

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 186

17 FEBRUARY 2014

PAGES 22388 TO 22579



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

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

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

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

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

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

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

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

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

16 MR MPOFU: That's correct, Chairperson.

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

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

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

6 GENERAL MBOMBO: It is correct, Sir.

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

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

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

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

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

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

6 MR MPOFU: That's correct, Chairperson.

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

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

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

18 MR MPOFU: Yes.

19 CHAIRPERSON: The comment that she made -

20 MR MPOFU: That she made -

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

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

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

7 CHAIRPERSON: I'm sorry, Mr Mpofo -

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

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

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

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

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

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

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

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1 information" - this is the important part – "because I
 2 think even when we were trying to talk about it last night
 3 she," and that "she" is the National Commissioner, "she
 4 asked me a question that says, 'You know, well, this one
 5 I'm not sure because the Lonmin shareholders, I do not know
 6 much about them.'" Mr Mokwena says, "Yes." Then you say,
 7 "But when I was speaking to the Minister Mthethwa he
 8 mentioned a name to me that is also calling him, that is
 9 pressurising him. Unfortunately it's a politically high,"
 10 I suppose you wanted to say politically high-placed
 11 individual, or words to that effect, correct?
 12 GENERAL MBOMBO: It should be, yes.
 13 MR MPOFU: And then Mr Mokwena says, "It
 14 is Cyril?" and then you say, "Cyril Ramaphosa, yes. Now
 15 remember now when I was talking to the National
 16 Commissioner last night she said to me, 'Look General, who
 17 are the shareholders here?' So I said I do not know the
 18 shareholders, but I know that when I spoke to the Minister
 19 he mentioned Cyril."
 20 [09:29] And then she says, "Now I got it," and we'll come
 21 back – that's the part that I said we'll come back to.
 22 "You know why she say she got it?" This is you now,
 23 "Remember, Cyril was in the Appeal Committee of Malema,
 24 remember?" "Yes," says Mokwena, and then you say, "And he
 25 was very strong in terms of the decision that was made."

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1 Mr Mokwena, "Yes." "And remember that in Impala Malema
 2 came out with our Premier and spoke to those people about
 3 that day should make their demands but in a way that, and
 4 after that we, ourselves as the police, we managed, you
 5 know, managed the situation after Malema came. Now our
 6 discussion with the National Commissioner," that means you
 7 and the National Commissioner, "was around this thing that
 8 say is this thing now happening such that again Malema come
 9 and defuse this thing, so that it becomes as if Malema has
 10 taken charge of the mining, the mine." Mr Mokwena says,
 11 "Yes." Then you say, "Once again remember Malema's view
 12 that the mines should be," Mr Mokwena, "Nationalised," and
 13 then you say, "Nationalised and all that. So it has got a
 14 serious political connotation that we need to take into
 15 account." Underline those words. Alright. "So it has got
 16 a serious political connotation that we need to take into
 17 account, but," you go on, "which we need to find a way of
 18 defusing, hence" – and the word "hence" is what causes the
 19 connection – "hence I just told these guys that we need to
 20 act such that we kill this thing." Do you see the
 21 connection? "Hence," so you say we have to take into
 22 account the political thing and defuse, "hence I told these
 23 guys that we need to act such that we kill this thing." Do
 24 you understand that that is a direct connection of the
 25 intention to kill this thing metaphorically or otherwise,

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1 being attributed directly to the political considerations
 2 which you said you needed to take into account? Do you
 3 accept that?
 4 GENERAL MBOMBO: I hear you, Sir -
 5 MR MPOFU: No, I know you hear me -
 6 GENERAL MBOMBO: - as it is written
 7 there.
 8 MR MPOFU: Yes, but do you accept, do you
 9 agree with what I'm saying?
 10 GENERAL MBOMBO: I do not want to agree
 11 totally to this, Chairperson.
 12 MR MPOFU: Okay, the part that you agree
 13 with me, does it involve the fact that the "hence" connects
 14 the intention to kill this thing, with what you just said
 15 in the previous breath, which is that you have to take into
 16 account political considerations?
 17 GENERAL MBOMBO: I am not sure of that.
 18 CHAIRPERSON: Mr Mpofu, are you now
 19 leaving the quotation, or are you going on?
 20 MR MPOFU: I'm carrying on, Chairperson.
 21 CHAIRPERSON: Alright.
 22 MR MPOFU: Right, so you say, "We need to
 23 kill this thing." "Hence we need to kill this thing."
 24 "Immediately, yes," says Mr Mokwena, and then you say – and
 25 listen again carefully because again there's a connection –

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1 "When tomorrow we have to move in, if today we do not find
 2 cooperation in these people we need to move in such that we
 3 kill it because," okay, there's another important word,
 4 "because we need to protect a situation where any jick and
 5 jiff from a political" –
 6 CHAIRPERSON: That should be Jack and
 7 Jill, I think was –
 8 MR MPOFU: It should be Jack and Jill,
 9 yes – "Jack and Jill from a political area," and again
 10 I'll, the words probably were "can come and resolve it and
 11 get the limelight," or something to that effect, but it
 12 doesn't matter. The point I'm making to you is that you've
 13 used the word "hence" and now you use the word "because".
 14 So every time you're talking about killing the thing – and
 15 I'm prepared to accept that that is metaphorical – you are
 16 linking it directly to the political question. Do you
 17 agree with that, General Mbombo?
 18 GENERAL MBOMBO: I do not agree with it,
 19 Chairperson.
 20 MR MPOFU: Do you know the meaning of the
 21 words "hence" and "because" which you used?
 22 GENERAL MBOMBO: Maybe it's because,
 23 maybe it's those words that I don't understand clearly.
 24 MR MPOFU: But you used the words,
 25 General, so we need your assistance.

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1 GENERAL MBOMBO: When I say I do not
2 agree with you, Chairperson, everything that I was saying
3 there, this was an ordinary discussion. Whoever it brought
4 in, my main idea, my intention was that an endeavour should
5 be made to brought this thing to an end then.

6 MR MPOFU: General Mbombo, please, I'm
7 going to try again, Madam. I need your assistance. I'm
8 saying to you, you on two occasions now which I've read out
9 to you, you have used the word that "There's this political
10 consideration, hence we must kill it," and then you say
11 again, "We must move in tomorrow because we do not want
12 people from a political arena coming to take advantage," or
13 whatever the rest of the sentence is. Now I'm asking you a
14 simple question. Do you accept that in those two
15 statements you, General Mbombo, are using those words, were
16 linking causally and directly the issue of the political
17 considerations to the "killing of the thing"?

18 GENERAL MBOMBO: That's why I say first
19 of all I'm not very sure of – let me say I do not agree
20 with you altogether.

21 MR MPOFU: Okay, then we get to that
22 problem again. I think if you use the word "altogether" it
23 could be interpreted to mean that she doesn't agree
24 completely. I think she used the word "entirely."

25 MR MAHLANGU: Yes, it would, can also be

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1 interpreted as entirely.

2 MR MPOFU: Okay, so you partly agree with
3 me. Now let's just forget the part where you don't agree
4 with me. Let's concentrate on the part where you agree
5 with me. Does that part involve an understanding on your
6 part or an agreement on your part that the words "hence"
7 and "because" link the killing, the finalisation of the
8 operation – let's use a neutral word – and the political
9 consideration?

10 GENERAL MBOMBO: Where I agree with you,
11 Chairperson, is that indeed yes, I did use these words.
12 With me these words only indicated the urgency with which
13 we had to handle this matter.

14 MR MPOFU: Yes, that I accept. I accept
15 that, General, wholeheartedly, entirely, that you were
16 saying things must be speeded up. All I'm saying is that
17 you were saying things must be speeded up, to use your
18 words, "because we need to protect a situation where any
19 Jack and Jill from a political area can do what they like."
20 Agreed?

21 GENERAL MBOMBO: What I was trying to
22 explain there, Chairperson, because in many occasions where
23 you allow a number of people to come and get involved in
24 trying to solve a situation, some would cause it in fact to
25 escalate instead of bringing a solution.

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1 MR MPOFU: Yes, but in this case
2 fortunately this was not a matter of speculation. Here you
3 with your own words, you were referring to a person whose
4 involvement previously had brought about a solution,
5 correct?

6 GENERAL MBOMBO: It is correct.

7 MR MPOFU: So we can put aside the issue
8 of people who might come and spoil the issue. Not only
9 were you referring to somebody who had brought about a
10 solution, according to the discussion between you and the
11 National Commissioner that is exactly what you did not
12 want. You did not want that politician to bring a solution
13 again, as you said, that "This thing now happening such
14 that again Malema come and defuse this thing." So you
15 didn't want this thing to be defused, correct?

16 GENERAL MBOMBO: Not altogether so,
17 Chairperson.

18 MR MPOFU: General –

19 GENERAL MBOMBO: Maybe let me explain why
20 I say this.

21 MR MPOFU: No, I understand what you are
22 saying. Again, once again you are using this "you don't
23 agree entirely" type of answer. I'm saying that does the
24 part where you agree with me confirm that you did not want
25 Mr Malema to come and defuse this thing, as you put it, "so

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1 that it becomes as if Malema has taken charge of the
2 mining." That's what, your discussion with the National
3 Commissioner concerned that topic and those were your
4 concerns and you wanted to prevent that, correct?

5 GENERAL MBOMBO: I am not denying that
6 that was discussed. We did talk about it, but it does not
7 mean that if he had come and he had a solution, that he
8 would have been denied.

9 MR MPOFU: No, please, General, but the
10 reason why you had to kill this thing is exactly to make
11 sure that that does not happen, according to you, or the
12 other part which I read to you many times, correct?

13 GENERAL MBOMBO: The idea was to
14 [inaudible] so that we come to a solution to this thing
15 before a lot of trouble is caused.

16 MR MPOFU: And is it something that
17 should concern you as the police what Mr Cyril Ramaphosa
18 did or did not do in a disciplinary hearing of a political
19 organisation?

20 GENERAL MBOMBO: No, it is not so.

21 MR MPOFU: And yet while you agree that
22 that is something that should not come into play, that is
23 exactly what you considered as an important factor in this
24 whole saga, correct?

25 GENERAL MBOMBO: If you'd just repeat the

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1 question, Sir?

2 MR MPOFU: You considered it an important

3 fact worth mentioning that the person who according to you

4 was pressurising the Minister was also in the Appeal

5 Committee of Malema, which is reference to a disciplinary

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

7 GENERAL MBOMBO: It is correct, yes.

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

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

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

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

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

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

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

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

16 agree?

17 GENERAL MBOMBO: I'm not sure where you

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

19 making my decision.

20 MR MPOFU: General, you know, the worse

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

22 person who made all these connections. You say Minister

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

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

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

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

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

3 National Commissioner, but you are making that connection,

4 correct?

5 GENERAL MBOMBO: As you say yes, that was

6 said.

7 MR MPOFU: Then you say that the source

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

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

10 Impala," correct?

11 GENERAL MBOMBO: It is so.

12 MR MPOFU: And you say that the National

13 Commissioner, you and the National Commissioner decided,

14 had a discussion around this thing that once again that

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

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

17 GENERAL MBOMBO: I remember saying that.

18 MR MPOFU: Yes, and you also made a

19 connection between that potential to defuse the situation,

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

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

22 mines. You made that connection, correct?

23 GENERAL MBOMBO: It is correct.

24 MR MPOFU: And having made that

25 connection you then made the statement that "This thing

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1 therefore has got serious political connotations that we

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

3 correct?

4 GENERAL MBOMBO: It's correct, Sir.

5 MR MPOFU: And you then connected it with

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

7 made the connection again. That final connection now

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

9 correct?

10 GENERAL MBOMBO: I hear you, Sir.

11 MR MPOFU: No, but I know you –

12 CHAIRPERSON: It's not a question of just

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

14 yourself said that "This is a serious political connotation

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

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

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

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

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

20 take it into account. You took serious political

21 connotations into account as reasons, not necessarily the

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

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

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

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

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1 GENERAL MBOMBO: Chairperson, I agree

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

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

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

5 doesn't agree entirely.

6 GENERAL MBOMBO: Correct, I do not agree

7 with it entirely.

8 CHAIRPERSON: Mr Mpofo, I must say I

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

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

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

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

13 the material you want is on record.

14 MR MPOFU: It's on record.

15 CHAIRPERSON: Mr Semenya will presumably

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

17 where in your contention one cannot agree with what she

18 says.

19 MR MPOFU: Yes, fair enough. That is

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

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

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

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

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

25 Minister would phone you as Provincial Commissioner and

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

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

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

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

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1 interpreted it, Mr Chairperson.
 2 MR MPOFU: Yes, and the Minister for some
 3 reason wanted you to know that he was under that pressure,
 4 quote unquote, correct?
 5 GENERAL MBOMBO: What the Minister wanted
 6 to know is what we were doing about it and asked if I was
 7 aware of what was happening.
 8 MR MPOFU: Yes, I accept that he wanted
 9 to know what you were doing but he also wanted you to know
 10 that he has been pressured or called by Mr Ramaphosa,
 11 correct?
 12 GENERAL MBOMBO: Maybe it is so but he
 13 did not say he wanted me to know that there's pressure
 14 brought to bear on him but he said to me Mr Ramaphosa had
 15 also phoned him.
 16 MR MPOFU: Yes, and you knew Mr Ramaphosa
 17 as a politically high placed individual?
 18 MR SEMENYA SC: Chair, this is just
 19 argumentative. The document says exactly that –
 20 CHAIRPERSON: He's already said that,
 21 you're just, Mr Semanya's right. She's already described
 22 him as a high placed political figure, whether you
 23 paraphrase what she said. So we've already got it on
 24 record that she regarded him as a political heavyweight.
 25 So I don't think you need make the point again.

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1 MR MPOFU: I'm obviously going somewhere
 2 else as I indicted when I started, Chairperson. I said I'm
 3 going to another, not that topic that I have already
 4 covered.
 5 CHAIRPERSON: Well let's go there.
 6 MR MPOFU: Yes. This is what I was
 7 saying to you, General, when the, this is about the
 8 National Commissioner really. When the National
 9 Commissioner discussed this matter with you she said that
 10 the minister had called her about shareholders, Lonmin
 11 shareholders, correct?
 12 GENERAL MBOMBO: No, that I don't
 13 remember.
 14 CHAIRPERSON: That's not what she said
 15 in the transcript. She wanted to know who the shareholders
 16 were, or said she didn't know who the shareholders were but
 17 I'm not sure that it went further than that and I'm not
 18 sure that your paraphrasing is correct. Let's have a look
 19 at that passage.
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: And then we can see
 22 whether your paraphrase is correct, I think, but I
 23 understand you're using it as a springboard to something
 24 else. So let's deal with it as quickly as we can. The
 25 previous page of this.

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1 MR MPOFU: Okay.
 2 CHAIRPERSON: It's before that, it's
 3 before the passage, presence, I think it's near the top of
 4 the page.
 5 MR MPOFU: Page 10.
 6 CHAIRPERSON: Here we are, National
 7 Commissioner says to me, "look General who are the
 8 shareholders here. So I said I did not know the
 9 shareholders." Then she, the question of Mr Ramaphosa
 10 comes up. So I'm not sure that your paraphrase of what the
 11 National Commissioner said was correct. But reformulate
 12 your question and put it to her and let's move on to the
 13 point that you're getting ready to make.
 14 MR MPOFU: Well firstly let me just ask
 15 you plainly when you spoke to the National Commissioner,
 16 did you get the impression that the Minister and her had
 17 had a conversation regarding the shareholders of Lonmin?
 18 GENERAL MBOMBO: No, that's not how I
 19 understood it.
 20 MR MPOFU: Okay. Now your, the
 21 Chairperson is correct, when you say that you then, she
 22 said to you who are the shareholders and you said well I
 23 don't know the shareholders but when the Minister called me
 24 he mentioned Cyril and she said to you, "now I've got it."
 25 What did you think she was referring to?

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1 GENERAL MBOMBO: She wanted to know who
 2 the holders, shareholders are, Chairperson, because it
 3 sometimes happens that when we have a problem we sometimes
 4 look at people that could have an influence. That are
 5 close to the company that could be influential.
 6 MR MPOFU: General Mbombo, when the
 7 National Commissioner said to you, when you identified this
 8 particular shareholder, "now I've got it," what did you
 9 think she meant? What is it that she got or she understood
 10 because I think that was the contents. You accept that
 11 that's what she was saying, when she says now I've got it,
 12 she means now I understand something, correct?
 13 GENERAL MBOMBO: Yes. I thought she was
 14 saying possibly that Cyril is one of the shareholders.
 15 MR MPOFU: And that's the only reason you
 16 thought she said now I've got it?
 17 GENERAL MBOMBO: That's how I thought,
 18 yes.
 19 MR MPOFU: But that's not what you said.
 20 You see, General, here the problem I have is that your
 21 words contradict you. You say there you know why she says
 22 she got it, you're asking a rhetorical question, and then
 23 you answer that question. You say, "remember Cyril was in
 24 the appeal committee of Malema," remember, that's your
 25 answer. Your own answer to your own question, is that

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1 correct?

2 GENERAL MBOMBO: It is so.

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

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

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

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

7 GENERAL MBOMBO: According to me when she

8 asked about shareholders I thought she was saying maybe

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

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

11 thinking –

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

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

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

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

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

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

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

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

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

21 later. Do you agree?

22 GENERAL MBOMBO: According to me when I

23 was talking to the National Commissioner I thought that she

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

25 mentioned that he had been in contact telephonically with

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1 the Minister.

2 MR MPOFU: Any way, once again

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

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

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

6 Commissioner was testifying here she did not even allude,

7 in fact she disowned anything to do with political

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

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

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

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

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

13 GENERAL MBOMBO: We did not discuss with

14 the National Commissioner any political pressure. Except

15 that she wanted to know who are directors or shareholders

16 of Lonmin.

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

18 linked it to the question of the political pressure,

19 correct?

20 GENERAL MBOMBO: When I personally spoke?

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

22 so the National Commissioner did not disclose to the

23 Commission any of these discussions regarding Mr Ramaphosa

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

25 CHAIRPERSON: I'm not sure that you

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

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

3 should come back, when the National Commissioner comes back

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

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

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

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

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

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

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

11 GENERAL MBOMBO: No, Chairperson, she did

12 not articulate that.

13 CHAIRPERSON: So what you are saying in

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

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

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

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

18 GENERAL MBOMBO: You mean it was me who

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

20 not the Commissioner, National Commissioner.

21 MR MPOFU: Yes, Chairperson, I'm

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

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

24 myself in June around this issue and the Chairperson almost

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

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1 evidence to suggest this question of pressure then at that

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

3 National Commissioner. As it happens now the –

4 CHAIRPERSON: I've already indicated

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

6 –

7 MR MPOFU: If I may, Chairperson –

8 CHAIRPERSON: There's a particular topic

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

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

11 will consider your application when you make it.

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

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

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

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

16 that the Chairperson was intending to call her for a

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

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

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

20 CHAIRPERSON: And the Minister will also

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

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

23 matter.

24 MR MPOFU: Yes.

25 CHAIRPERSON: And we have to make it

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

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

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

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

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

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1 remember clearly on this. If there's a passage that
 2 supports you, you may proceed but if there isn't one I
 3 won't allow you to ask the witness these questions. Page 2
 4 around about line 20 Mr Mokwena in the course of what you
 5 describe as a fairly long speech talks about people having
 6 to be arrested.

7 MR MPOFU: Ja.

8 CHAIRPERSON: And expecting people to be
 9 arrested and he says in line 23, "That is why I think it's
 10 very important for us. We want to see somebody arrested."
 11 Now, I'm not sure if he's talking about the tape recording.

12 MR MPOFU: No.

13 CHAIRPERSON: "So that the message gets
 14 across that the nine people who were killed," and so on.
 15 And then he talks about AMCU leaders are behind it. "If
 16 they do not get arrested and we do paperwork afterwards
 17 people gathered at the mountain will still believe their
 18 leaders were doing this." That's what he says up to line
 19 30. Now, I couldn't see a passage thereafter where the
 20 witness – could you just go onto the next page because we
 21 have it in front of us on screen now – couldn't find a
 22 passage where the witness agreed with that in terms. She
 23 did say line 6, you simply said the word "issue" because
 24 that relates to the question of the court interdict. It's
 25 true that she doesn't in terms disagree with Mr Mokwena –

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1 MR MPOFU: Mr Commissioner –

2 CHAIRPERSON: But I couldn't find any
 3 passage or I wasn't aware of one where she agreed in terms
 4 that leaders of the strike as it were would be arrested as
 5 requested by Lonmin, so perhaps we can ask her about it but
 6 what was your attitude? In the course of that conversation
 7 you remember Mr Mokwena did say that Lonmin were rather
 8 keen that people should be arrested. You remember that.

9 GENERAL MBOMBO: I remember that, Chair.

10 CHAIRPERSON: Now, what was your attitude
 11 in relation to that request by Lonmin.

12 GENERAL MBOMBO: Mr Chairperson,
 13 according to me at that time it wouldn't have been easy for
 14 us to arrest people. That is why I believe that we first
 15 have to talk to the people and see how we can assist or how
 16 we could be assisted.

17 CHAIRPERSON: Page 9 around about line
 18 17. She responds to – I see Advocate Hemraj drew my
 19 attention to it, she responds to the request for arrests as
 20 follows. She says –

21 MR MPOFU: I want us to be clear.

22 CHAIRPERSON: So I want us – about line
 23 14, "so I want us to – when you said people must be
 24 arrested I want us to be very clear that any information
 25 that we get we should get so that we can arrest people."

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1 That's our interest. So she's not saying we can arrest
 2 people. She says we're going to address people if you give
 3 us information which justifies the arrest which is a
 4 slightly different proposition I think. And in relation to
 5 this tape recording that was referred to at the beginning
 6 of the discussion there her evidence is, her attitude was
 7 if they've got a tape recording of that kind they must give
 8 it to the detectives and the detectives will investigate
 9 and do the necessary so I'm not sure it's fair to put to
 10 the witness that she agreed in terms as it were to arrest
 11 anybody that Lonmin wanted to have arrested or agreed or
 12 consented to receive favourably the request that was being
 13 put to her by Mr Mokwena.

14 MS PILLAY: Chair, I'm sorry, if I can
 15 just indicate there is now an agreed version of JJJ192
 16 which is slightly different from the version which we've
 17 been relying on to date.

18 CHAIRPERSON: You see, but is it – are
 19 the difference material for the present discussion?

20 MS PILLAY: For the current question,
 21 yes. There are some differences. But maybe I could give a
 22 copy to Mr Mpofo during the tea adjournment and he can have
 23 a look at it and decide.

24 CHAIRPERSON: Yes, yes, that's a very
 25 practical suggestion and my sister Hemraj says she'd like a

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1 copy as well as would the rest of us here at the table.

2 MR MPOFU: Thank you, Chairperson. Yes,
 3 for now we can just leave it at the fact that you did not
 4 when Mr Mokwena suggested that people or somebody, people
 5 must be arrested you did not disagree with him, correct?

6 CHAIRPERSON: No, no, that's not entirely
 7 fair. What she said was if you want people arrested give
 8 us information so that we can arrest them, so she wasn't
 9 saying we'll arrest anyone you ask us to arrest. What she
 10 was saying –

11 MR MPOFU: Help us.

12 CHAIRPERSON: If you give us the
 13 information –

14 MR MPOFU: Yes.

15 CHAIRPERSON: Which indicates that people
 16 should be arrested then we will do so but that falls short
 17 of what you're putting to her so I think we must be fair.

18 MR MPOFU: Okay, but what you did say was
 19 that it is our interest, it is your interest collectively,
 20 you and Lonmin, that people should be arrested, correct?

21 GENERAL MBOMBO: No, no, I wasn't talking
 22 about my interest together with Lonmin, Chairperson. I was
 23 talking of the interest of our interest as police.

24 MR MPOFU: No, no.

25 CHAIRPERSON: I think she's wrong too. I

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1 think the true position is this. This statement relates to
 2 the perception that Lonmin are as it were encouraging AMCU
 3 to do what they do and I have a clear recollection. I
 4 checked the file of press cuttings that the government
 5 provided me with. There was a statement issued by NUM at
 6 one stage alleging that the mining houses were actually
 7 assisting AMCU because they wanted – I think it was put
 8 also in the course of cross-examination – that they were
 9 assisting AMCU and they wanted AMCU to displace NUM as the
 10 dominant trade union in this area. And clearly the police
 11 attitude would be, look here, we can't come to help Lonmin
 12 to put down a violent situation which they say AMCU are
 13 responsible for if in fact they are secretly assisting AMCU
 14 to do what they do in order to displace NUM, so quite
 15 clearly the police wanted to know are Lonmin being straight
 16 with us, are they – do they really just genuinely want us
 17 to deal with this violent situation or are they secretly
 18 somehow supporting AMCU and that was the perception. That
 19 was in fact an allegation that was in effect being made by
 20 NUM and she wanted clarity on that point before they could
 21 proceed which seems perfectly sensible.

22 MR MPOFU: Ja, well, General, you know
 23 that I represent people who were arrested, correct, among
 24 others?
 25 GENERAL MBOMBO: It is so, yes.

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1 MR MPOFU: Ja. Now, I will suspend this
 2 questioning until we have the transcript, the proper
 3 transcript, but all I'm saying to you is that I want – my
 4 only interest in this is I want to know whether the people
 5 that I represent were arrested partly or wholly as a result
 6 of this invitation I suppose is a light word but
 7 exhortation that people must be arrested so that a message
 8 must be sent out there. That's what I'm going to explore
 9 with you, but for now your evidence is that you did not
 10 agree with that people should be arrested.

11 GENERAL MBOMBO: Not at the time they
 12 said it, at the time they wanted it. Not that I'm saying
 13 people would be arrested, Chairperson. When the time was
 14 appropriate they would.

15 MR MPOFU: And did you say for example if
 16 the pamphlets anger them you will move in a different
 17 direction and did that include arresting?
 18 GENERAL MBOMBO: No, not at all.

19 MR MPOFU: Didn't you say in your
 20 evidence in chief that when you used those words, we'll
 21 move in a different direction, you meant that the people
 22 would be dispersed and arrested?
 23 GENERAL MBOMBO: By the way the people we
 24 are talking about here in the context of this transcription
 25 it had to do with people that Lonmin alleged were leading

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1 the protest. The one you're referring to now, Chairperson,
 2 we were saying to them if there were problems, if you were
 3 doing a particular thing we will act this way.

4 MR MPOFU: General Mbombo, can you go to
 5 paragraph 62.5 of your statement, sorry, the amplified one,
 6 LLL1.

7 CHAIRPERSON: What paragraph are you
 8 referring to?
 9 MR MPOFU: 65.
 10 CHAIRPERSON: 65.
 11 MR MPOFU: Or rather 62.5, Chairperson.
 12 CHAIRPERSON: 62.5 so it's in –
 13 MR MPOFU: It's on page 22.
 14 CHAIRPERSON: Okay, thank you.
 15 MR MPOFU: You say there – have you got
 16 it, General? Or you can use the screen.
 17 GENERAL MBOMBO: I can see the screen.
 18 MR MPOFU: You say there, "Where I say
 19 that if protestors were to be angered by what is
 20 communicated to be the attitude of Lonmin then SAPS was
 21 prepared to take a different direction I meant that SAPS
 22 would take appropriate steps to disarm and arrest the
 23 protesters." Did you say that?
 24 GENERAL MBOMBO: I said that that is what
 25 I'm saying.

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1 MR MPOFU: Okay, no, we'll come back to
 2 these things after tea. Right. Now, I want to go to where
 3 once again you make or you make or you confirm the link
 4 between what you term for lack of a better word political
 5 opportunism.

6 CHAIRPERSON: That point has been covered
 7 really fully.

8 MR MPOFU: Well, Chairperson –
 9 CHAIRPERSON: I would've thought you've
 10 got enough material on record –
 11 MR MPOFU: I don't.
 12 CHAIRPERSON: To argue it.
 13 MR MPOFU: Well, that's the point I was
 14 making. I said I needed to add one more despite my
 15 agreement with you earlier, Chairperson, if you allow me
 16 just to add one more point.
 17 CHAIRPERSON: Well, when you've asked the
 18 question, I will then rule that we carry on.
 19 MR MPOFU: Ja, okay, can we go to page 12
 20 of JJJ192? This is a short extract of the conversation
 21 which I think for me is the most important issue which
 22 links the D day to –
 23 CHAIRPERSON: Which line are you
 24 referring to?
 25 MR MPOFU: I'm starting at 17, 18, 19,

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1 about 18, Chairperson. I'll read it out. So Mr Mokwena
 2 says to you, "So I agree with you, Commissioner," underline
 3 that. "If we can arrest these people because the longer it
 4 goes it is giving all the other opportunity to commence and
 5 seize the opportunity and then it gets out of control."
 6 SAPS Commissioner, "That is it." That is what you say.
 7 And Mr Mokwena, "So I think, yes, let tomorrow be the D day
 8 where we issue the ultimatum and say if you do not show up
 9 for work, sorry, that's it," and so on and so on. And
 10 remember now the, this – I don't want to go into all that.
 11 Your advice is that you must issue this pamphlet so that
 12 when we move in nobody has any doubt as to where the
 13 company stands – words to that effect. You remember that?
 14 [10:49] GENERAL MBOMBO: May I correct the part
 15 where you speak of advice. Again I want to say I was
 16 making there an example.
 17 MR MPOFU: Yes, Ma'am, I accept, let's
 18 say it's an example, but I'm saying your example, so-
 19 called, was that they must issue the ultimatum so that when
 20 you move in the workers know what is expected of them by
 21 the company. I'm not quoting it directly. If you force me
 22 to, I'll go to that passage, but was that generally what
 23 you were saying to them, this example of yours?
 24 GENERAL MBOMBO: That is what I was
 25 saying, yes.

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1 MR MPOFU: Thank you. So now I'm saying
 2 that ja – the link between the pamphlets and the action has
 3 been established. I'm saying what he's saying now here is
 4 that so when all those things must happen must be tomorrow
 5 which he calls D Days and he says that because of what you
 6 and him and have agreed that opportunity to receive – will
 7 receive the opportunity as it were. Do you understand
 8 that?
 9 GENERAL MBOMBO: I understand,
 10 Chairperson.
 11 MR MPOFU: Thank you, Chairperson. And
 12 by the way, is it correct that the fact that there were
 13 these police considerations to be taken into account was
 14 not discussed by you with your generals, correct?
 15 GENERAL MBOMBO: No it is not so.
 16 MR MPOFU: Oh I see, so did you also
 17 share with them this issue about the Minister having phoned
 18 you about Mr Ramaphosa and Mr Malema and all that jazz?
 19 MR MPOFU: If I say it is not so I
 20 intended to convey that I did not discuss with them.
 21 MR MPOFU: Okay sorry. That was a
 22 language issue. So you're agreeing with me that you did
 23 not share it with the commanders.
 24 GENERAL MBOMBO: I did not.
 25 MR MPOFU: Yes, sorry, sorry about that.

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1 And I think Mr Budlender asked you this question, but just
 2 for my own clarity because I'm going to argue that it's
 3 highly irregular that you would discuss this decisive piece
 4 of information with Lonmin and not the people that you
 5 should be discussing it with, if it was proper, who are
 6 your commanders. What will you say when I argue that?
 7 GENERAL MBOMBO: Remember even when I
 8 answered then I said the purpose of my discussion with
 9 Lonmin was to find out what it is that they were doing in
 10 order to bring this problem to an end.
 11 MR MPOFU: Well I'll leave I'll leave it
 12 with that answer and the answer you gave to Mr Budlender.
 13 I was now saying, before the comfort break –
 14 CHAIRPERSON: You were moving onto
 15 another point.
 16 MR MPOFU: Yes, to the point that I was
 17 going to move on before the comfort break.
 18 CHAIRPERSON: All right. You say you
 19 didn't share these considerations that you said had to be
 20 borne in mind about the political connotation, didn't share
 21 that with the commanders, the operational commander and the
 22 overall commander and members of the JOCCOM. Did you
 23 mention them to the National Commissioner?
 24 GENERAL MBOMBO: Chairperson, there was
 25 just one thing that we spoke with the National

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1 Commissioner, Chairperson, and it was that the Minister had
 2 said to me he had been phoned by Mr Ramaphosa.
 3 CHAIRPERSON: Yes, I understand, but you
 4 then went on in talking to Mokwena to say there would be
 5 serious political connotations we must take into account.
 6 Now did you mention those to the National Commissioner at
 7 any stage?
 8 GENERAL MBOMBO: We did not have such
 9 discussion, Chairperson, not that I remember.
 10 CHAIRPERSON: And we've heard that the
 11 extraordinary session of what one can describe as the rump
 12 of the National Management Forum discussion, took about an
 13 hour or up to an hour you told us. Now during the course
 14 of that discussion were these points mentioned at all in
 15 any way?
 16 GENERAL MBOMBO: I did not talk about
 17 this, Chairperson.
 18 CHAIRPERSON: Did anybody else do so?
 19 GENERAL MBOMBO: I don't remember it
 20 being mentioned by any other person.
 21 MR MPOFU: General, you did not know that
 22 your conversation with Mr Mokwena was being recorded
 23 correct?
 24 GENERAL MBOMBO: It is so, yes.
 25 MR MPOFU: If the transcript of that

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

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

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

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

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

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

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

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

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1 pressure which was widely publicised you didn't jog your
2 memory?
3 GENERAL MBOMBO: Maybe during that time
4 or around December it came to my mind. I then thought I
5 would be putting it in my supplementary statement when I
6 corrected it.
7 MR MPOFU: So you specifically thought in
8 December 2012 that maybe one day in 2014 you will do a
9 supplementary statement and then you'll mention this
10 important fact.
11 [11:08] GENERAL MBOMBO: According to me I was
12 busy already with the supplementary statement. I don't
13 remember whether it was in 2013.
14 MR MPOFU: Yes, so your evidence is that
15 for a whole year you sat with this information between
16 December 2012 and December 2013, on the hope because you
17 thought that maybe in a year's time there would be a
18 supplementary statement. Didn't you think this was now an
19 important issue before this Commission?
20 GENERAL MBOMBO: It was something that I
21 had to say in my statement, yes.
22 MR MPOFU: Did you bring it to the
23 attention of your lawyers in December 2012 when it crossed
24 your mind, when your memory was jogged?
25 GENERAL MBOMBO: I did not do so,

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1 Chairperson.
2 MR MPOFU: Well, I put it to you that for
3 all these, because of all these issues that I've raised,
4 whether your own actions or the actions of others who also
5 seem at this stage to have concealed this event, I put it
6 to you that had this not been revealed through the good
7 work of Lonmin counsel you would not have revealed it to
8 this Commission, despite the fact that it crossed your mind
9 in December 2012.
10 GENERAL MBOMBO: I disagree with you
11 there, Sir.
12 CHAIRPERSON: Are you now moving on to
13 your ultimate point?
14 MR MPOFU: On this topic, yes,
15 Chairperson.
16 CHAIRPERSON: No, no, never mind this
17 topic. You indicated to me there was what we called a
18 penultimate point and then there was going to be your last
19 point. Now have you finished with the penultimate point
20 and moving on to the last point –
21 MR MPOFU: No –
22 CHAIRPERSON: - or are you still busy
23 with the penultimate point?
24 MR MPOFU: No, Chairperson, let me –
25 CHAIRPERSON: I'm just asking you –

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1 MR MPOFU: Yes.
2 CHAIRPERSON: - because I was proposing
3 to take the tea adjournment at a convenient stage, that's
4 all -
5 MR MPOFU: Yes. No, no, I think it's my
6 fault –
7 CHAIRPERSON: - a stage that's
8 convenient –
9 MR MPOFU: Yes, it's my fault,
10 Chairperson. What I said to the witness in the morning is
11 that I'm going to deal with a number of points and then I
12 have a big topic which I will deal with as hopefully the
13 last topic. I'm not there yet. I'm still doing the
14 cleaning up, that cluster of points which I –
15 CHAIRPERSON: How many of the cluster
16 points have you still got?
17 MR MPOFU: Well, some of them have kind
18 of sneaked in through, so I think I have two – let me just
19 explain to you, Chairperson. What I'm doing is I've said
20 that her topics in the meeting with Mokwena were these six.
21 We've now covered four of –
22 CHAIRPERSON: I see. So you've got two
23 of those points to cover.
24 MR MPOFU: Yes, and then we –
25 CHAIRPERSON: Alright, okay.

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1 MR MPOFU: And then I had what Mokwena's
2 topics were and we've already covered one of them, which
3 was the -
4 CHAIRPERSON: Yes, well okay, I
5 understand now what's going on.
6 MR MPOFU: Yes.
7 CHAIRPERSON: And that is covered by the
8 topics that I gave you permission to cross-examine on.
9 MR MPOFU: Correct.
10 CHAIRPERSON: No, I understand.
11 MR MPOFU: Thank you, Chairperson.
12 CHAIRPERSON: Okay, shall we take the tea
13 adjournment now?
14 MR MPOFU: Yes, it will be convenient,
15 Chairperson.
16 [COMMISSION ADJOURNS COMMISSION RESUMES]
17 [11:40] CHAIRPERSON: The Commission resumes.
18 During the adjournment we had some housekeeping matters to
19 attend to, which explains the delay in coming back. One of
20 the things related to the new version of exhibit, it's
21 JJJ192 bis. This is the revised and improved and agreed
22 version of the transcript of the conversation on the
23 afternoon of Tuesday, the 14th of August 2012, between Mr
24 Mokwena and others of Lonmin on the one hand and the
25 witness on the other. It's headed "Second proofread

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1 version," that's the way that one distinguishes it from the
 2 one we've had up to now. Because there's been cross-
 3 examination on the earlier one I don't propose just
 4 replacing the exhibit because those who follow the cross-
 5 examination will be puzzled if they find the references of
 6 the exhibit don't match up with the one that's before us.
 7 So that's why it's got to be in as a separate exhibit, but
 8 to avoid confusion it's JJJ192 bis.
 9 The main points of difference, as I understand,
 10 this is not intended to be an exclusive statement to the
 11 points of difference, but at certain parts of the record
 12 there are insertions of comments made by the witness which
 13 I quote one as an example, at the foot of page 2 she's
 14 recorded as having said "Mmmm," and then that four Ms and
 15 then after that in brackets it says "in agreement," and
 16 then there are a number of other examples of that. So
 17 that's why Adv Pillay drew our attention to the fact that
 18 there are material insertions in the second proofread
 19 version of the transcript and that's why I'm referring to
 20 them now, and I understand Mr Mpofu is now going to return
 21 to those because there was a point he left over until the
 22 revised transcript was before us. But let me ask the
 23 witness - you're still under oath, Provincial
 24 Commissioner -
 25 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.

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1 CHAIRPERSON: Have you had an opportunity
 2 to see the revised transcript?
 3 GENERAL MBOMBO: I see it now, Mr Chair.
 4 CHAIRPERSON: I take it the words "in
 5 agreement" for example at the foot of page 2 and the foot
 6 of page 3, those are obviously not the witness's words, so
 7 they should really be in square brackets rather than in
 8 round brackets. So I will amend my one, which I hope one
 9 day will be the official document, but even there I suppose
 10 the objection arises that that is the interpretation of the
 11 transcribers rather than anything else. But Ms Pillay did
 12 tell me this had been agreed by the parties. Did they
 13 agree to that in parenthetical insertion as well?
 14 MS PILLAY: Chair, the version that we
 15 have now has been circulated and agreed by the parties,
 16 yes.
 17 COMMISSIONER HEMRAJ: But the comment "in
 18 agreement" at the end of all these Mmmms, that's the
 19 transcriber's comment, isn't it?
 20 MS PILLAY: That's correct, Chair. What
 21 has happened is that certain parties were insisting that
 22 that be included in the transcript and that's why it was
 23 included.
 24 CHAIRPERSON: Well, perhaps we should
 25 hear from Mr Semenya because it directly relates to the

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1 party whom he represents.
 2 MR SEMENYA SC: It would be less amusing
 3 if you saw page 1 where Mr Mokwena speaks, but he's not in
 4 agreement there. He just says Mmmm.
 5 CHAIRPERSON: There's no interpretive
 6 comment in parenthesis or otherwise as to what he meant by
 7 "Mmmm." So what do you want me to do? Do you agree that
 8 these others are -
 9 MR SEMENYA SC: Well, it's clearly not
 10 evidence, so those were to be in square brackets -
 11 CHAIRPERSON: No, the transcript before
 12 us, do you want me to delete the expressions in brackets?
 13 MR SEMENYA SC: Indeed, Chair.
 14 CHAIRPERSON: Alright, I'll do that. The
 15 Mmmm, the four Ms stands, but the words which are the
 16 transcriber's interpretation are deleted.
 17 MR MPOFU: Don't delete it too hard,
 18 Chairperson. You might have to reinstate it.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 ask the witness whether she was agreeing obviously -
 21 MR MPOFU: Yes, that's what I intend to
 22 do.
 23 CHAIRPERSON: But one of the problems is
 24 I understand from what she says that she's only seen it
 25 now. I assumed that it had been, you know, agreed by

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1 everybody, including the SAPS, and the witness had seen it.
 2 That appears not to be the case.
 3 MR MPOFU: Chairperson, I'm prepared to
 4 leave it for now. If it so happens that I have to come to
 5 this issue, then we'll have a break to give the witness a
 6 chance to have a look at it, or it might just happen that
 7 she'll have the lunch break.
 8 COMMISSIONER HEMRAJ: Ms Pillay, has
 9 someone done the exercise of comparing these two documents
 10 so we might know where our attention needs to be focussed?
 11 MS PILLAY: Commissioner Hemraj, we have
 12 compared the two documents. I think all the parties that
 13 have looked at 192 bis have compared 192 and 192 bis. If I
 14 can just explain the different, Chair, between the two, the
 15 "Mmmm (in agreement)" and the plain "Mmmm," it really was
 16 trying to capture the difference in the sound between the
 17 two. That was the debate which resulted in the difference
 18 between the two.
 19 CHAIRPERSON: We now have a new
 20 certificate on page 22 by Ms Louw who confirmed that she
 21 was instructed by Cliffe Dekker Hofmeyr Inc, that's the
 22 attorneys for Lonmin, to listen carefully to the audio clip
 23 of a meeting between the Provincial Police Commissioner and
 24 Lonmin representatives which took place on 14 August 2012
 25 and to compare same against the transcript of Realtime

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

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1 CHAIRPERSON: The only problem is of
2 course Xhosa is a language, unlike English, where I
3 understand the tone can alter the meaning quite
4 dramatically.
5 MR MPOFU: No, but Chairperson –
6 CHAIRPERSON: As I say that's a correct
7 statement as far as the Xhosa language is concerned. It
8 resembles Chinese in that respect, I believe, but not
9 English. So you've got tone problems as well here and
10 certainly it will be a very unsafe basis for us to proceed
11 where we've got "Mmmm" which could mean a number of things.
12 So I would have thought that the way forward is for perhaps
13 the witness to listen to the recording and she might well
14 be able to say yes, I accept that that's, when I said that
15 I meant I agree, and when I said that I mean carry on and
16 I –
17 MR MPOFU: Yes, no –
18 CHAIRPERSON: - when I said the third
19 version of "Mmmm" I meant I understand, or whatever.
20 MR MPOFU: Yes.
21 CHAIRPERSON: But perhaps an exercise of
22 that kind can be performed.
23 MR MPOFU: Thank you, Chairperson –
24 CHAIRPERSON: But it's not possible for
25 us to decide it here. You of course got the point that in

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1 certain circumstances –
2 MR MPOFU: Context –
3 CHAIRPERSON: - where one would expect
4 disagreement and there is no disagreement, you could argue
5 in certain cases -
6 MR MPOFU: Yes.
7 CHAIRPERSON: - that silence indicates
8 agreement or consent.
9 MR MPOFU: Yes.
10 CHAIRPERSON: But that's also a matter
11 which should stand over –
12 MR MPOFU: I accept that.
13 CHAIRPERSON: - for argument at the end.
14 MR MPOFU: I accept that, Chairperson. I
15 just was intending to use context, but obviously it's not
16 working. So as I say, I'm not wasting anymore time.
17 COMMISSIONER TOKOTA: I just want to
18 demonstrate what the Judge has just said. For example you
19 can say "Mmmm," in other words he was going to say the
20 "Mmmm," saying is that so?
21 MR MPOFU: Ja.
22 GENERAL MBOMBO: Mmmm.
23 COMMISSIONER TOKOTA: Or you say "Mmmm,"
24 what you mean I hear you. Or "Mmmm," when you say I agree.
25 Yes, there's also, the tone is very important, as the Judge

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1 says.
2 MR MPOFU: Yes.
3 GENERAL MBOMBO: Mmmm.
4 MR MPOFU: Now that's –
5 COMMISSIONER TOKOTA: Somebody who
6 doesn't speak Xhosa who listens to the audio will not
7 understand.
8 GENERAL MBOMBO: Mmmm.
9 MR MPOFU: Ja, I accept that,
10 Chairperson, but all I'm saying is that despite all these
11 intonations and so on, the issue is that the context would
12 clearly say whether a person is agreeing or not, but the
13 witness doesn't want to go along with that.
14 CHAIRPERSON: So that will be a matter of
15 argument at the end -
16 MR MPOFU: Yes, I'll leave it for now,
17 yes. Thank you, Chairperson. And also the hearer would
18 know which of those it is, but –
19 CHAIRPERSON: Yes, of course. There are
20 other complications. There's what has been, the speech
21 patterns –
22 MR MPOFU: Yes.
23 CHAIRPERSON: But there are also levels
24 of Xhosa, the witness I understands speaks what's described
25 as very deep Xhosa, which is the same as Mr Tokota's Xhosa,

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1 which is sort of aristocratic kind of speech and there are
2 other forms of Xhosa usage which can't be so described.
3 MR MPOFU: Yes.
4 CHAIRPERSON: But these are all
5 complications which are very difficult for the Commission
6 to resolve. I suspect the witness – I'm correct in saying
7 she speaks what's described as a deep Xhosa, aristocratic
8 kind of Xhosa -
9 MR MPOFU: Well, I –
10 CHAIRPERSON: - which may well cause
11 difficulties in certain quarters. But I don't think we
12 need to go there either.
13 MR MPOFU: No, we don't, Chairperson, but
14 we must also remember that her conversation with Mr Mokwena
15 was not in Xhosa, it was in English, but be that as it may;
16 we'll come back to this. I think bottom line is that we're
17 not ready to cross-examine on this for now. So it had
18 nothing to do –
19 CHAIRPERSON: Of course the question is
20 when she was saying "Mmmm," whether she was speaking Xhosa
21 or English, but we don't have to go there now either.
22 MR MPOFU: Well, the rest of the
23 transcript she was speaking English. She didn't even once
24 say anything in Xhosa. So I think it's a red herring, if
25 you ask me, Chairperson. I think it's just an escape –

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

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1 CHAIRPERSON: Perhaps we can proceed on
 2 the page where there isn't one –
 3 MR MPOFU: But just be mindful –
 4 CHAIRPERSON: Ms Pillay who seems to know
 5 her way around the new document can keep an eye on that and
 6 if there's a significant difference she can turn her light
 7 on and draw our attention to it.
 8 MR MPOFU: Thank you, Chairperson.
 9 CHAIRPERSON: If she doesn't mind having
 10 that task imposed upon her.
 11 MS PILLAY: I'll do so, Chairperson.
 12 CHAIRPERSON: Thank you.
 13 MR MPOFU: Okay so for the purposes of
 14 you and I, General, we are on the original JJJ192. When
 15 you say after this discussion about management being
 16 separated from the perception and so on. Then you say that
 17 "I want it to be very clear that any information that we
 18 get we should get so that we arrest the people, that is our
 19 interest because yourselves here as management, you will
 20 clear yourselves from this perception, you know" and so on.
 21 When you say our interests who are you referring to?
 22 GENERAL MBOMBO: I think, Mr Chair, I was
 23 referring to us as the police.
 24 MR MPOFU: Okay and when you say at
 25 paragraph 13, the bottom of paragraph 13, line 28,

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1 Chairperson, also.
 2 GENERAL MBOMBO: Sorry, page 13?
 3 MR MPOFU: 13 of JJJ192 ja.
 4 CHAIRPERSON: The original document.
 5 He's using that because it's got a line indication to the
 6 side of the page. What line are you referring to on the
 7 original page –
 8 MR MPOFU: 28, Chairperson.
 9 CHAIRPERSON: So it's the comment by the
 10 witness "I think it is very right what Graham is saying."
 11 MR MPOFU: Yes, that's the one. I'll
 12 read it out. You say there "I think it was very right what
 13 Graham is saying because you know we need to show our
 14 employees, all of them, in a balance that we are still in
 15 control." Who are our employees?
 16 GENERAL MBOMBO: Yes, in this context I
 17 was referring to the police and Lonmin.
 18 MR MPOFU: As one team, as a collective,
 19 correct? So "we" there was the collective for the Lonmin
 20 and SAPS.
 21 GENERAL MBOMBO: Chair, I was referring
 22 to Lonmin and its employees as well as SAPS and its
 23 employees.
 24 MR MPOFU: No, are you suggesting now
 25 that you also wanted the police to know who is in control,

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1 don't they know? Surely you were talking about – you were
 2 using Lonmin and SAPS in the collective as one collective
 3 to say our employees, meaning that you and Lonmin were one
 4 thing for the purposes of that sentence. Correct?
 5 GENERAL MBOMBO: I was referring to my
 6 employees, the police and they would also be referring to
 7 their employees.
 8 MR MPOFU: General, that is patently
 9 untrue because you remember you were agreeing what Mr
 10 Sinclair was talking about which we will go into now. It
 11 was about deployment of horses and all that and you're
 12 saying you agree with Graham because this would show
 13 employees, all of them, in a balance that we are still in
 14 control. So there's no need to show the police that you
 15 are in control by deploying the same police. I mean that
 16 is senseless.
 17 GENERAL MBOMBO: Mr Chair, what I was
 18 referring to here was the police, yes I did speak about the
 19 police and Lonmin and its employees.
 20 MR MPOFU: Okay well I'll argue that but
 21 that's just simply untrue. Can you go to page 14? Against
 22 the letter, about 18, Chairperson. There you say – okay
 23 again Graham Sinclair talks about moral support for the
 24 guys and so on and then it says "No they are going to – we
 25 already deployed them because now they have to call them

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1 back for this operation. We deployed them to key areas"
 2 and Graham says "Yes we deployed 110." So the we there
 3 clearly again talks about the police and Lonmin as one
 4 thing. Do you agree?
 5 GENERAL MBOMBO: This statement of Graham
 6 where he speaks about 110 I thought he was referring to his
 7 people that he had deployed.
 8 MR MPOFU: Okay I'll show you that that's
 9 also untrue. Ja he carries on and he says "we are going to
 10 deploy the horse and dot, dot" and then he says "but we
 11 bring them back now because I want all of them to move all
 12 of them at once to that area." So surely here you were
 13 talking about members of SAPS.
 14 GENERAL MBOMBO: Yes, there I'm talking
 15 about the police.
 16 MR MPOFU: Yes but it's clear that
 17 between you and Mr Sinclair you're talking about the same
 18 group of people. So if you were talking about the police,
 19 he was talking about the police too.
 20 GENERAL MBOMBO: I was not at all times
 21 sure that whenever he spoke he was referring to the police.
 22 MR MPOFU: And even when he says Calitz
 23 is on top of that with me, Ma'am. In other words this
 24 deployment that he's talking about, he still talks to you
 25 as referring to him and Calitz were on top of deployment of

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1 Lonmin security.

2 GENERAL MBOMBO: I thought he meant

3 Calitz was on top of the deployment of the police whilst he

4 was on top of the deployment of Lonmin security.

5 MR MPOFU: Okay last attempt. If you go

6 back to page 13 which is the original statement that you

7 are agreeing with from Mr Sinclair. He says now we have

8 got now the horse units we want to deploy as well for

9 visible policing. So visible policing must mean the

10 police, correct?

11 GENERAL MBOMBO: According to that

12 terminology yes it refers to the police.

13 MR MPOFU: All right.

14 MR VAN AS: Sorry, Mr Chairman. Policing

15 in that context doesn't necessarily have to refer to

16 police. Security –

17 CHAIRPERSON: I think that's a matter for

18 the witness to answer and not for you to answer from the

19 bar.

20 MR MPOFU: Thank you and the witness has

21 answered. Okay can –

22 COMMISSIONER HEMRAJ: Mr Van As does

23 Lonmin – sorry does Lonmin have any security officers on

24 horseback?

25 MR VAN AS: Not to the best of my

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1 knowledge.

2 MR MPOFU: Thank you, Commissioner. Also

3 just to round off another point very quickly, I promise. I

4 asked Mr Semenya last night to ask you to read from

5 exhibits that were not our list. One of them was the

6 statement of the Minister. Have you read it?

7 GENERAL MBOMBO: Yes I have.

8 MR MPOFU: Thank you, I think,

9 Chairperson, indeed I made an arrangement with Mr Semenya

10 to kindly convey the message and the witness says she has

11 read the statement but I don't want to refer to it in

12 detail. So I'll just ask one question, a broad one which

13 might not necessitate us going to the actual –

14 CHAIRPERSON: I would appreciate that

15 mode of procedure.

16 MR MPOFU: Thank you, Chairperson.

17 Having read the statement of the Minister would you agree

18 simply that he does not refer to the telephone conversation

19 with you which you have now testified about most of the

20 morning.

21 GENERAL MBOMBO: I saw that statement.

22 MR MPOFU: Yes, and I also asked you to

23 read Mr Ramaphosa's statement, do you remember?

24 GENERAL MBOMBO: That is so.

25 MR MPOFU: Would you also agree that he

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1 does not refer to a discussion with the Minister which

2 might have happened on the Sunday or before the 13th, let me

3 put it that way. Would you agree?

4 GENERAL MBOMBO: I saw it, that is

5 correct.

6 MR MPOFU: Yes okay, and in fact the only

7 conversation he talks about regarding the Minister is at a

8 time when already policemen had been killed. Is that

9 correct?

10 GENERAL MBOMBO: I do not remember now

11 whether –

12 MR MPOFU: We can just have a quick look.

13 GENERAL MBOMBO: - his statement contains

14 something like that.

15 MR MPOFU: Yes, it's FFF32 –

16 GENERAL MBOMBO: Paragraph?

17 CHAIRPERSON: Just let me understand

18 what's going on now. The are exhibits before us where the

19 affidavits made by the Minister and Mr Ramaphosa –

20 MR MPOFU: Yes, Chairperson –

21 CHAIRPERSON: - now they are both going

22 to come and give evidence and they're going to be

23 presumably asked about these affidavits.

24 MR MPOFU: Yes.

25 CHAIRPERSON: You may at some stage that

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1 certain things appear from the statements, particular

2 passages should be interpreted in a particular away, but

3 what's the point of asking this witness questions like

4 that? I don't understand what's going on. There may a

5 point that you've got that I don't understand which is a

6 permissible way of proceeding, but I'd be grateful if you'd

7 explain it to me.

8 MR MPOFU: There is, Chairperson, the

9 simple point is that the - whatever the Minister or Mr

10 Ramaphosa might whoever might come insofar as the evidence

11 I'm dealing with now concerns conversations with this

12 witness I have to put things to her because she was part of

13 that conversation. There's no use in me saying to the

14 Minister later but you had a telephone call with General

15 Mbombo and then by then he'll say oh well you must ask

16 General Mbombo and I'm asking her now because she's here.

17 I don't want to bring her back –

18 CHAIRPERSON: All right, what passage –

19 Mr Ramaphosa's affidavit is what exhibit? Has it not got

20 an exhibit number yet?

21 MR MPOFU: I think it's 32.

22 MS PILLAY: FFF32.

23 CHAIRPERSON: FFF33?

24 MS PILLAY: 32.

25 CHAIRPERSON: FFF32, 32, FFF32. Yes I

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

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

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

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

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

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

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

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

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1 MR MPOFU: Yes, you were not sure even in
 2 the case of the police, that's why you took them to EHW.
 3 I'm saying in your estimation were the protesters also
 4 affected emotionally?
 5 GENERAL MBOMBO: Maybe.
 6 MR MPOFU: And the events of the 16th you
 7 would agree were even more traumatic and graphic than those
 8 of the 13th, at least in terms of numbers. Would you agree?
 9 GENERAL MBOMBO: That is so.
 10 MR MPOFU: And while you and the
 11 Commissioner were boosting the morale, as you put it, of
 12 the troops - and I'm using that word loosely - did it occur
 13 to you that the protesters who were the only people who had
 14 lost on that occasion their friends and colleagues, could
 15 have been even more traumatised?
 16 GENERAL MBOMBO: Do you mean whether we
 17 spoke about it or not?
 18 MR MPOFU: I don't know whether you spoke
 19 about it or not, but did it occur to you?
 20 GENERAL MBOMBO: According to me yes, I
 21 thought of it like that.
 22 MR MPOFU: Given your realisation that
 23 they would have been more traumatised, do you now think
 24 that instead of being sent to EHW like the police, it was
 25 proper for them to be sent to police cells instead?

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1 GENERAL MBOMBO: You must remember, Mr
 2 Chair, some of them had to be arrested for being in
 3 possession of the weapons.
 4 MR MPOFU: So you went along with a
 5 decision that said people who have gone through this
 6 horrific experience with their friends having been killed
 7 in front of their eyes, that instead of them being
 8 counselled like the police, they must be locked up?
 9 GENERAL MBOMBO: Yes, it is like that.
 10 MR MPOFU: And you took no steps
 11 whatsoever that they should be counselled for the traumatic
 12 event of having witnessed their loved ones dying in front
 13 of them?
 14 GENERAL MBOMBO: That was not up to me to
 15 do.
 16 MR MPOFU: And did you know that none of
 17 the people who were arrested there had been linked to any
 18 dangerous weapons?
 19 GENERAL MBOMBO: No, I do not know about
 20 that. I only hear it now from you.
 21 CHAIRPERSON: Is that factually correct?
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: Well, I –
 24 MR MPOFU: It is.
 25 CHAIRPERSON: I went through some of the

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1 documents the other day and I see that one at least of the
 2 people, one at least, or two I think were allegedly found
 3 in possession of firearms on koppie 3. I didn't check up
 4 in relation to dangerous weapons, but certainly at least
 5 two of the persons are charged with possessing firearms and
 6 there are dockets open in respect of that and they were
 7 arrested at koppie 3 and the firearms, there's photographs
 8 of the firearms in exhibit L. So I'm not sure the
 9 statement you make in its total ambit is correct.
 10 MR MPOFU: Ja, okay. Do you think it's
 11 reasonable to arrest 250 people for two firearms?
 12 CHAIRPERSON: They weren't arrested for
 13 two firearms. There were specific people arrested for
 14 firearms. Most of the others were arrested for public
 15 violence, as I understand it.
 16 MR MPOFU: That's the point.
 17 CHAIRPERSON: And a charge of murder was
 18 added later, but I'm not sure that the opinion of this
 19 witness whether it's appropriate to arrest or not is
 20 something that's going to help us to answer the terms of
 21 reference of this Commission.
 22 MR MPOFU: Yes. General, was your
 23 evidence earlier on that everything that is done there,
 24 including the arrests and criminal investigations, you are
 25 ultimately responsible for?

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1 GENERAL MBOMBO: Please repeat the
 2 question.
 3 MR MPOFU: Was your evidence, or was it
 4 not, that everything that happened on that scene in
 5 relation to that operation, including the arrests of
 6 people, were your ultimately responsibility?
 7 GENERAL MBOMBO: The arrests of people
 8 there for public violence and being in possession of
 9 weapons, yes, is my responsibility.
 10 MR MPOFU: Well, now you're
 11 opportunistically grabbing what the Chairperson has just
 12 said. You said earlier that the people were arrested for
 13 dangerous weapons, but now you're taking the hint from the
 14 Chairperson. Is that correct?
 15 GENERAL MBOMBO: That is so, because I do
 16 not explain.
 17 MR MPOFU: Yes, so let's confine
 18 ourselves to what you regarded as being the reason for the
 19 arrests. I'm saying to you, I've given you the background;
 20 here's a group of people who are on your version even more
 21 traumatised than, or should be more traumatised than the
 22 police members, at least on that occasion. We know the
 23 police members could not have been traumatised because they
 24 were laughing around those dead bodies. So I'm saying to
 25 you, you have a situation where you have a group of people,

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

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

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

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

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1 been equally –

2 MR MPOFU: More.

3 CHAIRPERSON: - or possibly more, but

4 anyway, we won't debate that either. There would have been

5 traumatic experiences suffered by those on what one can

6 call the other side. The people who were arrested, the

7 people who survived the shooting, the people who saw their

8 comrades killed and maimed, they would also have gone

9 through a wrenching traumatic emotional experience. They

10 were in custody. They were detained in police cells which

11 fell under your jurisdiction as the Provincial

12 Commissioner. Did you consider it necessary or desirable

13 or appropriate or human to make arrangements to see that

14 they also receive counselling for the traumatic experiences

15 they undoubtedly underwent? That's counsel's question. I

16 put it a little bit at greater length than he did, but I

17 think that is his question. If he doesn't agree with it,

18 he will tell me.

19 MR MPOFU: I agree. Mmmm.

20 CHAIRPERSON: I don't know what that

21 "Mmmm" means, but what's your answer to the question,

22 Provincial Commissioner?

23 GENERAL MBOMBO: Mr Chair, it is my

24 responsibility to have counselling for the police, that

25 they are counselled when they have been in such an

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1 operation. According to us, the police, we do not have

2 facilities to counsel people who are not police officers

3 and who are arrested. Not disputing that they could have

4 been traumatised, but our job there was to disarm and

5 arrest people and that's what we were doing.

6 MR MPOFU: And instead you and the police

7 for whom you are ultimately responsible took steps to

8 ensure that those people are charged with the murder of

9 their comrades, correct?

10 GENERAL MBOMBO: That is what I heard,

11 yes.

12 MR MPOFU: Ja, so that's the point I'm

13 making. I'm juxtaposing, and I'll accept for now that it's

14 one thing not to arrange counselling for them because of

15 the reasons you've explained, but what I'm talking to you

16 is the things that you actually did, which was, (a), to

17 have them arrested and also to take steps to intimate to

18 the public prosecutors that they should be charged with the

19 murder of the same people –

20 CHAIRPERSON: Let's just clarify that.

21 Did you do that? Did you –

22 MR MPOFU: Van Zyl did that.

23 CHAIRPERSON: Did you cause the – you

24 yourself cause the prosecutor to be contacted and to be

25 told he must add a charge of murder? Was that your idea

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1 and your initiative?

2 GENERAL MBOMBO: That is not so, Mr

3 Chair. I never was involved in that discussion.

4 MR MPOFU: Yes, that's why I said, when

5 the Chairperson was not listening I said the investigators

6 for whom you are ultimately responsible, the record will

7 show that –

8 CHAIRPERSON: I understand people for

9 whom she's responsible did things, but you were really

10 asking her about her mental attitude in response to things

11 and I thought it appropriate to establish whether it was

12 her initiative or the initiative of people for whose acts

13 she may be responsible.

14 MR MPOFU: Yes, in any event –

15 CHAIRPERSON: You don't have to suggest I

16 wasn't listening. Sometimes –

17 MR MPOFU: No, no –

18 CHAIRPERSON: - I'm not able to hear

19 everything, but –

20 MR MPOFU: No, Chairperson, I was

21 criticising the witness, not you.

22 CHAIRPERSON: Well, I'm afraid I was

23 caught in the crossfire. I don't like that.

24 MR MPOFU: I'm sorry.

25 CHAIRPERSON: Don't do it again.

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1 MR MPOFU: No, no, I'm sorry,

2 Chairperson. No, what I was saying, again like I said that

3 she's taking advantage opportunistically of something that

4 you say. I'm not suggesting anything the way the

5 Chairperson took it.

6 CHAIRPERSON: Well, you know if I maybe

7 with a little bit of modesty can say if I sometimes, really

8 infrequently make a good point there's no reason why the

9 witness can't be entitled to take advantage of it.

10 MR MPOFU: Absolutely.

11 CHAIRPERSON: The trouble is if she takes

12 advantage of my bad points –

13 MR MPOFU: Yes, Chairperson. Thank you.

14 No, what I'm trying to say, General, is you would at least

15 agree with me if I put it like this; that some of the

16 senior people who are answerable to you – in fact, let's

17 just be direct. I'm talking about Brigadier Van Zyl. He

18 in cooperation – I think let's use that word – with

19 National Director of Prosecutions, and I'm saying that

20 because I had to cross-examine him in the bail application,

21 so I'm saying the police, including Brigadier Van Zyl, who

22 are answerable to you, took steps, instead of arranging for

23 counselling took steps that these people should be charged

24 with the murder of the very same colleagues in respect of

25 whom they would have been traumatised, correct?

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1 GENERAL MBOMBO: That is what I heard, Mr
2 Chair,
3 MR MPOFU: And when that happened you did
4 not say, 'What nonsense is this? How can these people be
5 charged with the murder of their own comrades when we know
6 who killed their comrades?' Did you?
7 GENERAL MBOMBO: Firstly I could not have
8 been able to say so because the investigation was ongoing
9 and secondly what I heard, when I heard it, that is when
10 interventions were being done, that includes you.
11 MR MPOFU: No – yes, but those
12 interventions were made after about 10 days that the people
13 had been incarcerated and where your police officers had
14 gone to oppose the bail application and in doing so
15 produced a list of the 34 people who had died as being the
16 victims of the alleged murder perpetrated by those people,
17 by my clients.
18 CHAIRPERSON: I'm sorry to interrupt –
19 GENERAL MBOMBO: I do not understand –
20 CHAIRPERSON: - but I'm not sure that
21 it's correct to put the question the way it was, to talk
22 about murders perpetrated by your clients. There is
23 authority for the proposition, the exact correctness of it
24 I think may be subject to debate, but there certainly is
25 authority, decision of the courts for the proposition that

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1 for example if two persons go together to commit a robbery
2 and in the course, and they foresee that the robbery may be
3 resisted and there may be shots fired by the victims of the
4 robbery, and if one of the robbers if then killed in the
5 course of the robbery, there's authority for the
6 proposition, people have been convicted of murder, the one
7 robber has been convicted of murder of his colleague not
8 because he actually shot at him, but because he foresaw
9 that the enterprise upon which they were engaged might lead
10 to the exchange of fire and the colleague might be killed,
11 and on the basis of recklessness, dolus eventualis, courts
12 have convicted people in those circumstances. That I
13 assume was the doctrine relied on by the prosecution in the
14 present matter. Whether it's a good doctrine –
15 MR MPOFU: It's a bad doctrine.
16 CHAIRPERSON: - is a matter upon which I
17 do not feel called upon to express an opinion.
18 MR MPOFU: Yes.
19 CHAIRPERSON: Whether it applies in the
20 particular facts of this case is another question which we
21 can possibly look at later in the course of these hearings.
22 MR MPOFU: Yes.
23 CHAIRPERSON: But you certainly can't
24 say, it's inappropriate in those circumstances to talk
25 about a murder perpetrated by one person on another. You

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1 wouldn't say that the first robber was guilty of
2 perpetrating a murder on the second robber. The legal
3 doctrine to which I've referred, if correctly applied on
4 the facts could lead, in fact in the past has led to
5 convictions. But I don't think the question you're
6 asking –
7 MR MPOFU: I'll leave it to –
8 CHAIRPERSON: - is essentially a bad
9 one –
10 MR MPOFU: That's fine.
11 CHAIRPERSON: But I think the question
12 could be reformulated –
13 MR MPOFU: I understand.
14 CHAIRPERSON: - in a way which avoids
15 those objections.
16 MR MPOFU: I understand, Chairperson.
17 Instead of –
18 MR SEMENYA SC: Well, perhaps –
19 MR MPOFU: Instead of perpetrated by –
20 I'm sorry.
21 MR SEMENYA SC: Perhaps further to that
22 objection must be added the following, Chair –
23 CHAIRPERSON: [Microphone off, inaudible]
24 MR SEMENYA SC: I say perhaps I must add
25 to the objection, Chair, that the opinion of this witness

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1 about whether or not people can or cannot be prosecuted is
2 totally irrelevant. It doesn't –
3 CHAIRPERSON: Yes, yes, I understand. I
4 wasn't quite sure that that was going to be the question.
5 If it had been I might have said something else, but I
6 think Mr Mpofo is busy with a slightly different question.
7 MR MPOFU: Yes.
8 CHAIRPERSON: So reformulate your
9 question clearly so that Mr Semenya and I can understand
10 it, and the witness, and then we can proceed.
11 MR MPOFU: Yes, thank you, Chairperson.
12 Well, for the record, the doctrine to which you referred
13 was used in apartheid times and it's a bad doctrine, but
14 I'll use instead of "perpetrated by" I thought I'd take the
15 Chairperson's point, I'll use "guilty of," which will cover
16 the difference.
17 The point I was making to you, General, is that
18 the intervention – you said because of interventions in
19 which I was involved, the people were released. You are
20 right about that. But I'm saying those interventions came
21 only after about 10 days, during which your senior
22 policemen, in particular Brigadier Van Zyl, had opposed
23 bail, and in so doing had produced the list of the 34
24 people who had died on the 16th as prima facie proof that
25 the people that I represented were guilty of murder. So

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

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

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

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

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1 GENERAL MBOMBO: I cannot be sure, Mr
2 Chair, but the investigations will tell, give a definite
3 thing of what happened.
4 MR MPOFU: Do you know who shot the 34
5 people dead?
6 GENERAL MBOMBO: Mr Chair, I've already
7 said that the police were there and they admit that they
8 fired. People died. But I cannot be sure whether all
9 those people were killed by the police, but investigations
10 will tell you.
11 MR MPOFU: Do you know that the version
12 of the police is that all those 34 people were shot dead by
13 the police?
14 GENERAL MBOMBO: If that is the version,
15 yes, because we did fire and they do not dispute that they
16 fired.
17 MR MPOFU: Ja, now what I'm asking you is
18 this; even assuming there's some farfetched doctrine on the
19 basis –
20 CHAIRPERSON: It's been upheld by the
21 Appellate Division, by the way, but anyway –
22 MR MPOFU: Yes, during apartheid times
23 mostly. Even assuming that they –
24 CHAIRPERSON: No, no. No, no, that's –
25 MR MPOFU: Yes, that's correct.

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1 CHAIRPERSON: That's not correct either.
2 MR MPOFU: It is correct.
3 CHAIRPERSON: The case was decided
4 relatively recently and I'm sure Adv Hemraj will be able to
5 give us – she says it's less than five years old.
6 MR MPOFU: Well, okay –
7 CHAIRPERSON: So it's not an apartheid
8 doctrine. It's a doctrine of the, upheld by the SCA. So
9 there may be room for debate about it, particularly room
10 for debate about its application on the facts of this case,
11 but that's a matter that will arise later on.
12 MR MPOFU: Yes. Yes.
13 CHAIRPERSON: But anyway, let's just
14 concentrate on, without side issues and comments –
15 MR MPOFU: Yes.
16 CHAIRPERSON: - on the question you're
17 asking.
18 MR MPOFU: Well, yes, Chairperson, but
19 the fact that it was upheld by the SCA doesn't mean it's
20 not an apartheid doctrine.
21 CHAIRPERSON: [Microphone off, inaudible]
22 no, but –
23 MR MPOFU: It might still be tested in
24 the Constitutional Court and found to be so. But be that
25 as it may –

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1 CHAIRPERSON: Well, anyway –
2 MR MPOFU: Ja, the point I'm making to
3 you, General, is simply this; the people, even if this non-
4 apartheid doctrine applies, the people, it would never say
5 that the people who actually shot the people must be left
6 off the hook and on the basis of some non-apartheid
7 doctrine you go and find their colleagues –
8 CHAIRPERSON: Now, Mr Mpofu, I don't
9 understand the –
10 MR MPOFU: Isn't that correct?
11 CHAIRPERSON: You're arguing the law with
12 the witness. In fact –
13 MR MPOFU: Well –
14 CHAIRPERSON: - the example I gave you of
15 two robbers who go to commit a robbery, what each robber
16 foresees that there may well be shooting and his
17 colleague –
18 MR MPOFU: By guns.
19 CHAIRPERSON: - and his colleague may be
20 killed.
21 MR MPOFU: Yes.
22 CHAIRPERSON: They proceed with the
23 robbery and the victims defend themselves, the victims
24 fire. One of the robbers is killed. In that case -
25 MR MPOFU: By someone.

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1 CHAIRPERSON: Yes, in that case the dead
2 robber has been killed, justifiably, by the victim of the
3 robbery, but that still did not prevent the co-robber from
4 being convicted by Justice Theron in the KwaZulu Natal High
5 Court and did not prevent that conviction being upheld by
6 the SCA.
7 MR MPOFU: Yes.
8 CHAIRPERSON: Those are the facts. Now
9 you're putting to the witness a rather confused and
10 inaccurate legal proposition. I don't think that the
11 witness's views on the matter, even if she has an
12 appreciation of the correct legal doctrine and its
13 application, will assist this Commission and I propose to
14 rule that question out of order.
15 MR MPOFU: Yes.
16 CHAIRPERSON: At this point I think we
17 can take the lunch adjournment.
18 MR MPOFU: Thank you.
19 [COMMISSION ADJOURNS COMMISSION RESUMES]
20 [13:57] CHAIRPERSON: The Commission resumes.
21 Provincial Commissioner, you're still under oath.
22 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
23 CHAIRPERSON: Mr Mpofu.
24 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
25 Thank you, Chairperson. General, you joined the police

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1 during the apartheid era in 1980, correct?

2 GENERAL MBOMBO: You can say so, Mr

3 Chair.

4 MR MPOFU: And you worked for the

5 security branch, the Internal Security Branch, correct?

6 GENERAL MBOMBO: Yes, I once worked for

7 them.

8 MR MPOFU: Are you familiar with the

9 concept of Ubuntu?

10 GENERAL MBOMBO: I think so, Mr Chair.

11 MR MPOFU: And the National Commissioner

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

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

14 GENERAL MBOMBO: That is so, yes.

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

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

17 both their physical and emotional wellbeing becomes your

18 responsibility, correct?

19 GENERAL MBOMBO: Especially the physical

20 part, yes.

21 MR MPOFU: Yes, especially the physical,

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

23 health, is your responsibility, correct?

24 GENERAL MBOMBO: You can say so, yes.

25 MR MPOFU: You are aware that on top of

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

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

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

4 allegations that they were assaulted in custody by among

5 others General Mpembe –

6 CHAIRPERSON: Mr Mpofu, what's the

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

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

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

10 I gave you leave to cross-examine?

11 MR MPOFU: Yes, Chairperson, it goes to

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

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

14 CHAIRPERSON: Oh, I see.

15 MR MPOFU: Thank you, Chairperson.

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

17 assaulted by among others General Mpembe?

18 GENERAL MBOMBO: I heard about that, Mr

19 Chair.

20 MR MPOFU: And you know that General

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

22 that suggests that General Mpembe would have been one of

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

24 GENERAL MBOMBO: It could have been like

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

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1 mood.

2 MR MPOFU: Now whether or not there were

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

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

5 ensured that these people instead of being exposed to all

6 these other hazards, that they were assisted emotionally?

7 GENERAL MBOMBO: Which people are you

8 referring to?

9 MR MPOFU: The ones which I represent,

10 the ones who were arrested and/or injured.

11 GENERAL MBOMBO: I wouldn't be against

12 such assistance if there was such assistance available.

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

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

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

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

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

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

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

20 assisted.

21 COMMISSIONER HEMRAJ: This is the witness

22 in her personal capacity, Mr Mpofu?

23 MR MPOFU: No.

24 COMMISSIONER HEMRAJ: As the –

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

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1 Commissioner.

2 COMMISSIONER HEMRAJ: Are you putting

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

4 SAPS as an organisation or –

5 MR MPOFU: No, thank you, Commissioner.

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

7 prefaced it by saying that the National Commissioner

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

9 prescripts. Do you understand the distinction, what the

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

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

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

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

14 responsibility. Their emotional and physical wellbeing is

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

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

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

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

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

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

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

22 happened. What is your comment?

23 GENERAL MBOMBO: Mr Chair, from what I

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

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

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

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

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

14 GENERAL MBOMBO: That is so, yes.

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

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

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

25 GENERAL MBOMBO: If they had such help I

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1 think that will be the situation, yes.

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

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

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

23 GENERAL MBOMBO: That is so, yes.

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

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

4 GENERAL MBOMBO: You can put it that way.

5 CHAIRPERSON: May I ask a question -

6 MR MPOFU: And -

7 CHAIRPERSON: Sorry, before you carry on.

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

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

17 CHAIRPERSON: Carry on, Mr Mpofu.

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

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

5 GENERAL MBOMBO: That is so, yes.

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

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

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

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

25 COMMISSIONER HEMRAJ: And those of them

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1 who were in police cells in custody and were taken to see
2 the district surgeon, did they complain to the district
3 surgeon about their psychological problems?

4 MR MPOFU: No – well, I don't know
5 anything about anyone who was taken to a district surgeon.

6 CHAIRPERSON: [Microphone off, inaudible]
7 district surgeon normally is consulted, is he not, I mean
8 in the case of people who are detained in the police cells,
9 whenever there's a change of staff the new person in charge
10 has to see to it that the people are all well and there's a
11 record made in the occurrence book of the police station,
12 and also prisoners are taken to the, in respect of whom
13 there's a problem, a health problem, are taken to the
14 district surgeon and if, as the witness says it's not
15 practically feasible to do that then the district surgeon
16 comes to the police station. Isn't that correct? Let's
17 ask the witness. Is that correct?

18 GENERAL MBOMBO: That is correct, Mr
19 Chair, if amongst the people detained there is someone who
20 needs medical help or some kind of help.

21 MR MPOFU: Yes, Chairperson, well my
22 instructions – and I'll confirm this – are that nobody was
23 taken to any district surgeon, but from my own experience I
24 can tell you that when you are in police cells, it might
25 happen like that in the book; you only get taken to a

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1 district surgeon, or at least I was taken to a district
2 surgeon when you are physically ill and in our case then
3 what would happen is that you'd raise that with the
4 district surgeon, and this particular one used to give us a
5 sleeping tablet, but my instructions on this - subject to
6 correction – are that none of the people were visited,
7 either them visiting or being visited by a district
8 surgeon.

9 CHAIRPERSON: Well, there are two points,
10 aren't there? The first is whether there's any legal
11 obligation on the police to do that, the way things are at
12 the moment, and whether there's a legal obligation is a
13 matter the witness can't testify on because she can't tell
14 us what the law is. Then of course you may wish at the end
15 of the hearings to suggest that we should make a
16 recommendation that people who are traumatised in the
17 psychological sense, steps should be taken and there should
18 in fact be a duty on the charge office, you know, station
19 commander under whom the charge office, the detention cells
20 fall to see to it that the, not only the physical wellbeing
21 of the prisoners but also the psychological wellbeing where
22 there's reason to believe that there's trauma, should be
23 looked into.

24 MR MPOFU: Yes.

25 CHAIRPERSON: And you're free to make

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1 that recommendation at the end and you may well find
2 support even from the SAPS if you made such a
3 recommendation.

4 MR MPOFU: Yes, thank you, Chairperson,
5 yes. No, no, that – yes, thank you, Chairperson. I just
6 want to point out that the legal duty I have established, I
7 hope, through cross-examination. That's why I asked the
8 witness is it so that when people are in your custody, both
9 their physical and wellbeing –

10 CHAIRPERSON: We heard the cross-
11 examination.

12 MR MPOFU: Yes, okay.

13 CHAIRPERSON: I did hear that.

14 MR MPOFU: Thank you. So the legal duty
15 is established and what I'm doing now is probably just –
16 and I'm not going to spend more time on this – is something
17 much more which says that –

18 CHAIRPERSON: [Microphone off, inaudible]
19 the legal duty is a matter you can argue at the end. I
20 hear you will contend that you did establish that from the
21 facts you elicited from the witness.

22 MR MPOFU: Fine.

23 CHAIRPERSON: Anyway, I think we can move
24 on. You've –

25 MR MPOFU: Okay.

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1 CHAIRPERSON: You've put the facts on
2 record on which you will rely.

3 MR MPOFU: Yes.

4 CHAIRPERSON: I don't know if the witness
5 can help us any more than she has, but you will presumably
6 have detailed submissions on this point -

7 MR MPOFU: Yes.

8 CHAIRPERSON: - which will elicit some
9 reply from the police service.

10 MR MPOFU: Fair enough, Chairperson.

11 Yes, in any event, General, your answer is that it just
12 didn't cross your mind, and my last question is that what
13 did cross your mind was the fact that they should be
14 charged with murder?

15 CHAIRPERSON: No, I don't think she
16 admitted that. Did you think they should be charged with
17 murder? They'd been arrested on charges, we know that.
18 They were taken into custody on particular charges which
19 have been explained to us, and at a later stage a murder
20 charge was added. We heard that the primary responsibility
21 for that, according to what Mr Mpofu tells us, rests with
22 the Brigadier Van Zyl.

23 MR MPOFU: That's correct, Chair.

24 CHAIRPERSON: Were you yourself involved?

25 You may ultimately be responsible in some kind of way, but

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

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

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

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

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1 62.5 of exhibit LLL1. What you say there was "where I say
2 that if the protestors were to be angered by what is
3 communicated to be the attitude of Lonmin the SAPS was
4 prepared to take a different direction. I meant the SAPS
5 would take appropriate steps to disarm and arrest the
6 protestors. This was meant to make it plain that the
7 communications between the employer and the employees must
8 happen but if things were wayward as police we would have
9 to disarm and arrest them" and what Mr Mpofu says that the
10 idea of disarming or the process of disarming and arresting
11 them was involved in stage 3. So what you were in effect
12 saying in 62.5 is that if the strikers were angered by what
13 was in the pamphlets then the SAPS would be prepared to
14 move to stage 3, I think that's -

15 MR MPOFU: 100% -

16 CHAIRPERSON: A summary of his -

17 MR MPOFU: 110%, Chairperson.

18 CHAIRPERSON: Now what's your answer to
19 that?

20 GENERAL MBOMBO: Mr Chair, it appears in
21 my statement. What I meant there was that if, yes the
22 dropping of the pamphlets angers them or whatever they do
23 not agree with each other we will be there to maintain law
24 and order and if it is necessary we would have to effect
25 arrests and disarm them.

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1 MR MPOFU: And that would be done in
2 terms of stage 3, that part of the operation of disarming
3 and arresting is stage 3, correct?

4 GENERAL MBOMBO: You can say it is
5 associated with stage 3.

6 MR MPOFU: What other stage do you think
7 is, it is about? What other stage of the operation do you
8 think the arrest and disarming is associated with other
9 then stage 3?

10 GENERAL MBOMBO: You must remember, Mr
11 Chair, the reason for our presence there was to disarm
12 them. Whether stage 3 was on the plans or not, that is why
13 I'm saying it is associated with stage 3.

14 MR MPOFU: Okay, let's -

15 CHAIRPERSON: Sorry, when you were
16 speaking to Mr Mokwena and his colleagues on the Tuesday
17 afternoon you didn't yet know of Mr Twala's death and
18 according to your evidence, other evidence on the point by
19 other people but we're busy with your evidence. According
20 to your evidence as far as you were concerned encirclement
21 was still going to be the plan because you use the word
22 encircle remember several times. So what you were saying I
23 take it by, when you refer to disarm and arrest was if
24 necessary you would have to proceed to what is stage 3 and
25 what was stage 3 at that stage in your mind was the

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1 encirclement plan, isn't that correct, which would involve,
2 I'm not asking the question of you, Mr Mpofu, I'm asking -

3 MR MPOFU: Well I'm just shocked,
4 Chairperson.

5 CHAIRPERSON: Well behave yourself.

6 The, at that stage in your mind stage 3 was disarm, was
7 encirclement which would then involve disarming the people
8 at the koppie and arresting them, is that right?

9 GENERAL MBOMBO: At the time I was
10 talking to them, Mr Chair, I knew that there was a plan
11 entailing encirclement but there were criticisms about that
12 plan already.

13 MR MPOFU: Yes, thank you very much.

14 CHAIRPERSON: - refer to evidence on
15 that. But any way but what we're concerned with, Mr Mpofu
16 and I is when you said in the last line of paragraph 62.5
17 that if the strikers becomes angry and so forth, in
18 consequence of the pamphlets then things were wayward as
19 you put it then the police would have to disarm and arrest
20 them and that would have been one form of implementation of
21 stage 3, is that correct?

22 GENERAL MBOMBO: I agree with you, Mr
23 Chair.

24 MR MPOFU: And it would be a form that
25 would involve the shedding of blood, correct?

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1 GENERAL MBOMBO: That was not in my mind.

2 MR MPOFU: General, that can't be
3 correct. Go to page 5 of JJJ192. You said after, if they
4 did not surrender their arms and Mr Mokwena says, I'm sorry
5 Chairperson, I'm reading, around 25 or so, and then you say
6 "their arms, their weapons, weapons will leave them, move
7 your vehicles, come back and park here because why, this
8 evening I'm getting 480 members, tomorrow when we go there
9 for the second time now that we were there today and they
10 did not surrender then it's blood". Did you say that?

11 GENERAL MBOMBO: I said it, Mr Chair.

12 MR MPOFU: Now in other words if you put
13 all these pieces of evidence together you were prepared to
14 ask Lonmin to distribute those pamphlets and if it angered
15 them it didn't matter because you would move in, into stage
16 3 or whatever you call it, but whatever it is that you were
17 going to do would involve blood, correct?

18 CHAIRPERSON: No, no, that's not quite
19 accurate, Mr Mpofu.

20 MR MPOFU: Okay, my -

21 CHAIRPERSON: What she said was and if
22 they did not surrender then it's blood.

23 MR MPOFU: Yes, my -

24 CHAIRPERSON: Remember there was the
25 story of the show of force and there was this big gun that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 GENERAL MBOMBO: I hear what he says.

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

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

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

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

6 CHAIRPERSON: They were not dropped.

7 MR VAN AS: No.

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

10 MR VAN AS: No, Mr Chairman.

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

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

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

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

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

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

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

3 MR MPOFU: Maybe you can remind, Chair.

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

13 GENERAL MBOMBO: That is so, Mr Chair.

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

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

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1 possibility would result in bloodshed. Now, what I'm
 2 saying is that this witness and I want her comment, if she
 3 had commented then I'm sorry, but as far as I'm concerned
 4 she has not yet commented. I'm saying to her so you had
 5 and the Chairperson did paraphrase my question, that she
 6 faced with three possibilities, as the Chair says, one
 7 would lead to bloodshed. The other, yes might lead to
 8 bloodshed, but the other two will almost definitely lead to
 9 no bloodshed because according to her evidence they, and we
 10 went through this, this morning, they knew that if Mr
 11 Malema had intervened the situation would be diffused. So
 12 that equals no bloodshed. That's they even went to say you
 13 remember in Impala he resolved it. So they actually did
 14 not want the situation to be resolved, at least to be
 15 resolved by him for whatever reason. We have gone through
 16 all that, ja. All I'm interested in now is that one equals
 17 no bloodshed, okay. So I'm saying that's the second
 18 possibility. Then I said the third possibility, and again
 19 I went through this last week, involves the interaction
 20 which will please the strikers. That one also means no
 21 bloodshed. So I'm saying when she has three things,
 22 bloodshed, no bloodshed, no bloodshed, she went for option
 23 one equals bloodshed. Does she have a comment on that,
 24 yes, General.
 25 GENERAL MBOMBO: I'm not sure if I

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1 understood the question correctly.
 2 MR MPOFU: Okay, I'll summarise it or the
 3 Chairperson will help me if it's still not clear. I'm
 4 saying to you, you were faced with three possibilities
 5 which you could do something about. One was to take the
 6 risk which would amount to bloodshed. We've gone through
 7 all that and the Chairperson recorded finally you conceded
 8 that it might have resulted in bloodshed. So let's call it
 9 bloodshed, question mark. The other two possibilities were
 10 likely to result in no bloodshed and I won't repeat what
 11 they are because I've just done so now. But I'm saying now
 12 faced with those three you chose to take the risk on the
 13 one that might cause bloodshed. Would you like to comment
 14 as to what informed your choice given that as a policeman
 15 your job is to try and avoid bloodshed? Policewoman,
 16 sorry. No I'm sorry, when I say policeman, I meant a
 17 member of the police force.
 18 GENERAL MBOMBO: I said it, Mr Chair,
 19 that at that time I did not think these options would lead
 20 to bloodshed.
 21 MR MPOFU: But you did reject one option
 22 which you knew would result in a solution and no bloodshed
 23 and in fact that informed your reason to move quickly and
 24 kill this thing, as you put it, correct?
 25 GENERAL MBOMBO: I do not know when you

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1 say I rejected it, but let me just say whatever I rejected
 2 I did not reject because I wanted bloodshed.
 3 MR MPOFU: But do you understand the
 4 notion of diffusing the situation meant the avoidance of
 5 bloodshed, correct?
 6 GENERAL MBOMBO: According to me that's
 7 what I thought I was saying, yes.
 8 MR MPOFU: Yes, that's what I'm saying.
 9 So if you reject something that would be likely to diffuse
 10 the situation you are rejecting something that is likely to
 11 avoid bloodshed, correct.
 12 GENERAL MBOMBO: Repeat please.
 13 MR MPOFU: You and I have agreed that
 14 diffusing the situation means avoidance of bloodshed. So
 15 I'm saying if you therefore rejected or acted to prevent
 16 anything that would diffuse the situation you were
 17 therefore, thereby rejecting something that would avoid
 18 bloodshed. That's seems obvious, correct?
 19 GENERAL MBOMBO: I hear what you say now,
 20 yes that is correct.
 21 MR MPOFU: Okay, thank you. I think on
 22 Friday you and I when we had to break because we had to go
 23 the airport, someone had to go to the airport, on Friday I
 24 was busy talking to you about the role of General
 25 Annandale. I just want to round off that point. Who

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1 called General Annandale to Marikana?
 2 GENERAL MBOMBO: I don't know exactly who
 3 called him.
 4 MR MPOFU: Did you call for him or call
 5 him?
 6 GENERAL MBOMBO: I did not specifically
 7 ask for him, I only asked for assistance.
 8 MR MPOFU: From whom?
 9 GENERAL MBOMBO: I think the
 10 correspondence between Brigadier Calitz and NAT Joint was
 11 asking for additional police.
 12 MR MPOFU: Yes, no, no I understand the
 13 additional police or as you call the additional resources,
 14 but I'm asking did you directly or indirectly call for
 15 somebody at the level of General Annandale effectively to
 16 take over the operation or something or to be the number
 17 two?
 18 GENERAL MBOMBO: I did not do that, Mr
 19 Chair.
 20 MR MPOFU: So you did not know how
 21 Annandale rocks up there. Well at least his evidence is
 22 that nobody invited him, but you yourself did not know how
 23 he got there, correct?
 24 GENERAL MBOMBO: No I did not know.
 25 MR MPOFU: And yet when it came to the

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1 crucial issue of executing and I'm using that word
2 advisedly –

3 CHAIRPERSON: You mean implementing.
4 MR MPOFU: Of executing the operation,
5 you gave that important task to someone who's presence you
6 did not know or you could not explain.

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

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

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

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

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1 particular message was retrieved from the mobile phone of
2 the –

3 MR MPOFU: IPID member.
4 CHAIRPERSON: - IPID member. So you can
5 accept that in all likelihood that will be evidence before
6 us and you can proceed with your questioning based on that.
7 MR MPOFU: Thank you, Chairperson. Now
8 General, the long and short of that evidence would be that
9 a few minutes after 4 when you were at or near the JOC the
10 – or rather, Brigadier Pretorius was already indicating to
11 IPID that there were bodies down and people injured. Would
12 you accept that?

13 GENERAL MBOMBO: As it said, there is
14 such a thing, Mr Chair, yes.

15 MR MPOFU: Now what I want – the only
16 thing I want to put to you is just a question of what we
17 will argue at the end, and as I say because when all this
18 is unravelled we don't want to have to recall you, so I'm
19 just going to ask you one or two questions. That would
20 indicate that the JOC in the person of Brigadier Pretorius
21 was already aware, so much aware that they had taken the
22 extra step of informing IPID, wherever IPID might have been
23 at that stage. That's logical, correct?

24 GENERAL MBOMBO: That's how I understand
25 it, Mr Chair.

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1 MR MPOFU: And you being the most senior
2 person in charge, I'm going to argue that that information
3 would have been relayed to you by that stage. What will
4 you say to that?

5 GENERAL MBOMBO: It's possible that it
6 was supposed to be the case, but I did not get it.

7 CHAIRPERSON: That was covered very fully
8 by Mr Budlender in his cross-examination of the witness.

9 MR MPOFU: Well, okay, well I didn't know
10 anyone knew about this SMS before I raised it now, but it
11 looks like –

12 CHAIRPERSON: Mr Budlender –

13 MR MPOFU: - prophetically someone did.

14 CHAIRPERSON: No, Mr Budlender did it on
15 the basis that there was an SMS.

16 MR MPOFU: Exactly.

17 CHAIRPERSON: That was on telephone
18 records. At that stage it wasn't known what the SMS was
19 about.

20 MR MPOFU: Exactly.

21 CHAIRPERSON: But he put to the witness
22 that realistically speaking there could have been only one
23 subject for an SMS to IPID at that time and that was what
24 we now know it was, and on the basis of that the witness
25 was asked about it and she said what she's now told you,

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1 she didn't know about it, she wasn't told, and Mr Budlender
2 went into great detail who should have told her, and it was
3 disgraceful they didn't tell her, and that was fully dealt
4 with in the cross-examination.

5 MR MPOFU: So, Chairperson, even in the
6 advent of the SMS one should not touch the subject because
7 Mr Budlender dealt with it without knowing about the SMS?

8 CHAIRPERSON: Mr Budlender asked
9 questions on the assumption, which he suggested was a
10 realistic one and turned out to be correct, that that was
11 the subject of the SMS. So the questions that you are
12 asking at the moment are repetition of the ones that Mr
13 Budlender asked.

14 MR MPOFU: Now, General, I'm now going to
15 deal with my final topic, and that is you remember that I –

16 CHAIRPERSON: I'm sorry, Mr Mpofo, how
17 long is the topic – I know it's difficult to predict, but
18 how long do you think the topic will be?

19 MR MPOFU: Chairperson, I'm sorry, it's
20 one of those that I can't say. So it's in relation to tea,
21 Chairperson?

22 CHAIRPERSON: Yes, that's why I'm asking
23 the question.

24 MR MPOFU: No, it will certainly be – it
25 would necessitated the tea adjournment right now.

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1 CHAIRPERSON: Well, I like that word
2 "necessitate". We'll take the tea adjournment.

3 MR MPOFU: Thank you.
4 [COMMISSION ADJOURNS COMMISSION RESUMES]
5 [15:23] CHAIRPERSON: The Commission resumes.
6 Provincial Commissioner, you're under oath still.

7 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
8 CHAIRPERSON: Mr Mpofo.
9 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
10 Thank you, Chairperson. Sorry, General, you know what
11 happens when there's a break; minds are changed. So I just
12 want to put one proposition before we go to the last topic.
13 You remember that whole discussion about the three options?
14 I don't want us to go back to that. Remember the
15 discussion you and I had about you chose this over this,
16 and so on?

17 GENERAL MBOMBO: I remember that,
18 Chairperson.

19 MR MPOFU: Yes, I just wanted to round
20 off that point by – one of the things I'm going to put at
21 the end is that you also, in the face of possible solutions
22 you chose a route that involved the risk of deploying
23 members of the police who, because of what they had gone
24 through, might have been trigger-happy and not follow
25 discipline or follow instructions, which would also lead to

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

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

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

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

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1 I mean I know JJJ192 was also covered by Mr Budlender, but
 2 I've managed to cross-examine on it and come up with quite
 3 – even if I say so myself – substantial points. So if you
 4 allow me to just ask one or two questions –

5 CHAIRPERSON: One or two questions, one
 6 or two literally, hey.

7 MR MPOFU: Yes. Essentially what I want
 8 to put to you is that what happened at the meeting, the
 9 reason why you were all hiding this meeting is because in
 10 that, one of the issues that informed the decision that you
 11 took was what you and I discussed this morning, namely the
 12 political pressure that was being put to bear on the senior
 13 police leadership. What will you say to that?

14 GENERAL MBOMBO: No, there I do not agree
 15 with you, Sir.

16 MR MPOFU: And that you knew, or you
 17 know, as you and I established last week, that the taking
 18 into account of political considerations on a matter such
 19 as such this would be grossly improper and grossly
 20 irregular, as you confirmed last week, correct?

21 GENERAL MBOMBO: There you are telling
 22 the truth, yes.

23 MR MPOFU: So what I want –

24 CHAIRPERSON: You asked your one or two
 25 questions, but I'll allow you to ask two more.

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1 MR MPOFU: Thank you, Chairperson. The
 2 decision that you took, the decision that you had – we've
 3 gone through this, I'm not going to go through it again.
 4 The decision that you had taken on the 14th to move on the
 5 15th was clearly motivated by political considerations. I'm
 6 not going to canvass that with you. The proposition that
 7 I'm putting to you now is that because of what we know -
 8 which mercifully doesn't involve you - of what happened on
 9 the 15th, namely that there was more interaction with the
 10 Minister, apart from your one of the 12th, there was even
 11 interaction with another minister and the matter was even
 12 referred up to the cabinet and the President, no less than
 13 the President, that those additional events, which
 14 obviously you couldn't have known when you were talking to
 15 Mr Mokwena, came to your attention either directly from the
 16 Minister or from the National Commissioner or whoever, and
 17 that those were directly used to make the decision on the
 18 15th that the 16th was D-day.

19 CHAIRPERSON: Before the witness answers
 20 I want to point out that the evidence so far doesn't deal
 21 with a decision, a discussion or decision by the cabinet,
 22 nor does it deal with the matter being referred to the
 23 President. What we have is some emails which indicate that
 24 Mr Ramaphosa spoke to the Minister of Mineral Resources,
 25 who had previously described it as a wage dispute, told her

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1 that that was not correct, it was a law and order matter,
 2 and that she undertook to raise it with the Minister of
 3 Police, Safety & Security at the cabinet meeting, who she
 4 was meeting him at the cabinet meeting later that day and
 5 she undertook to raise it with him. But the evidence
 6 doesn't go as far as dealing with, indicating that the
 7 matter was discussed by the cabinet or referred to the
 8 President, but in relation to the first two points, namely
 9 that Mr Ramaphosa spoke to the Minister of Mineral
 10 Resources and she undertook to speak to the Minister
 11 Mthethwa, I'll allow the question.

12 MR MPOFU: Yes, thank you, Chairperson.
 13 Well, then I'm afraid we have to go and show that my
 14 version is correct. Can you go to BBB4, which is one of
 15 the documents that I asked you to read last night. Sorry,
 16 BBB4.

17 GENERAL MBOMBO: I have it, Sir.

18 MR MPOFU: You do have it, yes. It's one
 19 of the documents I asked you to read last night. Can you
 20 go to page 289(e) of that document?

21 GENERAL MBOMBO: I have it.

22 MR MPOFU: Yes, you see that this is an
 23 email, it's the last of this series of emails about 3PM.
 24 This is a series of emails which started at 1AM in the
 25 morning. This one is 3PM from Mr Cyril Ramaphosa to those

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1 people indicated there, and he says, "I have just had a
 2 discussion with Susan Shabangu in Cape Town" –

3 CHAIRPERSON: I'm sorry, we haven't got
 4 that one on the screen.

5 MR MPOFU: Oh, sorry, Chairperson.

6 CHAIRPERSON: That's the one we now have
 7 on the screen?

8 MR MPOFU: Yes, it's the one below. Yes,
 9 there are two on that page, sorry. And he says, "She
 10 agrees that what we are going through is not a labour
 11 dispute but a criminal act. She will correct her
 12 characterisation of what we are experiencing. (2), She is
 13 going into cabinet and will brief the President as well."
 14 You see that part?

15 GENERAL MBOMBO: I see it, Chair.

16 CHAIRPERSON: Sorry, you were correct in
 17 one respect and I'm correct in the other.

18 MR MPOFU: Yes.

19 CHAIRPERSON: She was going into cabinet,
 20 not –

21 MR MPOFU: Fair enough.

22 CHAIRPERSON: It doesn't follow it would
 23 be discussed by the cabinet, but you are correct when you
 24 say she will brief the President and get the Minister to
 25 act in a more pointed way. So on that part you are

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1 correct.

2 MR MPOFU: Thank you, Chairperson.

3 CHAIRPERSON: I'll allow you to put that

4 part as your question as well. It's not an indication it

5 actually took place, but it's presumably a fair inference

6 that it did.

7 MR MPOFU: Yes, it is, Chairperson. I

8 think, unless if we really want to gild the lily, as they

9 say.

10 CHAIRPERSON: Yes, it's a fair inference

11 that it happened. He says that she said she'd do that and

12 there's no reason to think that (a), she didn't say it; and

13 (b), she didn't do what she said she'd do.

14 MR MPOFU: Yes.

15 CHAIRPERSON: And when Mr Mthethwa comes

16 he will presumably tell us –

17 MR MPOFU: And Shabangu, or Mr Ramaphosa,

18 yes, I accept that.

19 CHAIRPERSON: Yes, if Mr Ramaphosa and

20 the Minister come – I can't remember whether the Minister

21 of Mineral Resources is coming, but anyway, Mr Mthethwa

22 will be able to deal with it.

23 MR MPOFU: Yes, Chair, anyone of the

24 people mentioned here, Chairperson, will help, assist us

25 hopefully. I've even forgotten the point now. Now the

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1 point I was –

2 CHAIRPERSON: What Mr Mpofo is putting to

3 you is an extra reason why the decision was, you made that

4 decision or alternatively made that proposal at the meeting

5 on the Wednesday night, was where the events which are

6 dealt with in this email we just looked at had taken place

7 earlier that day on the Wednesday afternoon and he wants

8 your comment on that. Am I putting your question too

9 weakly for you, Mr Mpofo? That's the way you want it put?

10 MR MPOFU: No, Chairperson, I think

11 that's sufficient. The Chairperson is correct; all I'm

12 saying is that the discussion you're having with Mr Mokwena

13 was referring to something milder than what happened on the

14 15th, namely the telephone call that you had received from

15 the Minister. I'm saying by the 15th something bigger had

16 happened, which is a repeat of the interaction with the

17 Minister, so we can take that as a neutral fact. But in

18 addition to that there was further interaction with the

19 Minister of Minerals and she had possibly briefed no less

20 than the President of the country on the issue. That's, as

21 the Chairperson puts it, I'm saying there was a further and

22 bigger reason for you and the National Commissioner to feel

23 the political pressure from above.

24 GENERAL MBOMBO: At that time, Mr

25 Chairperson, I had no idea of this discussion.

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1 MR MPOFU: Yes, okay, but if the Minister

2 had promised Mr Ramaphosa – or let me put it this way. If

3 the Minister said well, we're going to act in a more

4 pointed way - and I'm not saying whether that happened or

5 did not happen – that would mean the National Commissioner

6 and yourself, among others, because he was not going, he

7 himself, to go and shoot the people, correct? Or conduct

8 the operation, sorry.

9 GENERAL MBOMBO: Just repeat your

10 question again.

11 MR MPOFU: Sorry, sorry, ja it was a bit

12 convoluted. I'm saying any undertaking by the Minister to

13 act in a more pointed way, and I'm putting aside whether

14 that undertaking was made or was not made will be answered

15 by the Minister, but any such undertaking would have

16 involved that those actions, those pointed actions being

17 taken by people such as the National Commissioner and

18 yourself rather than by the Minister himself, correct?

19 GENERAL MBOMBO: Procedurally yes, that

20 would have been so.

21 MR MPOFU: Thank you. And I think the

22 Minister says himself that whenever he received these

23 "concerns" he would transmit them to the police via the

24 National Commissioner and I suppose via yourself, correct?

25 GENERAL MBOMBO: He sometimes comes to me

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1 if he has not come into contact with the National

2 Commissioner.

3 [15:43] MR MPOFU: Yes. So had he not been

4 bluffing, had he meant his promise to act in a more pointed

5 way, the logical people to have transmitted that evidence –

6 sorry, that message to would have been either yourself or

7 the National Commissioner.

8 GENERAL MBOMBO: It is so, yes.

9 CHAIRPERSON: Just to correct it; this

10 email doesn't indicate that the Minister of Police had

11 promised to act in a more pointed way. What Mr Ramaphosa

12 says is that the Minister of Mineral Resources, that's

13 Minister Shabangu had said she would get the Minister of

14 Police to act in a more pointed way, but it doesn't affect

15 the validity of the –

16 MR MPOFU: Ja, that's so, that's enough

17 for –

18 CHAIRPERSON: - of the main thrust of the

19 question.

20 MR MPOFU: Ja, it doesn't – I don't

21 think –

22 CHAIRPERSON: And one must assume that if

23 Minister Shabangu did what she said she would do and

24 succeeded in persuading the Minister of Police to act in a

25 more pointed way, the Minister of Police would have done

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

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1 exactly because – underline because – of those political
 2 considerations and for that reason you should be guilty, or
 3 charged, correct?
 4 GENERAL MBOMBO: I believe that all those
 5 things that you have mentioned, those are things we'll
 6 discuss with Mr Semenya.
 7 MR MPOFU: Yes, I will also say that the
 8 recommendation should be made because you acted recklessly,
 9 and that's a legal term which simply means that when you
 10 appreciate something you act in accordance with that
 11 appreciation or against the appreciation, and the
 12 recklessness element will come as follows. I will argue
 13 that when there was an option of taking action when there
 14 were fewer number of people when predictable fatalities,
 15 even if they occurred, might have been fewer. You took a
 16 decision to do the operation when there was the highest
 17 number of people and that situation was caused by the fact
 18 that there was this interest in the report-back that Mr
 19 Mathunjwa had promised to bring the following day. But
 20 forget the Mr Mathunjwa thing, but you knew that there were
 21 quite a large number of people on the koppie at that time.
 22 GENERAL MBOMBO: It's correct, I knew.
 23 MR MPOFU: Then on the side of omissions
 24 I will then say that you knew or ought to have known that
 25 Mr Mathunjwa's peace mission was still ongoing, because

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1 after all, Mr Mathunjwa in front of you had said he was
 2 going to the koppie using his own vehicle, but you did not
 3 care about the fate of that mission which would have
 4 prevented the bloodshed and you nevertheless gave the
 5 instruction, knowing that it might result in deaths and
 6 injuries. Understand?
 7 GENERAL MBOMBO: I hear what you're
 8 saying as you're putting it, but I do not agree with you,
 9 Sir.
 10 MR MPOFU: Yes, yes, and I will also
 11 argue that once again you omitted to take an opportunity
 12 presented by the Bishop to you when he explained that he
 13 had been sent on a mission as well with two demands or
 14 requests, one being for an engagement with management and
 15 the other one being for water to be brought to the people
 16 who were sitting at the koppie and you rejected that
 17 mission as well which had the potential of avoiding
 18 bloodshed. Understand, and do you agree?
 19 GENERAL MBOMBO: I hear what you say, but
 20 again I disagree with you.
 21 MR MPOFU: And I will say that for the
 22 reasons that you and I agreed that had you not given the
 23 instruction on the 16th and had you not given the
 24 instructions on the 13th, those 39 persons who died on those
 25 two days might still have been alive today. Remember that?

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1 GENERAL MBOMBO: I hear what you say,
 2 though I do not agree with you, Sir.
 3 MR MPOFU: Just to round off that point,
 4 your evidence was that General Mzembe gave you a full
 5 account of what happened on the 13th. Is that correct?
 6 GENERAL MBOMBO: He gave me a report,
 7 Chairperson, yes.
 8 MR MPOFU: And that included the fact
 9 that the violence of that day was sparked by the teargas
 10 from the police, correct?
 11 GENERAL MBOMBO: I don't remember him
 12 saying it exactly as you say it.
 13 MR MPOFU: And were you aware of the
 14 controversy or disagreement that happened among the police,
 15 some of them saying General Mzembe gave the instruction and
 16 him saying he had not given the instruction? You remember
 17 the Chairperson read it out, it ended up with some threats
 18 being made between the General and Lieutenant Colonel
 19 Vermaak about him being arrested for intimidation? Were
 20 you aware of that?
 21 GENERAL MBOMBO: I did not know it at
 22 that time, Mr Chairperson, but now that I've seen the
 23 statements I've become aware of it.
 24 MR MPOFU: And I will also be arguing
 25 that for the reasons I did not canvass this with you fully

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1 is because it has been canvassed exhaustively with other
 2 witnesses, but I did touch on it, namely that your actions
 3 and your own collusion with Lonmin, more particularly Mr
 4 Mokwena, as evidenced by JJJ192, is clear evidence that,
 5 (1), you and him regarded this as a joint operation between
 6 Lonmin and SAPS by using the words that I pointed you to,
 7 "We must do this," "Our deployment," this, all those words.
 8 Would you accept that?
 9 GENERAL MBOMBO: I have explained,
 10 Chairperson, again I did not agree with you there.
 11 MR MPOFU: Again she said she does not
 12 agree with me entirely. "Kwapela."
 13 MR MAHLANGU: I'm sorry.
 14 GENERAL MBOMBO: I do not agree with you
 15 entirely.
 16 MR MPOFU: Yes, and that, as I say I
 17 won't go into the other factors which I've canvassed with
 18 other witnesses, but that a general reading, without going
 19 to specific passages, a general reading of the conversation
 20 between you and Mr Mokwena I will argue is evidence enough
 21 of the toxic collusion on which we premise this part of our
 22 argument, on which we premised it when we were doing our
 23 opening address, that those two entities, SAPS and Lonmin
 24 in combination – well, separately and in combination are
 25 responsible for the deaths, that the starkest evidence of

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

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