the MA?
 22 Are all your degrees from UNISA?
 23 GENERAL NAIDOO: No, the Masters degree
 24 as well as the doctorate, Chair, were from the University
 25 of Pretoria.

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1 CHAIRPERSON: I see, thank you.
 2 MR SEMENYA SC: That doctorate being
 3 which year?
 4 GENERAL NAIDOO: I completed my research
 5 in 2009. However, I graduated in 2011.
 6 MR SEMENYA SC: You have also attended
 7 various courses external to the SAPS, you say, including a
 8 certificate in project management?
 9 GENERAL NAIDOO: That's correct, Chair.
 10 MR SEMENYA SC: Another in management
 11 services, a certificate there.
 12 GENERAL NAIDOO: That's correct.
 13 MR SEMENYA SC: Another in labour saving
 14 devices.
 15 GENERAL NAIDOO: Correct, Chair.
 16 MR SEMENYA SC: Balance scorecard.
 17 GENERAL NAIDOO: Correct, Chair.
 18 MR SEMENYA SC: And the fundamentals of
 19 supply chain management.
 20 GENERAL NAIDOO: Correct, Chair.
 21 MR SEMENYA SC: This is in area of
 22 procurement.
 23 GENERAL NAIDOO: That is correct.
 24 MR SEMENYA SC: You also underwent
 25 several internal training courses in the police service and

<p style="text-align: right;">Page 22845</p> <p>1 you mention them there, police basic training.</p> <p>2 GENERAL NAIDOO: That is correct, Chair.</p> <p>3 MR SEMENYA SC: Crowd management.</p> <p>4 GENERAL NAIDOO: Correct, Chair.</p> <p>5 MR SEMENYA SC: Junior commanders course.</p> <p>6 GENERAL NAIDOO: That is correct.</p> <p>7 MR SEMENYA SC: Candidate officers</p> <p>8 course.</p> <p>9 GENERAL NAIDOO: Correct, Chair.</p> <p>10 MR SEMENYA SC: What does that entail?</p> <p>11 GENERAL NAIDOO: Chair, in the old</p> <p>12 dispensation, pre-1994, in order to become an officer you</p> <p>13 first qualified academically in all other requirements and</p> <p>14 you submitted yourself as available for promotion to</p> <p>15 officer. You then underwent, irrespective of the fact that</p> <p>16 you have now all the qualifications and other requirements,</p> <p>17 you still had to undergo a candidate officers course which</p> <p>18 prepared you for the entering of the officer cadre. In</p> <p>19 this officers course you learned of police management,</p> <p>20 police administration, operational responsibilities of a</p> <p>21 police officer and not a non-commissioned officer. So when</p> <p>22 you pass out of that course, if you have successfully</p> <p>23 completed it, Chair, then you achieve the rank of</p> <p>24 lieutenant. If you do not successfully complete it, you</p> <p>25 would not, irrespective of the fact you may have the</p>	<p style="text-align: right;">Page 22847</p> <p>1 the last one. Did you say other than?</p> <p>2 GENERAL NAIDOO: Yes, it dealt with – at</p> <p>3 that stage we used to have Public Order Police, or the</p> <p>4 Internal Stability division, who functioned separately from</p> <p>5 the other police units. They used to wear the camouflage</p> <p>6 uniform and hat, so they had already a format in terms of</p> <p>7 their planning, but the station's planning was, did not</p> <p>8 have a structured format, so the courses developed were the</p> <p>9 police to train station police officials to do planning,</p> <p>10 especially integrated planning, because it was very</p> <p>11 important that our planning tied in with whichever units</p> <p>12 that we functioned with.</p> <p>13 MR SEMENYA SC: Okay, and you did one</p> <p>14 relating to the use of firearms. What was the content of</p> <p>15 that?</p> <p>16 GENERAL NAIDOO: The use of firearms,</p> <p>17 basically it's in terms of the new Firearms Control Bill</p> <p>18 which requires us to have competency both legal and</p> <p>19 practical before we have a competency certificate to carry</p> <p>20 a firearm. It applies to the South African Police Service</p> <p>21 as any other citizen of South Africa.</p> <p>22 MR SEMENYA SC: And that would be the use</p> <p>23 of firearms like handguns, rifle and –</p> <p>24 GENERAL NAIDOO: Shotgun.</p> <p>25 MR SEMENYA SC: - shotgun.</p>
<p style="text-align: right;">Page 22846</p> <p>1 academic qualifications, etcetera.</p> <p>2 MR SEMENYA SC: And the special weapons</p> <p>3 and tactics course entailed what?</p> <p>4 GENERAL NAIDOO: Chair, yes, the special</p> <p>5 weapons and tactics course was an operational level course</p> <p>6 which trained us on how to handle operational situations</p> <p>7 such as arresting of suspects, approaching vehicles during</p> <p>8 patrols, doing penetration of houses and buildings when we</p> <p>9 are going after armed suspects or generally entering, so</p> <p>10 basically it was what we later called the street survival</p> <p>11 course in its infancy, which prepared us for our daily</p> <p>12 duties as functional police officials.</p> <p>13 MR SEMENYA SC: Some of the internal</p> <p>14 training courses you did related to planning officers</p> <p>15 course and what did that entail?</p> <p>16 GENERAL NAIDOO: The planning officers</p> <p>17 course was for visible planning officers where we were</p> <p>18 trained to assess and develop operational plans for various</p> <p>19 policing situations for purely visible policing operations,</p> <p>20 or interdisciplinary operations. But prior to that we did</p> <p>21 not have any formal planning in the environment and this</p> <p>22 was the initiative that was taken to establish in the</p> <p>23 uniform planning environment, other than your public order,</p> <p>24 which had another format.</p> <p>25 MR SEMENYA SC: Sorry, I could not hear</p>	<p style="text-align: right;">Page 22848</p> <p>1 GENERAL NAIDOO: That's correct, Chair,</p> <p>2 the three categories are those as you mentioned.</p> <p>3 MR SEMENYA SC: And what's the rifle used</p> <p>4 by the South African Police Service here?</p> <p>5 GENERAL NAIDOO: The rifle is the – we</p> <p>6 have two rifles currently in use, the standardised general</p> <p>7 use rifle is the R5 assault rifle, but we still have units</p> <p>8 that are utilising the R1 rifle, depending on their</p> <p>9 specific taskings and purpose.</p> <p>10 MR SEMENYA SC: Now General, as your</p> <p>11 statement would say, you are currently holding the post of</p> <p>12 Deputy Provincial Commissioner, Operations Officer for the</p> <p>13 province of North West.</p> <p>14 GENERAL NAIDOO: That is correct, Chair.</p> <p>15 MR SEMENYA SC: Above you is General</p> <p>16 Mbombo.</p> <p>17 GENERAL NAIDOO: That is correct, Chair.</p> <p>18 MR SEMENYA SC: And in Support Services</p> <p>19 you would sit lateral to General Mpembe as support to the</p> <p>20 Provincial Commissioner?</p> <p>21 GENERAL NAIDOO: No, Chair, I'm in the</p> <p>22 office of Lieutenant General Mbombo. We have two deputies</p> <p>23 who function in the support environment and we have three</p> <p>24 deputies that function in the operational environment of</p> <p>25 the province.</p>

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1 MR SEMENYA SC: Okay, now giving evidence
 2 over the events of Marikana in 2012, you get a call that
 3 morning, this is now the morning of the 11th of August 2012,
 4 as you say approximately 10 o'clock.
 5 GENERAL NAIDOO: That is correct, Chair.
 6 MR SEMENYA SC: This is now General
 7 Mbombo calling you.
 8 GENERAL NAIDOO: That is correct, Chair.
 9 MR SEMENYA SC: Advising you about the
 10 unrest situation that is developing in Marikana.
 11 GENERAL NAIDOO: That's correct, Chair.
 12 MR SEMENYA SC: What do you do, having
 13 received that call?
 14 CHAIRPERSON: Sorry to interrupt. I
 15 can't remember whether you told us before, but you were at
 16 that stage acting Provincial Commissioner –
 17 GENERAL NAIDOO: That is correct, Chair.
 18 CHAIRPERSON: - because both, I don't
 19 know how it, what the order is, but Lieutenant General
 20 Mbombo was on leave and so was Major General Mpembe.
 21 GENERAL NAIDOO: That is correct, Chair.
 22 MR SEMENYA SC: So you were the acting
 23 Provincial Commissioner.
 24 GENERAL NAIDOO: I was acting –
 25 CHAIRPERSON: And so you received the

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1 telephone call that you are now referring to on Saturday,
 2 the 11th of August -
 3 GENERAL NAIDOO: That is correct, Chair.
 4 CHAIRPERSON: - 2012, in that capacity as
 5 acting Provincial Commissioner. Is that correct?
 6 GENERAL NAIDOO: That is correct.
 7 General Mbombo, Chair, was not in the province at that
 8 stage, she was on leave, and however the people that called
 9 her, called her directly on her cell phone. So she, that's
 10 when she called me.
 11 MR SEMENYA SC: What information does she
 12 convey in this telephone call to you?
 13 GENERAL NAIDOO: Chair, she indicated to
 14 me that she had received a telephone call from – she didn't
 15 mention a name of the person at Lonmin Mine in Marikana,
 16 who indicated that there was an unrest situation there
 17 which they felt that the police were not coping with and
 18 she wanted me to have a look at that in terms, as she was
 19 out of the province and I was at that stage acting as
 20 Provincial Commissioner.
 21 MR SEMENYA SC: Okay.
 22 GENERAL NAIDOO: She wanted me to get in
 23 contact with the relevant people on duty on the ground to
 24 establish what their need was and assist them accordingly.
 25 MR SEMENYA SC: General, if you can just

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1 push your mike a little closer. Sometimes you fade.
 2 GENERAL NAIDOO: Okay, thank you.
 3 MR SEMENYA SC: And what you then are
 4 requested to do is to obtain additional resources to help
 5 the cluster in Rustenburg to address the problem.
 6 GENERAL NAIDOO: Yes, I was receiving the
 7 telephone call asking me to do that and then I immediately
 8 called Brigadier Calitz who was then the Provincial Head
 9 for Operational Response Services. Normally I would have
 10 called Major General Mpembe but he was on vacation leave on
 11 that week as well.
 12 MR SEMENYA SC: Okay. By the way, for
 13 completeness, the Public Order Police units in the province
 14 are stationed where?
 15 GENERAL NAIDOO: They are provincial
 16 units but we have three provincial units; in Rustenburg, in
 17 Potchefstroom, and Maokeng, but for command purposes they
 18 resort directly under Brigadier Calitz at the province.
 19 MR SEMENYA SC: Okay, and this is now in
 20 Potchefstroom?
 21 GENERAL NAIDOO: That is correct, Chair.
 22 MR SEMENYA SC: What do you say to
 23 Brigadier Calitz?
 24 [14:34] GENERAL NAIDOO: I indicated to him there
 25 are, the message that I had received from the Provincial

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1 Commissioner and I instructed him to make sure that we had
 2 sufficient deployment in order to address the issues
 3 because he already had knowledge of the issue at Marikana
 4 on a 24 hour basis until Monday where we would have
 5 hoped that the situation would have stabilised at that
 6 stage. We didn't have an idea how long the situation would
 7 sustain itself.
 8 MR SEMENYA SC: The Sunday you get a call
 9 from your provincial commissioner again.
 10 GENERAL NAIDOO: That is correct, Chair.
 11 MR SEMENYA SC: The message in that
 12 telephone call is?
 13 GENERAL NAIDOO: Chair, just before lunch
 14 I had a call from the Provincial Commissioner indicating to
 15 me that the situation at Lonmin had escalated since our
 16 last conversation and that two people had been injured and
 17 two mine security guards had just been killed as well.
 18 MR SEMENYA SC: Your response to that?
 19 GENERAL NAIDOO: Chair, I immediately
 20 contacted Brigadier Calitz again who was on his way to
 21 Maokeng and he responded by proceeding to Lonmin Mine so
 22 that he could go and assess the situation and give me a
 23 report.
 24 MR SEMENYA SC: You get the report from
 25 Brigadier Calitz?

<p style="text-align: right;">Page 22853</p> <p>1 GENERAL NAIDOO: Yes, he gets to Lonmin 2 mine, he does an assessment and he gives me a call 3 indicating to me what the situation was there. 4 MR SEMENYA SC: And with that information 5 you tell us you contact Major-General Annandale who is the 6 head of specialised operations at Head Office, this is now 7 in Pretoria. 8 GENERAL NAIDOO: That is correct. On my 9 discussion with Brigadier Calitz, we agreed that he would 10 send a written request to the National Joint Operation 11 Centre or NATJOC as we refer to it for request for 12 reinforcements of public order police and I indicated I 13 would phone Major-General Annandale who was the head of 14 Specialised Operations to request him additional support as 15 well from the units that he commanded. 16 MR SEMENYA SC: Again what is the 17 strength in terms of numbers of POP members in the 18 province? 19 GENERAL NAIDOO: We have approximately 20 380 operational members and we have support members as 21 well. 22 MR SEMENYA SC: Okay, and whilst on the 23 subject these members would get their training where? 24 GENERAL NAIDOO: The public order police 25 training is conducted on a national level. There is a</p>	<p style="text-align: right;">Page 22855</p> <p>1 notice to assist the local policing unit including the 2 public order police unit in guarding and patrolling high 3 density, high visibility patrols in support of the policing 4 actions. 5 MR SEMENYA SC: And to get all of this 6 support with, after, with or after the Brigadier had 7 submitted the formal request? 8 GENERAL NAIDOO: Yes, Major-General 9 Annandale called me back to confirm that he had liaised 10 with the NATJOC and indicated that in addition to the 11 National Intervention Unit personnel he would be sending 12 us, there will be public order police units from Gauteng 13 and Mpumalanga who would be supplementing our units from 14 the North West. 15 MR SEMENYA SC: Okay. Later that day 16 though is it, Monday the 13th you then go to Lonmin together 17 with the Provincial Commissioner and General Mpmembe. 18 GENERAL NAIDOO: That is correct, we 19 proceeded that morning just after 7:30 to Lonmin. 20 MR SEMENYA SC: What were you going to do 21 there? 22 GENERAL NAIDOO: We had to firstly assess 23 the situation as I indicated previously whether the 24 situation had stabilised and secondly as it was indicated 25 earlier in my statement there was continuous communication</p>
<p style="text-align: right;">Page 22854</p> <p>1 national institution. Currently there are two institutions 2 they're using for Public Order Police training at Verdrag 3 as well as at Mankwe. 4 MR SEMENYA SC: That is now in Limpopo? 5 GENERAL NAIDOO: Mankwe is in the North 6 West Province on the border with Limpopo, yes. 7 MR SEMENYA SC: What do you say to 8 General Annandale? 9 GENERAL NAIDOO: I sketched out the 10 situation to General Annandale where we've indicated that 11 we have also asked the NATJOC for public order police 12 reinforcements and I requested that he assist us with the 13 National Intervention Unit as well as it's clear that from 14 the reports from Brigadier Calitz that the situation that 15 we had at Lonmin was deteriorating into a public violence 16 situation and we would need sufficient personnel to be part 17 of the night and the early hours of the morning to 18 stabilise that situation. 19 MR SEMENYA SC: Why the National 20 Intervention Unit? 21 GENERAL NAIDOO: Chair, the National 22 Intervention Unit is normally used in stabilisation 23 operations where we have public violence and key 24 infrastructure gets damaged and key routes get blocks, 25 etcetera. They have the capacity to respond at short</p>	<p style="text-align: right;">Page 22856</p> <p>1 and complaints from the mine management that the police 2 were not responding and assisting and stabilising the 3 situation and we wanted to meet them on that because we had 4 a large deployment there and we felt you know we were 5 trying to do what we could without understanding what were 6 the real issues, we could not do more. 7 MR SEMENYA SC: And the team that you met 8 from Lonmin was as you say led there by Mr Bernard Mokwena? 9 GENERAL NAIDOO: That is correct, Chair. 10 MR SEMENYA SC: Who then give you a 11 briefing of how things are happening there, what in broad 12 terms were you told? 13 GENERAL NAIDOO: Broadly they indicated 14 firstly, Chair, that we were dealing with a conflict 15 between two unions that were represented at the mine, 16 namely the National Union of Mineworkers and AMCU and 17 secondly they indicated that the employees that were on 18 strike who were so-called rock drill operators were being 19 agitated and being led by unknown faceless people, so the 20 people that were really keeping the problem going were 21 unknown to them at that stage. 22 MR SEMENYA SC: And was there at that 23 time, in that meeting any attempts at trying to identify 24 who the perpetrators of the murders were? 25 GENERAL NAIDOO: We, Chair, that's why I</p>

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1 indicated we tried to establish who were the people that
 2 were leading the strikes and demonstrations, obviously it
 3 could give us a direction. We also attempted to establish
 4 what was the reason for the conflict that existed now
 5 because the mine management indicated to us they had a two
 6 year wage negotiation deal in place and it would only come
 7 later in the year up for negotiations. So we were trying
 8 to understand why the labour situation now arose and maybe
 9 that would assist us to who was initiating the violence and
 10 help us with our investigations, yes.

11 MR SEMENYA SC: Is there any mention made
 12 there around the rock drill operators?

13 GENERAL NAIDOO: Yes, Chair, there was
 14 specific mention that the rock drill operators played a
 15 very significant role in the mine at, earlier in the month
 16 they had approached management with regard to certain wage
 17 issues which the management felt they could not address
 18 because of this agreement that they had in place. But at
 19 that same time we were informed that some sort of allowance
 20 which was determined by management was going to be paid to
 21 the rock drill operators which we questioned because it
 22 seemed to be a contradiction in terms of what they were
 23 telling us, yes.

24 MR SEMENYA SC: Why a contradiction in
 25 terms?

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1 GENERAL NAIDOO: Well they clearly
 2 indicated to us that they had an agreement in place for two
 3 years and they could not go beyond that agreement or
 4 outside that agreement for fear of angering the unions that
 5 were signatories to this agreement and at the same time
 6 they indicated to us there was decision by management to
 7 pay some sort of allowance to these people outside this
 8 negotiated settlement. So they were in any way breaking
 9 that two year agreement.

10 MR SEMENYA SC: And was there anything
 11 said or done in relation to the faceless people behind this
 12 unrest?

13 GENERAL NAIDOO: Well the Provincial
 14 Commissioner did question them about the, indicating or
 15 highlighting firstly their contradiction but also
 16 emphasising that we needed to identify who the people were
 17 as they could not be faceless people because they were
 18 obviously employees of the company.

19 MR SEMENYA SC: Any attempts at obtaining
 20 video footage in relation to the events of the previous
 21 day?

22 GENERAL NAIDOO: At that stage we did not
 23 talk on an operational level about those aspects. We were
 24 more at a strategic level.

25 MR SEMENYA SC: What was the thrust of

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1 the contact you then made with Lonmin at that point, in
 2 that meeting?

3 GENERAL NAIDOO: Chair, yes, we indicated
 4 to them we would do what's necessary as far as policing is
 5 concerned. Obviously many crimes has been committed since
 6 the first telephone call where people have been murdered or
 7 badly injured and property had been damaged and we would
 8 deal with that in terms of our policing. However we
 9 depended on them being of assistance to us in terms of the
 10 information we required as to who and what and the
 11 Provincial Commissioner did raise a concern about this.
 12 The indication that they cannot talk to these people but at
 13 the same time, you know there was these other agreements
 14 that were coming in place. So she wanted some sort of
 15 engagement with the, from Lonmin's side with the people
 16 that were on strike or at least link us up with the people
 17 who were possibly in charge of these things.

18 MR SEMENYA SC: And I take it they were
 19 willing to be of assistance to the extent they can as
 20 Lonmin?

21 GENERAL NAIDOO: They assisted us with
 22 almost everything other then the faceless people which we
 23 battled with yes.

24 MR SEMENYA SC: Okay. As you tell us
 25 against paragraph 22 "you then proceeded back to the Joint

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1 Operational Centre".

2 GENERAL NAIDOO: That is correct, Chair.

3 MR SEMENYA SC: This is the, what we now
 4 know to be the small JOC?

5 GENERAL NAIDOO: That is correct, Chair.

6 MR SEMENYA SC: Just describe it for us a
 7 bit?

8 GENERAL NAIDOO: Chair, the joint
 9 operational centre was actually a room that was being
 10 utilised by the mine security officials where they monitor
 11 the radio as well as the CCTV cameras. So when Brigadier
 12 Calitz arrived on Sunday we added a police representative
 13 with police communications who functioned from there with
 14 the necessary operational room equipment such as you know a
 15 chart depicting our operational conditions, etcetera.

16 MR SEMENYA SC: And there's a time when
 17 you are with Brigadier Calitz as well Brigadier Seboloke in
 18 the, that joint room.

19 GENERAL NAIDOO: That is correct, they
 20 gave us an overview of their current deployment status as
 21 well as the operational status.

22 MR SEMENYA SC: And you tell us that that
 23 consisted, the overview given to you consisted of amongst
 24 others, what assessment of the situation was there from a
 25 policing perspective, the current resources that they had

<p style="text-align: right;">Page 22861</p> <p>1 deployment, the incident which had occurred as well as the 2 available resources for the days coming? 3 GENERAL NAIDOO: That is correct, Chair. 4 MR SEMENYA SC: You saw the CCTV? 5 GENERAL NAIDOO: Yes, Chair, the CCTV was 6 part of the ops room and we observed the CCTV. 7 MR SEMENYA SC: What did you notice as 8 you were looking at the footage at that time? 9 GENERAL NAIDOO: Chair, I think they had 10 about two screens on the desk top and one, on one of them 11 they indicated to us a koppie where the miners were 12 gathered, it was a large contingent. At that stage they 13 indicated to us it's about approximately 3 000 plus people 14 and on another screen they were monitoring a smaller group 15 of armed miners who were gathered near a mineshaft which 16 they were concerned about. 17 MR SEMENYA SC: They were concerned 18 because? 19 GENERAL NAIDOO: Because firstly there 20 were people on duty on that particular shaft and the, it 21 was obvious that the group was quite heavily armed with 22 traditional weapons, etcetera. 23 MR SEMENYA SC: You say traditional 24 weapons that would be reference to what type of weapons? 25 GENERAL NAIDOO: Spears, kieries, pangas,</p>	<p style="text-align: right;">Page 22863</p> <p>1 assessment the contingency plan of that particular station 2 or that area is activated in terms of the appropriate 3 situation. So if it's a public unrest situation or a bank 4 robbery they would obviously then deal with it in terms of 5 the appropriate contingency plan. So there would not be 6 this formal process of documentation and planning, now 7 there could be the activation of existing standard 8 operating procedures to respond to a situation. 9 MR SEMENYA SC: Okay. Having been told, 10 no we'll get to that, and then you leave with the 11 Provincial Commissioner to go back to Potchefstroom? 12 GENERAL NAIDOO: That is correct, Chair. 13 MR SEMENYA SC: It is whilst you're on 14 route to Potchefstroom that the Provincial Commissioner 15 gets a telephone call? 16 GENERAL NAIDOO: That is correct, Chair. 17 MR SEMENYA SC: In fact you say how many 18 calls did she get? 19 GENERAL NAIDOO: She got two telephones 20 calls. 21 MR SEMENYA SC: Do you know whose on the 22 other end of the line? 23 GENERAL NAIDOO: I was not aware at that 24 time, Chair. 25 MR SEMENYA SC: What does she report to</p>
<p style="text-align: right;">Page 22862</p> <p>1 axes, etcetera, Chair. 2 MR SEMENYA SC: Okay. It is at that time 3 when you, the small group is observed as we now know they 4 are walking along a railway line? 5 GENERAL NAIDOO: That is correct, Chair. 6 MR SEMENYA SC: And the Provincial 7 Commissioner then instructs General Mpembe to attend to 8 that situation? 9 GENERAL NAIDOO: Yes, Chair, firstly she 10 places him in charge of the operation to support, with the 11 support of Brigadier Calitz and then instructed that we, 12 the situation should be addressed where armed groups should 13 not be able to roam around and they needed to be disarmed. 14 MR SEMENYA SC: And then General Mpembe 15 goes to attend to that instruction? 16 GENERAL NAIDOO: Yes, Chair, we had by 17 then the Provincial Commissioner and I had departed to 18 Potchefstroom after leaving General Mpembe behind, yes. 19 MR SEMENYA SC: Just typical, typically a 20 spontaneous gathering of that nature being attended to what 21 planning would go into it? 22 GENERAL NAIDOO: Chair, there would not 23 be time to conduct a formal planning exercise, what 24 normally, an assessment is done by the people, the 25 appropriate person on the scene. If, based on the</p>	<p style="text-align: right;">Page 22864</p> <p>1 you having spoken over the phone? 2 GENERAL NAIDOO: She was a bit shocked. 3 The caller informed her that the group under the command of 4 Major General Mpembe who were at Marikana were attacked by 5 some miners and that some of the police personnel had been 6 killed. 7 MR SEMENYA SC: About this civilian? 8 GENERAL NAIDOO: I, at that stage didn't 9 immediately hear about the three civilians, I did later 10 hear that three civilians had been killed. 11 MR SEMENYA SC: Okay. What you then do 12 as you say is "you then turned and drive back to Marikana"? 13 GENERAL NAIDOO: That is correct, Chair. 14 MR SEMENYA SC: And you do so also 15 contacting General Annandale to appraise him of these 16 developments and indicating whatever additional recourses 17 would be necessary for you to address the problem? 18 GENERAL NAIDOO: Chair, yes, there were 19 twofold reasons for calling General Annandale. Firstly I 20 had to inform him of the incident where police members were 21 killed because there was a possibility, although we did not 22 know at that stage, that one of his personnel who he had 23 deployed could have been among the victims and secondly yes 24 to solicit additional assistance that we possibly will 25 need. I did not give him the specifics but I placed him on</p>

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1 alert that we are going to possibly need further assistance
 2 from him.
 3 MR SEMENYA SC: And when you get back in
 4 Marikana you then go to the JOC?
 5 GENERAL NAIDOO: That is correct, Chair.
 6 [14:54] MR SEMENYA SC: You get a briefing from
 7 General Mpmembe as to what happened and Brigadier Calitz as
 8 well gives the information that he has?
 9 GENERAL NAIDOO: That is correct, Chair.
 10 MR SEMENYA SC: What in broad terms
 11 again, General Mpmembe has testified but what in broad terms
 12 does he say happened?
 13 GENERAL NAIDOO: Chair, broadly he
 14 indicated to us that after we had departed he proceeded to
 15 execute the instructions of the Provincial Commissioner
 16 where he had taken approximately 70 members of public order
 17 police, the National Intervention Unit and the TRT to
 18 confront the group we had identified on the TV screen as
 19 being near a mineshaft. He indicated that he tried to
 20 speak to them and eventually decided to escort them to
 21 safety but during the process of escorting the police came
 22 under attack and in that situation two police officers were
 23 killed, a third injured as well as then three civilians
 24 were killed. We got the final count much, after his
 25 briefing but.

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1 MR SEMENYA SC: Did you get informed how
 2 that happened?
 3 GENERAL NAIDOO: Yes, Chair, he indicated
 4 to us that the policemen were killed by the miners
 5 utilising the traditional weapons, they were hacked and
 6 that some of the police responded by shooting and that's
 7 how the civilians had been killed.
 8 MR SEMENYA SC: Well I think it is now
 9 common cause, I can go with you there, any weapons taken
 10 from the police?
 11 GENERAL NAIDOO: Yes, Chair, as far as I
 12 could recall they were, an R5 assault rifle, a shotgun as
 13 well as pistols of two of the members and a police radio
 14 were taken from the scene.
 15 MR SEMENYA SC: That information does it
 16 bring a broader concern to the police?
 17 GENERAL NAIDOO: Yes, Chair. There had
 18 been a continuous number of incidents on Saturday where
 19 initially were injured and then people started getting
 20 killed and maimed. So we foresaw with the firearms
 21 available to the group that was engaged with the incident
 22 with the police that the, that the level of incidents would
 23 increase the threat in terms of safety, not only now of
 24 other civilians but also the police would increase with the
 25 availability of arms to these attackers.

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1 MR SEMENYA SC: That the strikers were
 2 miners did it bring a different complexion to the threat?
 3 GENERAL NAIDOO: Well, Chair, there were
 4 two things that we had to be aware of. Firstly that they
 5 were numbers and now the numbers were being announced by
 6 the arms that they had and secondly the threat it would
 7 pose to other civilians who were trying to go to work and
 8 try to go about their normal lives which will definitely be
 9 prejudiced because it's already been indicated when, on the
 10 Sunday night when people attempt to go to work that they
 11 were not just intimidated but they were virtually
 12 butchered.
 13 MR SEMENYA SC: Would this be a
 14 convenient for a comfort break, Chair?
 15 CHAIRPERSON: Yes, we'll take the tea
 16 adjournment at this stage. Quarter of an hour.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [15:29] CHAIRPERSON: The Commission resumes.
 19 You're still under oath, Major General Naidoo.
 20 GANASEN NAIDOO: Still under oath, yes.
 21 CHAIRPERSON: Mr Semenya.
 22 EXAMINATION BY MR SEMENYA SC (CONTD.):
 23 Thank you, Chair. You would then go to briefing about what
 24 had transpired with the operation General Mpmembe was
 25 involved with.

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1 GENERAL NAIDOO: That is correct, Chair.
 2 MR SEMENYA SC: And the Commissioner then
 3 immediately convened a meeting of the JOC which at that
 4 time included General Annandale.
 5 GENERAL NAIDOO: Correct, Chair. General
 6 Annandale had since joined us, yes.
 7 MR SEMENYA SC: He too had also received
 8 a briefing.
 9 GENERAL NAIDOO: He formed part of that
 10 briefing, yes.
 11 MR SEMENYA SC: It is later that evening
 12 that the National Commissioner then arrives at the JOC,
 13 correct?
 14 GENERAL NAIDOO: That's correct.
 15 MR SEMENYA SC: He is in the company of
 16 General Mawela, you say.
 17 GENERAL NAIDOO: No, the Provincial
 18 Commissioner of Gauteng, General Petros –
 19 CHAIRPERSON: It was Lieutenant General
 20 Petros, as I -
 21 GENERAL NAIDOO: Petros, that's correct.
 22 MR SEMENYA SC: Okay, and this is after
 23 the National Commissioner was informed of the situation a
 24 little earlier?
 25 GENERAL NAIDOO: That is correct. The

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1 Provincial Commissioner did inform her of the situation.
 2 MR SEMENYA SC: So was General Mawela
 3 informed about it?
 4 GENERAL NAIDOO: General Mawela was
 5 informed also by General Annandale.
 6 MR SEMENYA SC: Around 8 o'clock that
 7 evening then the National Commissioner arrives in the
 8 company, as the Chair says, with the Provincial
 9 Commissioner Gauteng, General Petros.
 10 GENERAL NAIDOO: That is correct, Chair.
 11 MR SEMENYA SC: They too obtain whatever
 12 briefing there was about where the matters were standing
 13 that time.
 14 GENERAL NAIDOO: Chair, yes, we had a
 15 briefing with the police, between the police first and
 16 later on we met Lonmin management as well.
 17 MR SEMENYA SC: It is quite a large
 18 contingent of you that time, as you mention in paragraph 31
 19 of your statement.
 20 GENERAL NAIDOO: That is correct, there
 21 were quite a few generals there.
 22 MR SEMENYA SC: And you are contemplating
 23 how the situation must be arrested, investigations
 24 conducted.
 25 GENERAL NAIDOO: That's correct, Chair.

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1 MR SEMENYA SC: And establish what had
 2 actually transpired.
 3 GENERAL NAIDOO: That's correct, Chair.
 4 MR SEMENYA SC: Just for chronology, do
 5 you see Lonmin management that evening with the National
 6 Commissioner?
 7 GENERAL NAIDOO: After our initial
 8 meeting as the police yes, we met the Lonmin management,
 9 Chair.
 10 MR SEMENYA SC: Were you part of that
 11 meeting?
 12 GENERAL NAIDOO: Yes, Chairperson.
 13 MR SEMENYA SC: What concerns are raised
 14 there with Lonmin management?
 15 GENERAL NAIDOO: Chairperson, firstly the
 16 National Commissioner asked Lonmin management to try and
 17 explain what the situation was, why did this state of
 18 unrest exist on the mine, and we had the same, or virtually
 19 the same discussion as what the Provincial Commissioner led
 20 that morning. She tried to establish, she questioned this
 21 issue of the faceless people because by then out of the
 22 CCTV camera we were able to download photographs of people
 23 that took part on the attack on General Mpmembe's group and
 24 she indicated, but these, we have photographs, they are no
 25 longer faceless, and these must be employees of your mine

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1 and then surely, you know, the HR department can assist us
 2 in identifying these people so that the investigations
 3 could be done, and also she questioned their involvement in
 4 terms of engaging with the people that are on strike so
 5 that we can defuse the situation. She said it's no longer
 6 relevant that they continue saying faceless people where we
 7 had photographs, we had labour representation, and she
 8 would want to see some sort of initiative from them to
 9 resolve or calm down the situation because looking at the
 10 cost that we've had thus far in terms of human life, she
 11 felt they could do more.
 12 MR SEMENYA SC: And relating to the
 13 debate of whether or not there is a wage agreement and how
 14 long it was still to endure, etcetera?
 15 GENERAL NAIDOO: She did engage them on
 16 that. Obviously that conflict that I indicated earlier in
 17 my testimony she did highlight and the fact that they
 18 seemed to contradict themselves by saying we had a wage
 19 agreement but on the same breath saying we had an allowance
 20 arrangement set up for the rock drill operators, etcetera.
 21 She said they had, she was sure they had avenues to address
 22 this through the labour relations process so that the
 23 security situation didn't escalate.
 24 MR SEMENYA SC: After that meeting you
 25 then go back to the JOC?

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1 GENERAL NAIDOO: Yes, we reconvened as
 2 police officials.
 3 MR SEMENYA SC: And as you tell us
 4 against paragraph 32, you escalate the police resources and
 5 through the facilitation of the NATJOC.
 6 GENERAL NAIDOO: That is correct. There
 7 was a mobilisation of police resources from within as well
 8 as from outside the provinces to ensure there's concomitant
 9 resources made available to stabilise the area, as well as
 10 a formal planning process was initiated. Up to now we had
 11 been functioning on a contingency basis and a formal
 12 planning process started to deal with the situation on
 13 hand.
 14 MR SEMENYA SC: And the contingency plan
 15 was?
 16 GENERAL NAIDOO: The contingency plan had
 17 been drawn up by the Public Order Police unit commander and
 18 the cluster commanders, Colonel Merafe and Brigadier
 19 Sebolohe on Friday when the initial march took place and
 20 has been over the weekend expanded as the situation
 21 escalated.
 22 MR SEMENYA SC: Its broad details?
 23 GENERAL NAIDOO: It, really it made
 24 provision for us to deploy resources to police generally
 25 because we at that stage could not specifically say what

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1 would happen. So we deployed Public Order Police units as
 2 well as VISPOL units to patrol as well as to man strategic
 3 key points and which is why we enhanced with units like
 4 Public Order Police from other provinces as well as the
 5 National Intervention Unit, was to enhance that contingency
 6 plan.
 7 MR SEMENYA SC: And because of the
 8 facilitation that NATJOC had done around resources, the
 9 following day, Tuesday the 14th, those resources arrive from
 10 the various units. Is that right?
 11 GENERAL NAIDOO: That's correct, Chair.
 12 MR SEMENYA SC: Purpose is to support the
 13 operation.
 14 GENERAL NAIDOO: That's correct, Chair.
 15 MR SEMENYA SC: You activate the various
 16 support sections in the province to support the increase to
 17 deployment that was required.
 18 GENERAL NAIDOO: That's correct, Chair.
 19 MR SEMENYA SC: As well as responding to
 20 all other support requirements that were needed for that
 21 operation?
 22 GENERAL NAIDOO: To sustain the
 23 operation, correct, Chair.
 24 MR SEMENYA SC: By this you mean?
 25 GENERAL NAIDOO: Accommodation, there was

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1 a lot of members coming from out of the province, radio
 2 equipment, handset radios - most provinces did not work on
 3 the same network as the North West province - additional
 4 vehicles, and anything as it arose; we had to put in
 5 additional ablution facilities, etcetera, and we worked on
 6 those things.
 7 MR SEMENYA SC: Now was the discussion
 8 around what intervention would be employed in relation to
 9 the strikers?
 10 GENERAL NAIDOO: Yes, Chair, there was a
 11 lengthy discussion. As we had the evening it was a
 12 continuation where we decided that we would take a
 13 negotiated approach with the striking group to lay down
 14 their weapons, to disperse peacefully and conduct their
 15 labour relations dispute through the established channels,
 16 and we also made provision that should the situation
 17 escalate or the negotiations approach fail, then we would
 18 have to possibly disperse them. We looked at the
 19 contingencies around that, how would we go about it and
 20 what resources would we require to disperse the strikers,
 21 especially as they were armed and they could pose a threat
 22 to public safety.
 23 MR SEMENYA SC: In terms of negotiations,
 24 what negotiations were contemplated?
 25 GENERAL NAIDOO: We through the NATJOC

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1 and head office activated and established a negotiation
 2 team which came from within our province as well as from
 3 Gauteng, who would, we were not engaged in any labour
 4 issues, we were merely engaging with the strikers to
 5 firstly lay down their arms and then disperse and possibly
 6 return to work to normalise the situation, but it's
 7 primarily around laying down their arms and dispersing. We
 8 also tried to engage them in terms of the firearms that
 9 were taken that should be returned, etcetera.
 10 MR SEMENYA SC: Yes, at that time the
 11 picture was complicated by the several deaths that had
 12 occurred at that time?
 13 GENERAL NAIDOO: That is correct, Chair.
 14 MR SEMENYA SC: Was there any sense or
 15 discussion about an immediate tactical response to what had
 16 happened the day before?
 17 GENERAL NAIDOO: No, Chair, although we
 18 had mobilised tactical units, it was merely to support the
 19 investigation of crime, possible identification of suspects
 20 and arrest of suspects. Otherwise there was no tactical
 21 options on the table. It was just the negotiations.
 22 GENERAL NAIDOO: Your responsibility was
 23 to be at forward holding area 1. Now the Tuesday who are
 24 you with at forward holding area 1?
 25 GENERAL NAIDOO: Chair, yes, forward

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1 holding area 1 was the location where we had the Special
 2 Task Force group, the National Intervention group, the
 3 various Tactical Response units that came from various
 4 provinces, Public Order Police reserve forces, K9 unit, the
 5 mounted unit, the detectives, as well as the crime scene
 6 investigators, and the medical emergency personnel from
 7 Rescue 911 that was arranged by Lonmin, as well as fire
 8 fighters that were arranged by Lonmin.
 9 MR SEMENYA SC: And why forward holding
 10 area 1? What is a forward holding area?
 11 GENERAL NAIDOO: Chairperson, the forward
 12 holding area was merely a place where we held our reserve
 13 forces. We did not commit all our resources to the
 14 negotiation area, so for a couple of reasons; first one, we
 15 didn't want - in terms of our protocol we don't commit all
 16 our forces immediately into a particular operation. We do
 17 have reserves, if required. Secondly, the incidents, if we
 18 had all the forces committed to one area and if incidents
 19 happened on the periphery of the operation area or
 20 elsewhere, it would be problematic to move people rapidly.
 21 So the forward holding area became a holding area so that
 22 we could deploy people either to the negotiation group or
 23 anywhere else when it's required.
 24 MR SEMENYA SC: For what was happening
 25 there, what was the relevance of STF?

<p style="text-align: right;">Page 22877</p> <p>1 GENERAL NAIDOO: The original idea of 2 bringing in the Special Task Force was to assist the 3 investigation side of the operation. The idea was that 4 suspects could be identified and the tactical units could 5 go and do house penetrations, extract suspects from high- 6 risk areas with the weapons and other exhibits. So 7 primarily the original idea of the Special Task Force was 8 to support the investigation and the recovery of various 9 exhibits. 10 MR SEMENYA SC: NIU? 11 GENERAL NAIDOO: The NIU, as I earlier 12 indicated, were a stabilising, they had a stabilising 13 responsibility. They normally conducted high-density 14 patrols, guarded key points, as we used them during this 15 operation, they were guarding several key points. They 16 supplemented us in terms of numbers for higher visibility, 17 etcetera. 18 MR SEMENYA SC: TRT? 19 GENERAL NAIDOO: The TRT was also a 20 tactical unit, just like the NIU, with the same application 21 for high-density patrols, protection of certain groups, 22 escorting of buses. We utilised them during the operation 23 for most of those things. 24 MR SEMENYA SC: K9? 25 GENERAL NAIDOO: The K9 capability was</p>	<p style="text-align: right;">Page 22879</p> <p>1 MR SEMENYA SC: Was it considered an 2 adequate number for the operation that was to happen on the 3 Thursday, three medics? 4 GENERAL NAIDOO: For what we intended, 5 yes. When the decision was taken to disperse, as I 6 indicated, normal dispersal action you get people falling, 7 tripping, injuring themselves. Some people may even 8 through inhalation of teargas suffer respiratory problem. 9 It was to address those kind of things that normally tend 10 to rise in the dispersal action. 11 MR SEMENYA SC: If there was a 12 foreseeability of scores of people being injured, as we 13 know, and fatalities, as has happened, would a team of 14 three have been adequate? 15 GENERAL NAIDOO: No, it definitely would 16 not have been adequate, but as I indicated the purpose we 17 had that number was to deal with what we generally come, 18 encounter in such operations. 19 MR SEMENYA SC: And you tell us the 20 forward holding area 1 is about two kilometres away from 21 where the negotiations were happening at the koppie. 22 GENERAL NAIDOO: Approximately, yes. 23 MR SEMENYA SC: Yes, the purpose of your 24 team, i.e. those at FHA1, was really as a support 25 function?</p>
<p style="text-align: right;">Page 22878</p> <p>1 purely for the sniffer dog capacity where we wanted to 2 utilise them for identification of explosives, firearms, 3 and those kind of things, and so we had dogs with that 4 capability deployed. 5 MR SEMENYA SC: The medical personnel? 6 GENERAL NAIDOO: There was already 7 leading up to the operation various incidents where the 8 people were dispersed and people were injured, etcetera. 9 With a gathering that large it was foreseen that there will 10 possibly be a need for immediate response should people be 11 injured for any reason. Normally in a dispersal operation, 12 if there is a dispersal operation, then people tend to 13 stampede, run, fall, injure themselves. So we would have 14 to have medical personnel on hand to deal with those as 15 they may arise. 16 MR SEMENYA SC: What was the size of the 17 medical personnel that was with you at forward holding area 18 1? 19 GENERAL NAIDOO: On the Tuesday and 20 Wednesday I had two medics with me. On the Wednesday I had 21 three medics with me. They changed later on, two of them 22 rotated so, but I maintained a number of three. 23 MR SEMENYA SC: Just for completeness, 24 how many did you have for Thursday the 16th? 25 GENERAL NAIDOO: Three medics with me.</p>	<p style="text-align: right;">Page 22880</p> <p>1 GENERAL NAIDOO: That is correct, Chair. 2 MR SEMENYA SC: And you would be called 3 or deployed as and when the need for additional support was 4 called for? 5 GENERAL NAIDOO: That is correct, Chair. 6 MR SEMENYA SC: You did, as you tell us, 7 the high visibility patrols that were to happen. 8 GENERAL NAIDOO: That occurred on 9 Tuesday, Chair. Before implementing the forward holding 10 areas we had the area divided into zones and we had high- 11 visibility patrols for two reasons; one is to create that 12 sense of visibility, but also to allow the new units that 13 have been deployed with us to familiarise themselves with 14 the areas that they were going to be operating in. 15 MR SEMENYA SC: And the negotiator to 16 that team was Brigadier Calitz to engage the protesters, 17 you say. 18 GENERAL NAIDOO: Yes, he was in the Papa1 19 Nyala at the negotiation point. 20 [15:49] MR SEMENYA SC: And that afternoon you 21 get information about a person or a body near the koppie. 22 GENERAL NAIDOO: Yes, there was a report 23 of a body lying behind koppie 1, which was confirmed by the 24 chopper that did a flyover. 25 MR SEMENYA SC: And you needed to attend</p>

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1 to it.

2 GENERAL NAIDOO: Yes, Chair, I had to

3 support two issues there. Initially I had to get the crime

4 scene personnel taken out to the scene with an armoured

5 vehicle and subsequently the pathology services vehicle to

6 recover the corpse had to be escorted as well.

7 MR SEMENYA SC: Just addressing the

8 question of the pathology services, when did they arrive

9 there?

10 GENERAL NAIDOO: Actually quite late,

11 Chair, because it was getting quite dark and we were

12 concerned about escorting an un-armoured vehicle with the

13 knowledge that there were firearms in the area, etcetera.

14 So it took them some time to get to the scene and

15 eventually we escorted them too.

16 MR SEMENYA SC: And later that night you

17 then withdrew after the support service that you gave in

18 relation to who we now know as Mr Twala.

19 GENERAL NAIDOO: That is correct, Chair.

20 MR SEMENYA SC: You then say during this

21 deployment one of the notable observations you made as

22 police and that was discussed was the use of rituals.

23 GENERAL NAIDOO: That is correct, Chair.

24 The chopper did report to us that behind the koppie 1 they

25 had seen various males in a state of undress performing

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1 some sort of ritual.

2 MR SEMENYA SC: What did that convey to

3 you as police, this event, or this incident?

4 GENERAL NAIDOO: It indicated to us that

5 the strikers were engaging in some sort of preparation for

6 something, as previously when we had observed the rituals

7 normally thereafter we did have incidents in the mining

8 area, as on Sunday night when on Sunday we observed, there

9 was an attack on the mineshaft and people were killed and

10 injured and quite a few vehicles burned.

11 CHAIRPERSON: Did you yourself see these

12 rituals?

13 GENERAL NAIDOO: No, Chair.

14 CHAIRPERSON: I see. So your affidavit

15 is wrong where it says "During this deployment the most

16 notable observation which we made was the rituals."

17 That's –

18 GENERAL NAIDOO: Police.

19 CHAIRPERSON: The "we" means SAPS, I take

20 it.

21 GENERAL NAIDOO: That is correct, Chair.

22 CHAIRPERSON: It doesn't relate to you

23 and your group.

24 GENERAL NAIDOO: It was reported to us on

25 the radio.

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1 CHAIRPERSON: So what exactly had been

2 seen on the Sunday night?

3 GENERAL NAIDOO: There was previous –

4 CHAIRPERSON: You of course weren't there

5 then.

6 GENERAL NAIDOO: No, I was not.

7 CHAIRPERSON: But you'd received a report

8 presumably, I take it, which I can't see dealt with in your

9 statement.

10 GENERAL NAIDOO: Yes.

11 CHAIRPERSON: But was there information

12 that something of the sort had been seen also on the Sunday

13 night?

14 GENERAL NAIDOO: That's correct, ja.

15 CHAIRPERSON: Who saw that? Do you know?

16 GENERAL NAIDOO: As I say when we got to

17 Lonmin, as part of the briefing they did indicate to us the

18 issue of the rituals as well.

19 CHAIRPERSON: I see, so Lonmin made the

20 report to you?

21 GENERAL NAIDOO: No, no –

22 CHAIRPERSON: The Lonmin people –

23 GENERAL NAIDOO: Our police officials,

24 Chair.

25 CHAIRPERSON: Your police officials?

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1 GENERAL NAIDOO: That's correct.

2 CHAIRPERSON: Can you remember who it

3 was?

4 GENERAL NAIDOO: I can't remember off-

5 hand –

6 CHAIRPERSON: Which group it was.

7 GENERAL NAIDOO: I could check, but I

8 can't remember off-hand, yes.

9 CHAIRPERSON: I see. So anyway, what

10 you're telling us is that some members of the SAPS reported

11 to you that on the Sunday night before the incident at the

12 Karee Shaft where two people were killed, I think, and

13 vehicles were set alight, that rituals had also been

14 performed?

15 GENERAL NAIDOO: Yes, they informed us

16 that they had seen these rituals, yes.

17 CHAIRPERSON: Yes, yes, I understand.

18 Very well, that's something that presumably will be dealt

19 with in subsequent evidence. Yes, thank you, I'm sorry to

20 have interrupted you, Mr Semenya.

21 MR SEMENYA SC: Thank you, Chair. Then

22 there was the Wednesday the 15th.

23 GENERAL NAIDOO: That is correct, Chair.

24 MR SEMENYA SC: You were deployed

25 approximately at 10 o'clock in the morning with the same

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1 type of units and the same purpose.
 2 GENERAL NAIDOO: That is correct, Chair.
 3 MR SEMENYA SC: During that morning you
 4 deployed the five Nyalas under the command of Colonel
 5 Heyneke of the POP Pretoria to koppie 1 to support the
 6 negotiating team. What support was that?
 7 GENERAL NAIDOO: Chair, the operational
 8 commander indicated that he felt that his flanks should be
 9 protected and thus requested that the additional armoured
 10 vehicles be deployed to protect his flanks.
 11 MR SEMENYA SC: Why armoured vehicles?
 12 GENERAL NAIDOO: There, we had taken a
 13 decision at that stage before the deployment that in the
 14 direct frontline of the negotiations we would only deploy
 15 personnel in armoured vehicles due to the risk that was
 16 prevalent in terms of both the firearms and the fact that
 17 we had these large crowds.
 18 MR SEMENYA SC: And in paragraph 43 you
 19 say during the late afternoon you received delegations from
 20 the NUM and the AMCU trade unions. Is that right?
 21 GENERAL NAIDOO: That is correct, Chair.
 22 MR SEMENYA SC: And these were escorted
 23 by the Special Task Force.
 24 GENERAL NAIDOO: Yes, Chair.
 25 MR SEMENYA SC: These are members that

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1 were in your unit at the forward holding area 1.
 2 GENERAL NAIDOO: Yes, we sent them in to
 3 do the escort, Chair.
 4 MR SEMENYA SC: Why was that necessary?
 5 GENERAL NAIDOO: Chair, we - firstly
 6 these were two unions who we were informed were at
 7 loggerheads with each other. We had to ensure that they
 8 kept apart, but secondly, should the, any of the
 9 representatives from either of the unions have anything
 10 happen to them whilst they are in our company and in our
 11 escort, obviously it could aggravate the situation we had.
 12 We had to make sure that the parties were apart and safe,
 13 nothing happened to either of the parties. It could have a
 14 negative effect on what we were trying to achieve in terms
 15 of negotiation.
 16 MR SEMENYA SC: Were you part of the
 17 briefing or exchange or discussion that was had with the
 18 union leaders?
 19 GENERAL NAIDOO: Not in the earlier
 20 briefing, no. I was in the, after debriefing.
 21 MR SEMENYA SC: Yes, the reference there
 22 to additional representatives of trade unions to wait at
 23 the forward holding area 1, why was that?
 24 GENERAL NAIDOO: Chair, it was agreed at
 25 the discussions with the two unions' leadership that three

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1 representatives from each union would get 20 minutes to go
 2 and address the crowd at the koppie. We wanted to ensure
 3 that each union was properly represented and obviously
 4 three representatives would be something that we could
 5 manage in terms of security as well.
 6 MR SEMENYA SC: And there was discussion
 7 also about how they would proceed to the koppie,
 8 alternating.
 9 GENERAL NAIDOO: That's correct, Chair.
 10 We were – part of the agreement was we would take one group
 11 at a time to the koppie in an armoured vehicle and they
 12 would be given an opportunity to address the crowd, and on
 13 their return then the other group would go and address.
 14 MR SEMENYA SC: And when each team
 15 finishes you would then escort back to the forward holding
 16 area 1 and back to the JOC?
 17 GENERAL NAIDOO: That is correct, Chair.
 18 MR SEMENYA SC: Where we see VOC
 19 appearing at paragraph 43, that's the JOC at Lonmin?
 20 GENERAL NAIDOO: Yes, Chair, not a venue
 21 operation, the joint operational centre.
 22 MR SEMENYA SC: So can we have –
 23 CHAIRPERSON: It's effectively a
 24 misprint.
 25 GENERAL NAIDOO: Yes, it was my error.

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1 CHAIRPERSON: Yes, so it should be JOC.
 2 GENERAL NAIDOO: It's JOC.
 3 CHAIRPERSON: Okay.
 4 MR SEMENYA SC: Is it that time of the
 5 day, Chair?
 6 CHAIRPERSON: I'd hope to get to the end
 7 of 46, but we can't. So where are we ending now? At the
 8 end of 44? End of 43 or end of 44?
 9 MR SEMENYA SC: It's 43, Chair.
 10 CHAIRPERSON: Alright, we will adjourn
 11 now until tomorrow morning at 9 o'clock.
 12 [COMMISSION ADJOURNED]
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