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 180 4 FEBRUARY 2014 PAGES 21516 TO 21659



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Marikana Commission of Inquiry

1	Page 21516 [PROCEEDINGS ON 4 FEBRUARY 2014]	1	Page 21518 GENERAL MBOMBO: If I'm not mistaken, Mr
2	[09:09] CHAIRPERSON: Please turn off your cell	2	Chair, it's at the end of 2013.
3	phones so they don't disturb us. Provincial Commissioner,	3	CHAIRPERSON: Towards the end of last
4	you're still under oath.	4	year in other words?
5	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	5	GENERAL MBOMBO: That is correct, Mr
6	CHAIRPERSON: Mr Budlender.	6	Chair
7	CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):	7	CHAIRPERSON: Did you know about the
8	Thank you, Chair. Provincial Commissioner, good morning.	8	transcript before you heard that it had come to the
9	GENERAL MBOMBO: Morning. Morning,	9	attention of the Commission?
10	Chairperson.	10	GENERAL MBOMBO: I did not know about it,
11	MR BUDLENDER SC: When we adjourned on	11	Mr Chair.
12	Friday we were discussing the transcript of your discussion	12	CHAIRPERSON: Were you not told about it
13	with Lonmin officials on the 14th of August. You remember	13	by anybody in the police service before that?
14	that?	14	GENERAL MBOMBO: No, Mr Chair, I only
15	GENERAL MBOMBO: That is correct, Mr	15	became aware of it after the Commission became aware of it.
16	Chair.	16	MR BUDLENDER SC: Lieutenant General, you
17	MR BUDLENDER SC: And I said there were	17	are correct that we became aware of it in the last half of
18	six matters I wanted to raise about that. I've raised	18	last year, towards the end of last year, so you're
19	five; I'm going to come to the sixth shortly, but before we	19	recollection of the date then is correct. And can you
20	get there, there's a preliminary question I want to ask you	20	remember - you say it was at a meeting in your office – who
21	about that. That recording was made without your	21	told you about it?
22	knowledge, the recording of that meeting?	22	GENERAL MBOMBO: Mr Chair, it is
23	GENERAL MBOMBO: That is correct, Mr	23	Brigadier Pretorius who gathers information that concerns
24	Chair.	24	this Commission in my office.
25	MR BUDLENDER SC: You must have been	25	CHAIRPERSON: Are you moving away from
			, , , , , , , , , , , , , , , , , , ,
	Dama 21517		
	Page 21517		Page 21519
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1	MR BUDLENDER SC: Chair, I'm moving off	1	things that were needed, details that were needed by the
2	the subject.	2	police.
3	CHAIRPERSON: Did you know that the	3	MR SEMENYA SC: For the record, Chair,
4	police had issued – is it section 205 or section –	4	what was included in the 205 documents was an audio, not a
5	MR BUDLENDER SC: Section 205.	5	transcript.
6	CHAIRPERSON: Did you know that the	6	CHAIRPERSON: Audio of what? Audio of
7	police had caused a subpoena to be issued under section 205	7	the conversation?
8	of the Criminal Procedure Act against Lonmin for all	8	MR SEMENYA SC: Of the conversation,
9	documents and so forth which Lonmin had which were relevant	9	which was inaudible in the best part.
10	for the Commission? Do you know that they did that?	10	CHAIRPERSON: I see. Were you told that
11	GENERAL MBOMBO: I knew about that, Mr	11	an audio had been provided by Lonmin of a conversation
12	Chair.	12	between yourself and people from Lonmin?
13	CHAIRPERSON: Do you know whether this	13	GENERAL MBOMBO: Mr Chair, when I was
14	transcript was one of the documents which Lonmin produced	14	told I took it for granted they were talking about the
15	by way of complying with that subpoena?	15	details of a meeting I had with Lonmin people on the 13th.
16	GENERAL MBOMBO: I am not sure about	16	CHAIRPERSON: Thank you.
17	that, Mr Chair.	17	COMMISSIONER HEMRAJ: Mr Budlender, do
18	MR BUDLENDER SC: Chair, I say it was	18	you perhaps know to whom all these items that were the
19	205. I can't be certain, it may have been 204, but I'm not	19	subject of the subpoena were delivered to and in whose
20	sure if anything turns on that.	20	custody they were?
21	CHAIRPERSON: The number doesn't matter.	21	MR BUDLENDER SC: Commissioner, we have
22	Did you know at the time that the subpoena had been issued	22	asked for information in that regard and we are currently
23	against Lonmin, roughly at the time it was issued?	23	awaiting it. Right, now Lieutenant General, I want now to
24	GENERAL MBOMBO: When it was issued, Mr	24	go back to the contents of that discussion that you had
25	Chair, I was not aware. In due course I was told.	25	with the Lonmin management and deal with the sixth question
		20	
	Page 21521		Page 21523
1	Page 21521 CHAIRPERSON: How long after the subpoena	1	Page 21523 which, the sixth issue which arises. I am sure you will
1 2	6	1 2	
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		1	
1	Page 21524 question that says, 'You know, well this one I'm not sure	1	Page 21526 line of work it is important to know where the pressure is
2	because the Lonmin shareholders, I do not know much about	2	coming from. What is important is how we deal with the
3	them." Now when you're referring to "she" there, that is	3	problems that we face, not only the pressure, but also the
4	the National Commissioner you're referring to; she said she	4	problems. If people are raising their concerns, what is
5	didn't know much about the Lonmin shareholders. Is that	5	always important is that we deal with their concerns.
6	correct?	6	MR BUDLENDER SC: And you didn't want to
7	GENERAL MBOMBO: That is correct, Mr	7	divulge that Mr Ramaphosa was the person who had phoned?
8	Chair.	8	GENERAL MBOMBO: According to me that was
9	MR BUDLENDER SC: And then you go on two	9	not important, Mr Chair.
10	lines later, you say, "But when I was speaking to Minister	10	MR BUDLENDER SC: But then why did you
11	Mthethu [should be Mthethwa] he mentioned a name to me that	11	divulge it? Why did you say yes, it is Cyril Ramaphosa?
12	is also calling him, that is pressuring him. Unfortunately	12	Why didn't you just say I'm not going to tell you who it
13	it is a political high." Mr Mokwena interrupts and says,	13	is?
14	"It is Cyril?" and you say, "Cyril Ramaphosa, yes. Now	14	GENERAL MBOMBO: Because his name was
15	remember when I was talking to the National Commissioner	15	already mentioned.
16	last night she says to me, 'Look General, who are the	16	MR BUDLENDER SC: Yes, but you were now
17	shareholders here?' So I said I do not know the	17	divulging that Mr Ramaphosa had phoned the Minister, which
18	shareholders, but I know that when I spoke to the Minister	18	previously you said you didn't want to divulge. Why were
19	he mentioned Cyril," and then she says, "No, I got it."	19	you now divulging it?
20	We'll come to that. Now the Chairperson asked you why was	20	GENERAL MBOMBO: Because his name was
21	it unfortunate that the person phoning the Minister was	21	already mentioned and if he or she already knew who it was,
22	politically high profile. Would you like to explain that	22	there was nothing wrong with that, even if I did not like
23	again? You say unfortunately it is a politically high.	23	the name to be divulged.
24	Why was it unfortunate?	24	MR BUDLENDER SC: Did the fact that the
25	GENERAL MBOMBO: As I'd explained, Mr	25	Minister told you that Mr Ramaphosa had called him
	• · · · ·		, ,
	Page 21525		Page 21527
1	Page 21525 Chair, earlier on, what made me to say that is because I	1	Page 21527 influence your way as to what should be done?
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1	Page 21528 the word "entirely" was used, would you translate that for	1	Page 21530 GENERAL MBOMBO: If I would be in a
2	us again please?	2	position where I wanted to say the Minister received a call
3	MR GQIRANA: Chair, the witness used the	3	from an unknown person, I would have said so although I
4	words (African language) which means it is not entirely the	4	would not have been compelled to say so.
5	case.	5	MR BUDLENDER SC: I want to put it to
6	MR BUDLENDER SC: So does this mean, did	6	you, Provincial Commissioner, that it's obvious that when a
7	the witness say it is not entirely the case or did she say	7	Minister receives a phone call from a high profile person
8	it is entirely not the case? Which is it?	8	such as Mr Ramaphosa, that is noteworthy and that is why
9	MR GQIRANA: She said it is not entirely	9	you mentioned it.
10	the case. It is entirely not the case.	10	GENERAL MBOMBO: I do not agree, Mr
11	GENERAL MBOMBO: Mr Chair, let me explain	11	Chair.
12	it again. I'm saying that is not how I work, or what Mr	12	MR BUDLENDER SC: So the fact that it was
13	Chair said is not how I work.	13	Mr Ramaphosa was entirely irrelevant to your conversation
14	MR BUDLENDER SC: Well, let's proceed.	14	with Lonmin?
15	If the Minister had received a phone call from a person	15	GENERAL MBOMBO: That call or that it was
16	you'd never heard of, an anonymous person living in	16	from Mr Ramaphosa did not influence how I worked or the way
17	Rustenburg, would you have said, by the way, the Minister	17	I worked.
18	has received a phone call from somebody I don't know who is	18	MR BUDLENDER SC: Are you saying, are you
19	pressuring him to deal with the situation.	19	saying that the fact that Mr Ramaphosa – let me ask again.
20	GENERAL MBOMBO: Firstly, the Minister	20	Are you saying that the fact that it was Mr Ramaphosa who
21	did not say he was being pressurised about the situation	21	phoned was entirely irrelevant?
22	and when the Minister phoned me about someone who had a	22	GENERAL MBOMBO: According to me, yes, it
23	problem, something concerning the police, especially if I'm	23	was. What was important was the problem I was raising with
24	already aware of that problem, there is no need for me to	24	our Minister.
25	ask who was saying that. My duty is to tell him what I'm	25	MR BUDLENDER SC: Why did you mention
	Page 21529		Page 21531
1	Page 21529 doing about that problem and, Mr Chair, there was no	1	Page 21531 that it was a politically high profile person who had
1 2		1 2	•
	doing about that problem and, Mr Chair, there was no		that it was a politically high profile person who had
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1	Page 21532	1	Page 21534
1	GENERAL MBOMBO: Then why did you	1	pick up the phone and speak to the Minister and explain his
2	mention, I'm asking for the third time now, why did you	2	problems or her problems?
3	mention that the person who phoned was a politically high	3	GENERAL MBOMBO: If one is able to get
4 5	profile person if that was irrelevant? GENERAL MBOMBO: Because we were	4 5	hold of the Minister then they are allowed to do so. MR BUDLENDER SC: That's the point,
6	GENERAL MBOMBO: Because we were continuing with the discussions, sir.	6	MR BUDLENDER SC: That's the point, Provincial Commissioner. An ordinary person can't, will
7	MR BUDLENDER SC: That's not an answer,	7	not get hold of the Minister. An ordinary person who picks
8	Provincial Commissioner.	8	up the phone and phones the Minister's office and says, I'm
9	CHAIRPERSON: Mr Budlender, [Microphone	9	Piet van der Merwe or I'm Piet Mofokeng, I'd like to speak
10	off, inaudible]. You've given the witness four	10	to the Minister because I've got a problem, will be told
11	opportunities to answer the question. If she doesn't avail	11	speak to your local police, you can't bother the Minister
12	herself of the opportunity now, I suggest you move on. It	12	with everything.
13	can be a matter for argument later that – if in fact it is	13	GENERAL MBOMBO: Mr Chair, I'm not sure I
14	so – that the question is not being answered.	14	understand what you mean. If I had time I would try and
15	MR BUDLENDER SC: Thank you, Chair, I'll	15	understand but the Minister is supposed to listen to people
16	move on.	16	who have problems. If people phone, relevant offices
17	CHAIRPERSON: The question now, I mean	17	regarding their problems, they are supposed to be listened
18	she hasn't had an opportunity to answer it.	18	to.
19	MR BUDLENDER SC: Once more for the last	19	MR BUDLENDER SC: And anyone can phone
20	time. If it was irrelevant that the person who phoned the	20	the Minister and get him on the line and explain their
21	Minister was a high – sorry, let me start again. If it was	21	problems to him?
22	irrelevant that the person who phoned the Minister was a	22	GENERAL MBOMBO: Repeat the question, Mr
23	politically high profile person, why did you say to Lonmin	23	Chair?
24	there's a person who phoned who is a politically high	24	MR BUDLENDER SC: Do you think anyone,
25	profile person?	25	any m e-mail of the public can just pick up the phone,
1	Page 21533 GENERAL MBOMBO: I repeat, Mr Chair, I	1	Page 21535 phone the Minister, get him on the line and explain their
2	say it was not important who phoned the Minister. What was	2	problems to him, do you think that's how it works?
3	important is the problem that the caller mentioned to the	3	GENERAL MBOMBO: That is not how it's
4	Minister. Now, to talk about Mr Ramaphosa was just	4	supposed to work but the people who manage to get hold of
5	continuing with the discussion.	5	him and they do call him, he is supposed to listen to them.
6	MR BUDLENDER SC: Alright, I'll move on.	6	MR BUDLENDER SC: Alright, I'm not going
7 8	Of course it's not everybody who can just phone the Minister and get him on the telephone and discuss his	7 8	to pursue that further, Lieutenant-General. Now I want to move on to another, to a related aspect. You know of Mr
9	problems with him, is it? You have to have some influence	9	Julius Malema.
10	or contacts to be able to do that.	10	GENERAL MBOMBO: That's correct, Mr
11	GENERAL MBOMBO: There are many people	11	Chair.
12	who phone the Minister about problems concerning the	12	MR BUDLENDER SC: And by the time of
13	police.	13	these events, as I understand it, he had been expelled from
14	MR BUDLENDER SC: Are you really	14	the African National Congress, is that correct?
15	seriously suggesting to the Commission that the way the	15	GENERAL MBOMBO: That is correct.
16	Minister spends his days is, anyone who phones him to talk	16	MR BUDLENDER SC: He was challenging the
1		1	African National Congress.
17	about problems, he receives the call and then he phones the	17	Andan National Congress.
17 18		17 18	GENERAL MBOMBO: I'm not sure about that,
	about problems, he receives the call and then he phones the		-
18	about problems, he receives the call and then he phones the relevant Provincial Commissioner and says by the way, I've	18	GENERAL MBOMBO: I'm not sure about that,
18 19	about problems, he receives the call and then he phones the relevant Provincial Commissioner and says by the way, I've just had a call from this person and maybe you should do	18 19	GENERAL MBOMBO: I'm not sure about that, Mr Chair.
18 19 20	about problems, he receives the call and then he phones the relevant Provincial Commissioner and says by the way, I've just had a call from this person and maybe you should do something about this? Are you really suggesting that's how the Minister runs his work? GENERAL MBOMBO: That is not what I'm	18 19 20	GENERAL MBOMBO: I'm not sure about that, Mr Chair. MR BUDLENDER SC: Well, he was opposing
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1	Page 21536 with me the transcript from page 10, line 6 you say –	1	Page 21538 chatting.
2	you're talking now, your discussion with the – line 5, your	2	MR BUDLENDER SC: Why was it relevant to
3	discussion with the Minister, with the National	3	what you were chatting about?
4	Commissioner. You say, "Last night she said to me, look	4	GENERAL MBOMBO: What we were talking
5	General, who are the shareholders here? So I said I do not	5	about, Mr Chair, was how does Cyril Ramaphosa get involved
6	know the shareholders but I know that when I spoke to the	6	in this discussion.
7	Minister he mentioned Cyril and then she says, now I got	7	MR BUDLENDER SC: Yes, and is he involved
8	it." Do you know why she says she got it? Do you remember	8	in this discussion because of Mr Malema or because he's a
9	Cyril was on the appeal committee of Malema, remember? Mr	9	director of Lonmin?
10	Mokwena: Yes. And he was very strong in terms of	10	GENERAL MBOMBO: What I was trying to say
11	the decision that was made. Mr Mokwena Yes." Now what	11	was that whilst talking to the National, to the
12	did the Minister get? What did the National Commissioner	12	Commissioner, she said she now sees why Cyril Ramaphosa has
13	get when you mentioned Mr Ramaphosa? You say now you know	13	an interest in this Lonmin issue.
14	why she says she got it. What did she get?	14	MR BUDLENDER SC: And is he interested
15	GENERAL MBOMBO: Mr Chair, she said she	15	because he is a director or is he interested because of Mr
16	knows that Cyril was in that committee, the appeals	16	Malema?
17	committee of Mr Malema.	17	GENERAL MBOMBO: Because during the
18	MR BUDLENDER SC: And what has that got	18	strike in Impala, that is in the paragraph below, Mr Malema
19	to do with the violence at Lonmin?	19	came to Impala and spoke to the workers. That is why I'm
20	GENERAL MBOMBO: I'm not sure why she	20	saying during this discussion I had with the Commissioner,
20	mentioned that.	20	it was that we should not – Mr Ramaphosa, was meaning that
22	MR BUDLENDER SC: No, no, you mentioned	22	we should not think that Mr Malema would not come to this
23	it. Why did you mention it?	23	place as well, to Lonmin as well.
24	GENERAL MBOMBO: I meant I'm not sure why	24	MR BUDLENDER SC: You were actually
25	she said, I got it.	25	concerned that if Mr Malema came to Lonmin, as he had come
	Page 21537		Page 21539
1	MR BUDLENDER SC: And why did you say	1	to Impala, he might have exercised some influence on the
2	that Mr Ramaphosa was in the appeal committee of Mr Malema?		situation and gained support as a result.
3	What was the relevance of that to the violence at Lonmin?	3	GENERAL MBOMBO: That was not the problem
4	GENERAL MBOMBO: We were just continuing	4	I had, Mr Chair. The problem I had was that we, as the
5	the discussion. It was now a chat.	5	police, had to do our policing work in order to ensure the
6	CHAIRPERSON: What was the last word? It	6	safety of the people there and the other thing I was trying
7	was now a what?	7	to say is we should work together with Lonmin, help each
8	MR GQIRANA: It was now a chat, we were	8	other, look at this problem under the situation it was,
9	chatting.	9	concerning the workers and their wage issues. My main
10	CHAIRPERSON: A chat? Oh, it was a chat.	10	concern was that we should arrest the situation within its
11	MR GQIRANA: Yes, chatting.	11	labour context.
12	MR BUDLENDER SC: No, Lieutenant-General,	12	[09:48] MR BUDLENDER SC: National Commissioner –
13	that really won't go down. Read what you said. You're	13	Provincial Commissioner, let's read what you say about Mr
14 15	saying to Mr Mokwena that the Commissioner, the National	14	Malema. That same page 10, line 15, this is what you say.
15 14	Commissioner says "Now I got it" and then you say, "You	15	You say, "And remember that in Impala Malema came with our Promise and spake to those people about that they should
16 17	know why she says she got it? Remember, Cyril was in the	16	Premier and spoke to those people about that they should
17 19	appeal committee of Malema, remember, and he was very	17 19	make the demands but in a way that – and after that we
18 19	strong in terms of the decision that was made." You're the	18 19	ourselves as the police we managed to, you know, manage the situation after Malema came. Now our discussion with the
	one who raised it and you clearly think it was relevant		
20	because why, because you raised it in the context of the	20 21	National Commissioner was around this thing that there is
21	National Commissioner got it.	21	this thing now happening, such that again Malema come and
22	GENERAL MBOMBO: That is so, Mr Chair. MR BUDLENDER SC: Well, why was it	22 23	defuse this thing so that it becomes as if Malema has taken
23 24	MR BUDLENDER SC: Well, why was it relevant?	23 24	charge of the mining." Do you read that? GENERAL MBOMBO: I can see it, Mr Chair.
24	GENERAL MBOMBO: Because we were	24 25	MR BUDLENDER SC: You were concerned that
	C H I V F F O R I I S T I C F	20	with DODLENDER 30. TOU WERE CONCERNED HIDE
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	Page 21540		Page 21542
1	Mr Malema might arrive and gain influence by the way he	1	passage that I've read you means, it was a good thing that
2	handled the situation, or gain credibility as a result of	2	Mr Malema helped to defuse the situation at Impala and it
3	the way he handled the situation. That's clearly what that	3	would be a good thing if he helped to defuse the situation
4	means, isn't it?	4	at Lonmin? Is that what this passage means?
5	GENERAL MBOMBO: That is how you	5	GENERAL MBOMBO: That's what the
6	interpret it, Mr Chair. I had one goal in mind and that	6	statement says, Chair, but it emphasises again and explains
7	was us to do what we had to do according to the problem we	7	that the management of Lonmin have got a responsibility to
8	had as the police officer and Lonmin.	8	run the mine, to appear to their workers that they are able
9	MR BUDLENDER SC: I would think,	9	to do that without help from outside.
10	Provincial Commissioner, if that was your only concern you	10	MR BUDLENDER SC: Provincial
11	would be very grateful for anybody who could come along and	11	Commissioner, let me just summarise to you. I want to put
12	help to defuse the situation. Wouldn't you be very please with anybody who could help you defuse the situation?	12	it to you that your explanation simply is inconsistent with
13 14	GENERAL MBOMBO: That is correct, Mr	13 14	what you said and I want to put the following to you, that your judgment was influenced by political considerations
	Chair, but you look at the person who comes to help you, if		
15 16	the person was going to be able to help with the problem	15 16	and it was influenced by two political considerations. First, it was influenced by the fact that Mr Ramaphosa who
17	that you face.	10	is politically influential, had raised the matter with the
18	MR BUDLENDER SC: But if Mr Malema was	17	Minister. Secondly, it was influenced by the political
19	going to defuse the situation, would that be a good thing	19	consideration that you didn't want Mr Malema to gain any
20	or a bad thing?	20	credibility or support as a result of an intervention.
21	GENERAL MBOMBO: It would be a good	21	What do you say to that?
22	thing.	22	GENERAL MBOMBO: I do not agree with you,
23	MR BUDLENDER SC: Well, then read what	23	Mr Chair, because my job was not dependent on Mr Ramaphosa
24	you say. "Remember that in Impala Malema came with our	24	or Mr Malema. We normally do not have a problem with
25	Premier and spoke to those people about that they should	25	people who come with the solutions during our job, to our
	Page 21541		Page 21543
1	make the demands but in a way that – and after that we	1	problem, but what must be clear is in our job from time to
2	make the demands but in a way that – and after that we ourselves as the police we managed to, you know, manage the	2	problem, but what must be clear is in our job from time to time we have to be careful of not involving anybody who we
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1	Page 21544	1	Page 21546
1	solve the problem, in fact make it worse. Is that, did I	1	anyone coming from the political side, it could have gone
2	understand you to say that or did I misunderstand you?	2	one of two ways. That person is able to assist or we get
3	GENERAL MBOMBO: Mr Chair, at times when	3	the problem aggravated. MR BUDLENDER SC: Provincial
4	we have such a problem, anyone – when someone comes we are never sure whether they will be able to help, to assist in	4 5	
5		5	Commissioner, I think my question was why was Mr Malema's
6	that problem, especially if it's someone who does not have	6	opinion on the nationalisation of the mines relevant to the
7 8	an interest in that problem that we face. CHAIRPERSON: So is the answer to my	7 8	decision which you had to make or the action you had to
0 9	CHAIRPERSON: So is the answer to my question that you were afraid that Mr Malema might come and	0 9	take? GENERAL MBOMBO: The problem was not his
10	might not solve the problem but in fact make it worse? Is	9 10	opinion of nationalisation of mines or that it would be
11	that what you were afraid that it would do?	10	something influencing my decision, but it was about him
12	GENERAL MBOMBO: That is correct, Mr	12	personally or anybody for that matter.
13	Chair.	12	MR BUDLENDER SC: Was his opinion on the
14	CHAIRPERSON: I don't understand that	14	nationalisation of the mines something you needed to take
15	answer because in line 21 what you're talking about is – or	14	into account?
16	perhaps I should read from line 19. "Now our discussion	16	GENERAL MBOMBO: We had to look at it
17	with the National Commissioner was around this thing that	17	from all the angles of anyone who could have come there and
18	say, is this thing now happening such that again Malema	18	been of assistance.
19	come and defuse this thing so that it becomes as if Malema	19	MR BUDLENDER SC: Provincial
20	has taken charge of the mining, the mine." And then you go	20	Commissioner, was Mr Malema's view on the nationalisation
21	on in line 30 to talk about "We must find a way of	21	of the mines something that you needed to take into
22	defusing" – so you say you must find a way of defusing but	22	account?
23	you previously discussed the possibility that Malema would	23	GENERAL MBOMBO: Mr Chair, we had to look
24	come and defuse the thing. So you don't appear to have	24	at anyone's view or assistance, including Mr Malema.
25	been concerned that Malema would make things worse, you	25	MR BUDLENDER SC: Why did you have to
1	Page 21545	1	Page 21547 take into account his view on the nationalisation of the
1	appear to be concerned that he would come and defuse this thing. Can you explain that to me, please?	1 2	mines? What did it have to do with the matter you were
3	GENERAL MBOMBO: Mr Chair, as I've said,	3	dealing with?
4	if you are facing such a problem you would welcome anyone	4	GENERAL MBOMBO: That was something that
5	who comes to help you but it happens at times that when	5	was spoken about. I had to find out if Lonmin did not
6	people come to help you they aggravate the situation	6	think that was also something that could cause the problem,
7	instead of solving it. In this situation, problem, Mr	7	further aggravate the problem that we were facing.
8	Chair, I was not excluding that Mr Malema should come and	8	MR BUDLENDER SC: No, Provincial
9	try and assist us but as I knew that he was in politics, I	9	Commissioner. Read what you said. "Once again remember
10	feared that his presence there could make things worse	10	Malema's view that the mine should be nationalised and all
11	because my concern was for us to contain this thing as it	11	of that. So it has got a serious political connotation
12	was a labour issue problem with the workers.	12	that we need to take into account but which we need to find
13	MR BUDLENDER SC: Provincial	13	a way of defusing." What was the political connotation you
14	Commissioner, one more matter on page 10, can you go to	14	had to take into account?
15	line 25 and you say, "Once again remember Malema's view	15	GENERAL MBOMBO: It is because the
16	that the mine should be –" and Mr Mokwena says,	16	nationalisation issue was being mentioned in the political
17	"Nationalised." And you say "Nationalised and all of that.	17	circles. If that could also have an effect on the problem
18	So it has got a serious political connotation that we need	18	that we are having, then we had to look at it, especially
19	to take into account but which we need to find a way of	19	Lonmin people had to look at it.
20	defusing." Now, why was Mr Malema's view on	20	MR BUDLENDER SC: Provincial
21	nationalisation of mines relevant to what you had to do?	21	Commissioner, I don't want to go on with the same point
22	GENERAL MBOMBO: Mr Chair, it is	22	again and again but I give you one more opportunity to
23	important that in such problems you gather all the	23	explain. You say Mr Malema's view that the mine should be
24	information that could help you solve the problem. As I'm	24	nationalised has got a serious political connotation that
2			
25	saying, the issue of Malema coming to this problem or	25	we need to take into account. Why did you have to take

Pretoria

1	Page 21548	1	Page 21550
1	that into account in deciding what to do? GENERAL MBOMBO: I was not going to take	1	audio recording, or that recording of a meeting which we've
2	GENERAL MBOMBO: I was not going to take that into account concerning my decisions of what had to be	2 3	been discussing is part of a larger audio recording which it appears was on the SAPS hard drive which was given to
3	done but it was important that we are aware that there is	4	us. We're checking that to make sure that that is so. But
4		4 5	it seems that it is, to use the word "embedded" is not
5	such a thing and know that if there is such a thing, what effect does it have, if it has any. What was important, I		quite accurate -
6 7	was thinking that Lonmin people should explain to me if it	6	CHAIRPERSON: Well, I would be – maybe
8	has any effect, what effect it does have.	8	it's part of it. It certainly would be an important
9	MR BUDLENDER SC: Let me just finish the	8 9	factor –
10	sentence, that paragraph. You say, "Mr Malema's view that	9 10	MR BUDLENDER SC: Yes.
11	the mine should be nationalised and all of that, so it has	11	CHAIRPERSON: - operating in favour of
12	got a serious political connotation that we need to take	12	the police if that were so.
13	into account but which we need to find a way of defusing.	13	MR BUDLENDER SC: Absolutely, and I
14	Hence I just told these guys that we need to act such that	14	wanted to get it right now at the first opportunity, Chair.
15	we kill this thing." So his views on nationalisation were	15	We'll check that, but I think I misstated the position.
16	relevant to the need for you to act to kill this thing.	16	CHAIRPERSON: Yes, I understand that the
17	That's what you said.	17	audio recording appears to run from early in the day and
18	GENERAL MBOMBO: What I'm trying to say,	18	covers a number of things. That's why it's possible to
19	Mr Chair, firstly is that we should be aware that the	19	identify the time when this conversation took place, but
20	problem we're facing concerns the salaries of the workers	20	anyway, that's a matter that can be gone into. It
21	and we should keep it there, contain it there. Even if	21	certainly would be satisfactory to hear that the police did
22	there are these views of nationalisation, what was	22	disclose that and did not endeavour to conceal it, but
23	important for me and Lonmin as the police and Lonmin, is to	23	anyway, that's something which – well, to be fair I suppose
24	maintain this thing, contain it where it is.	24	they might have, if it wasn't included there are other
25	CHAIRPERSON: Are you moving on to the	25	explanations that could be given, but certainly if it was
	Page 21549		Page 21551
1	next point, Mr Budlender? I think we should take a comfort	1	disclosed initially that would be an important point in
2	next point, Mr Budlender? I think we should take a comfort break at this stage. I want to announce that we'll take a	2	disclosed initially that would be an important point in favour of the police.
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Marikana Commission of Inquiry

	Page 21552		Page 21554
1	that –	1	Chair.
2	GENERAL MBOMBO: That is correct.	2	MR BUDLENDER SC: And that's perfectly
3	CHAIRPERSON: - could I ask a question	3	proper; that's how democracy works.
4	from the foot of page 10, I thought you were going to deal	4	GENERAL MBOMBO: That is correct.
5	with it. You talked about "a serious political connotation	5	MR BUDLENDER SC: Yes, now let me read
6	that we need take into account." Now the "we" I take it	6	you what you said. We're on page 11, line 4, "When
7	means the police and Lonmin. Is that right?	7	tomorrow we have to move in, if today we do not find
8	GENERAL MBOMBO: That is correct, Mr	8	cooperation with these people we need to move in such that
9	Chair.	9	we kill it because we need to protect the situation where
10	CHAIRPERSON: And what was the serious	10	any jick and jiff" – I think that probably means Jack and
11	political connotation?	11	Jill – "from a political arena" – Mr Mokwena interrupts,
12	GENERAL MBOMBO: Mr Chair, in all matters	12	"Let me interrupt you. Let me interrupt you, okay.
13	concerning protest action it is important to look at any	13	Amongst a thousand calls I got yesterday, I got a call from
14	information that might help to find a solution. That is	14	Godi, Godi," and you say, "Themba Godi? He's operating in
15	why I say it was important as we are talking to Lonmin they	15	this area, Moruleng and all that." Mr Mokwena, "Yes." You
16	should be aware of all angles that could cause a problem in	16	say, "So I know, he was phoning me now." And then you go
17	the situation that they were facing. The reason why I used	17	on and then towards the foot of the page Mr Mokwena again
18	the word "serious," there is nothing that made me use that	18	refers, this is now line 26, "I'm going to have the same
19	word but someone like me uses words such as "serious"	19	problem immediately he was thereafter at meetings in the
20	because I am Xhosa. We use this word loosely, especially	20	communities, rallies, post," this is Mr Godi he's talking
21	when we are speaking in English.	21	about still, and then on the next page, this is page 12,
22	CHAIRPERSON: Alright, so "serious" was	22	line 18, Mr Mokwena says, "So I agree with you,
23	meaningless in this context, but what was the political	23	Commissioner, if we can arrest these people because the
24	connotation then?	24	longer it goes, it's giving all the other opportunists to
25	GENERAL MBOMBO: As I was talking about	25	comment and seize the opportunity and then it gets out of
	Page 21553		Page 21555
1	Page 21553 nationalisation of mines, Mr Chair, I thought that Lonmin	1	Page 21555 control," and you say, "That is it." You see that?
1 2		1 2	
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	Page 21556		Page 21558
1	labour dispute; the police were concerned with the	1	with him in principle because sometimes this is true.
2	violence. Correct?	2	MR BUDLENDER SC: He refers to – alright,
3	GENERAL MBOMBO: That is so.	3	so in your opinion was Mr Godi one of the opportunists who
4	MR BUDLENDER SC: Now why were you	4	had to be kept out of the picture?
5	concerned that Mr Godi was visiting the area and involving	5	GENERAL MBOMBO: I did not say so, Mr
6	himself in the matter?	6	Chair.
7	GENERAL MBOMBO: I was not concerned	7	MR BUDLENDER SC: In your opinion was Mr
8	about him visiting the area or involving him in this	8	Godi one of the opportunists who had to be kept out of the
9	problem. My concern was that this issue should be	9	area?
10	addressed in the proper way. As I said earlier on, Mr	10	GENERAL MBOMBO: I do not think so, Mr
11	Chair, we Xhosa people believe that too many cooks spoil	11	Chair.
12	the broth.	12	MR BUDLENDER SC: In your opinion was Mr
13	MR BUDLENDER SC: And is that a reason	13	Malema one of the opportunists who had to be kept out of
14	for being concerned about a member of parliament doing his	14	the area?
15	job as a member of parliament?	15	GENERAL MBOMBO: I did not say so and I
16	GENERAL MBOMBO: If he wanted to come and	16	do not think so.
17	talk I would not be sure whether his pitch would help us.	17	MR BUDLENDER SC: So who were the
18	MR BUDLENDER SC: But you'd never had any	18	opportunists who you thought had to be kept out of the
19	information that he had ever before stirred up trouble or	19	area?
20	stirred up violence.	20	GENERAL MBOMBO: It could have been
21	GENERAL MBOMBO: That is correct, Mr	21	anyone they suspected.
22	Chair.	22	MR BUDLENDER SC: No, but who were the
23	MR BUDLENDER SC: Provincial	23	ones you suspected? You agreed with this statement. Who
24	Commissioner, let's just go back to page 12, line 18, you	24	did you think were the opportunists who had to be kept out
25	say, "So I agree with you, Commissioner" – or Mr Mokwena	25	of this matter?
	Dogo 21557		Dago 21550
1	Page 21557 Savs –	1	Page 21559 GENERAL MBOMBO: Mr Chair, a statement
1 2	says –	1	GENERAL MBOMBO: Mr Chair, a statement
	says –		
2	says – GENERAL MBOMBO: What page, Mr Chair?	2	GENERAL MBOMBO: Mr Chair, a statement like this in such discussions is to be expected. I was
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1	Page 21560	1	Page 21562
1	principle of stopping opportunists in case there are	1	opportunists, although you don't know whether there were
2	opportunists.	2	any opportunists.
3	MR BUDLENDER SC: So one of the reasons	3	GENERAL MBOMBO: That is not how I know
4	you must arrest these people is in case there are	4	it, Mr Chair.
5	opportunists, although you don't know whether there are	5	MR BUDLENDER SC: Alright, let me try to
6	any. Is that what you're saying?	6	sum up this section of the cross-examination. You made
7	GENERAL MBOMBO: I did not hear the	7	these statements at a meeting with Lonmin management at
8	question.	8	which you were discussing how to handle the situation at
9	MR BUDLENDER SC: One of the reasons you	9	Marikana.
10	agreed that people, the strikers must be arrested is to	10	GENERAL MBOMBO: I did not hear the
11	stop the opportunists, in case there are any, although you	11	question, Mr Chair.
12	don't know whether there are any?	12	MR BUDLENDER SC: I'm sorry. You made
13	GENERAL MBOMBO: That is not the only	13	these statements at a meeting with Lonmin management at
14	reason why we acted like that.	14	which you were discussing how to handle the situation at
15	MR BUDLENDER SC: No, but I said one of	15	Marikana.
16	the reasons. One of the reasons why you must arrest the	16	[10:37] GENERAL MBOMBO: You must remember, Mr
17	strikers, according to your evidence that you've now given,	17	Chair, I said earlier on in my testimony that this was not
18	is to stop the opportunists, is to stop any opportunists,	18	a formal meeting, but only a chat between us, and it
19	although you don't know whether there are any.	19	concerned us finding a solution to this problem in our ways
20	MR VAN AS: I'm sorry, Mr Chair, if I can	20	of doing our job.
21	just raise an objection. Read within its context Mr	21	MR BUDLENDER SC: Yes, you were
22	Mokwena isn't saying that the strikers must be arrested;	22	discussing what they should do and what you should do.
23	he's saying that the perpetrators of violence must be	23	GENERAL MBOMBO: That is correct.
24	arrested.	24	MR BUDLENDER SC: And you decided that
25	MR BUDLENDER SC: Alright, I accept that.	25	the police must intervene soon to bring an end to the
		1	
1	Page 21561	1	Page 21563
1	One of the reasons the perpetrators of violence must be	1	situation. That's what you said.
2	One of the reasons the perpetrators of violence must be arrested is to avoid giving the opportunists an	2	situation. That's what you said. GENERAL MBOMBO: That is correct, Mr
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1	Page 21564	1	Page 21566
1 2	that you did not want Mr Malema to be seen to exercise influence over the situation.	2	of Tuesday, and on this Wednesday that you are asking about it was at night when I was explaining to the National
2	GENERAL MBOMBO: I did not say so, Mr	2	Commissioner of Police.
4	Chair.	4	MR BUDLENDER SC: I understand it was at
4 5	MR BUDLENDER SC: A fourth reason is that	5	night that you were discussing with the National
6	you were concerned that Mr Malema supported nationalisation	6	Commissioner of Police. When did you decide this is what
7	of the mines.	7	we're going to do tomorrow? In other words not when did
8	GENERAL MBOMBO: That was in a chat	8	
0 9		9	you tell her; when did you decide this is what we're going to do tomorrow?
9 10	between me and Lonmin, Mr Chair. MR BUDLENDER SC: A fifth reason is that	9 10	GENERAL MBOMBO: It's when I was
10	you were concerned to put an end to the situation where an	10	explaining to her, telling her what was happening according
12	opposition member of parliament was involving himself with	12	to the information that I was receiving from General
12		12	-
13	that community. GENERAL MBOMBO: Those were not my	14	Mpembe. MR BUDLENDER SC: I'm not sure I
	j		
15 16	thoughts, Mr Chair. MR BUDLENDER SC: And a sixth reason is	15 16	understand you, Lieutenant General. You had a discussion with the Minister and you said to her
16	you were concerned because one of the shareholders of	16 17	with the Minister and you said to her – CHAIRPERSON: Not the Minister, with the
18	Lonmin was Mr Ramaphosa, a politically influential person	18	National Commissioner –
19	in the governing party, who was phoning the Minister.	10	MR BUDLENDER SC: I beg your pardon, with
20	GENERAL MBOMBO: My concern, Mr Chair,	20	the National Commissioner, and you said to her, "If they
20	was that yes, there was someone who phoned the Minister	20	don't lay down their arms tomorrow we're going to move in
22	saying there is a problem.	22	tomorrow and disarm and disperse," and that took place in
22	MR BUDLENDER SC: And I want to put it to	22	the evening. Is that correct?
23	you, Provincial Commissioner, we will submit at the end of	23	GENERAL MBOMBO: The Wednesday night, Mr
25	this Commission that you allowed political considerations	25	Chair.
20		20	onul.
	Page 21565		Page 21567
1	Page 21565 to influence your decisions about how the situation should	1	Page 21567 MR BUDLENDER SC: Yes.
1 2		1 2	
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2	to influence your decisions about how the situation should be handled.	2	MR BUDLENDER SC:Yes.GENERAL MBOMBO:As I've said, after
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Marikana Commission of Inquiry

1	Page 21568 in one respect, but they were different in one respect. On	1	Page 21570
1	Tuesday you said you decided if they don't lay down their	1 2	attitude that if the presidents can't bring about a
2	arms they will have to be disarmed and dispersed, but you	2	peaceful solution, we'll have to act on Thursday? GENERAL MBOMBO: Especially, Mr Chair, on
4	didn't decide finally when that would happen. GENERAL MBOMBO: That is correct, Mr	4	Tuesday afternoon when I learned that someone had been
5		5	killed there it became clear to me that we really had to
6	Chair.	6	disarm these people.
7	MR BUDLENDER SC: On Wednesday you	7	CHAIRPERSON: Now this was clear to you,
8	persisted in that position, but you decided that the next	8	you say. Did you communicate that to any of the commanders
9	day, Thursday would be the day. Is that correct?	9	on the ground, as it were, the people who were the
10	GENERAL MBOMBO: It's the same, Mr Chair,	10	commanders at Lonmin? Did you tell any of them on the
11	even on Tuesday I said on Wednesday, although I did not	11	Tuesday already what you told Lonmin, namely that firstly
12	have the specific time, and that is the same case as well	12	we have to act tomorrow, i.e. Wednesday, if the people
13	as on Wednesday.	13	don't cooperate, and then later when the trade union
14	CHAIRPERSON: Yes, that's in fact what	14	presidents became involved did you then tell them if they
15	you say on page 11, lines 4 to 6, where you say when	15	don't bring about a peaceful solution we're going to have
16	tomorrow – you've just agreed, I think, with the	16	to act on Thursday? Did you communicate that to any of
17	proposition that you have to act immediately. Mr Mokwena	17 10	your commanders on the ground?
18	said you had to act immediately and you then said, "When	18	GENERAL MBOMBO: Firstly, Mr Chair, I was
19	tomorrow we have to move in," so tomorrow was Wednesday, so	19 20	getting a briefing from them and on the afternoon of the
20	as of Tuesday as at the time you discussed the matter with		14th I sent that report to General Mpembe and Annandale.
21	Mr Mokwena and other people from Lonmin, at that stage your	21	Maybe, Mr Chair, not a report, but I instructed them. As I
22 23	attitude was stage 3 had to take place tomorrow, i.e.	22	was getting these reports from them and if this is true,
	Wednesday, if the people don't cooperate, i.e. which	23	what we were thinking, I'm thinking that tomorrow can't you
24 25	presumably means voluntarily lay down their arms. Is that a correct interpretation of what you say in the lines to	24 25	try and if the opportunity allows, can't you try tomorrow and get these weapons from them.
25	a correct interpretation of what you say in the lines to	20	and get these weapons from them.
	Page 21569		Page 21571
1	which I've referred on page 11?	1	CHAIRPERSON: By "tomorrow" you're now
1 2	which I've referred on page 11? GENERAL MBOMBO: Mr Chair, that is	1 2	CHAIRPERSON: By "tomorrow" you're now talking about Wednesday. You're talking about what you
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1	Page 21572 microphone is on, Mr Budlender. You've got to repeat the	1	Page 21574 disperse, disarm them, and make arrests where necessary."
2	question with the microphone on.	2	So what you say in your statement is consistent with what
3	MR BUDLENDER SC: It was obviously	3	you've just said, that you needed to tell them and you did
4	important that the SAPS leaders who would have to implement	4	tell them.
5	your decision should know about it.	5	GENERAL MBOMBO: That is correct, Mr
6	GENERAL MBOMBO: That is correct.	6	Chair.
7	MR BUDLENDER SC: It was important that	7	MR BUDLENDER SC: Now according to the
8	they should know about it as soon as possible so that they	8	minutes of the National Management Forum meeting – I'm
9	could make the necessary plans.	9	sorry, and you told them on the Wednesday.
10	GENERAL MBOMBO: That is correct, Mr	10	GENERAL MBOMBO: On a Wednesday, yes.
11	Chair, but according to what they told me they had already	11	MR BUDLENDER SC: According to the
12	looked at all the strategic positions of their plan.	12	minutes of the National Management Forum meeting the main
13	MR BUDLENDER SC: But they needed to know	13	meeting ended at 9:15PM and shortly after that there was
14	as soon as you made the decision this is the final day,	14	the extraordinary session and you said that the
15	this is now the final day, because they must get moving. GENERAL MBOMBO: That is correct, and	15 16	extraordinary session lasted less than an hour. You
16		16	remember that? GENERAL MBOMBO: That's how I remember
17	that is what they knew.	17	
18	MR BUDLENDER SC: Yes, can I take you to	18	it, Mr Chair. I don't think it was more than an hour.
19	paragraph 41 of your statement, of your supplementary	19	MR BUDLENDER SC: Yes, now I want you to
20	statement LLL1. Do you have it? I'm sorry –	20	- and then after that meeting you made, and until 11:30
21	GENERAL MBOMBO: I'm still struggling to	21	that night you made and received a lot of telephone calls
22	find it, Mr Chair.	22	and I want you to look at a phone call, some of the phone
23	MR BUDLENDER SC: That's fine. If you	23	calls you made and received. It's on LLL3. Do you have
24	can't find it, Provincial Commissioner, it is also on the	24	LLL3?
25	screen, so you can follow it there. It's not a long	25	GENERAL MBOMBO: I think I've got it.
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1	Page 21573	1	Page 21575 [10:57] MR BUDI ENDER SC: Unfortunately the pages
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1	Page 21576 GENERAL MBOMBO: Especially, Mr Chair,	1	Page 21578 MR BUDLENDER SC: And I'm sure that as
2	during these calls they were reporting to me how the day	2	you said you told him what was going to – what you decided
3	went, how they worked, and I would also make a report to	3	must happen the next day.
4	them and tell them that we will give them time, give them	4	GENERAL MBOMBO: I told him that as well
5	chance.	5	after he gave me a report.
6	MR BUDLENDER SC: Yes, and the next day	6	MR BUDLENDER SC: Right, and then at
7	was the last chance, otherwise you were going to go in.	7	22:38 you'll see there is – I've got the wrong number, my
8	GENERAL MBOMBO: If the opportunity	8	apologies.
9	prevailed itself, yes.	0 9	CHAIRPERSON: Mr Budlender, is this point
10	MR BUDLENDER SC: Well, you had made a	-	· · · · ·
_	-	10	going to take some time? Because I was proposing to take
11	decision that if the strikers did not lay down their arms	11	the tea adjournment at 11 o'clock.
12	you would disperse and disarm them. That's what you	12	MR BUDLENDER SC: Perhaps we can just
13	announced the next morning.	13	finish the point –
14	GENERAL MBOMBO: That is correct, Mr	14	CHAIRPERSON: Well, it occurred to me if
15	Chair.	15	you need to find things in your papers it might be
16	MR BUDLENDER SC: And I assume you told	16	appropriate to take the adjournment now, but alternatively
17	that to General Naidoo when you spoke to him the night	17	you can find them quickly and you want to round this point
18	before, so that he could prepare himself?	18	off before we take the adjournment –
19	GENERAL MBOMBO: I told all of them, Mr	19	MR BUDLENDER SC: I have it now –
20	Chair.	20	CHAIRPERSON: I'm in your hands.
21	MR BUDLENDER SC: Yes, and then at 22:27	21	MR BUDLENDER SC: I'd like to round off
22	you'll see you telephoned, it's the last entry on that	22	now if I may, Chair. I have it. At 22:38:12 there is a,
23	page, you telephoned Major General Mpembe and you spoke to	23	you telephoned Major General Annandale. You see that?
24	him for 297 seconds, nearly five minutes. You see that?	24	GENERAL MBOMBO: That is correct, Mr
25	At the bottom of -	25	Chair.
	Page 21577		Page 21579
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		1	
1	Page 21580 adjournment we were looking at the phone calls you made to	1	Page 21582
1		1	Scott's briefing. NB. Important to follow to the letter.
2	or received from General Naidoo and General Mpembe and	2	NB to start with force continuum. They must see it
3	General Annandale after the extraordinary session and it	3	stopping here and now. SAPS not retreating. Agreement,
4	seems to me, in any event, that those telephone records	4	everything will be done on command. Today things will be
5	seem to support or tend to support what you say, that you	5	changed." Do you see that?
6	told the three generals about your decision that if they	6	GENERAL MBOMBO: I see, Chair.
7	didn't lay down, if the strikers didn't lay down their arms	7	MR BUDLENDER SC: And it seems to me that
8	the operation must proceed the next day to phase 3 or to	8	that is consistent with what you have told the Commission,
9	stage 3.	9	that you informed the generals that Thursday was D-day.
10	GENERAL MBOMBO: It is so, Chairperson.	10	You agree with that?
11	MR BUDLENDER SC: And I want to refer you	11	GENERAL MBOMBO: I told them,
12	to the handwritten notes which were made at the JOCCOM	12	Chairperson, yes, that Chair, this agreement or the
13	meeting at 6 o'clock the next morning, which I think also	13	endeavours that are being made by the unions, if these are
14	support, seem also to support what you say that you told	14	not successful we have to look at these and see where we
15	your generals what, about the new situation. Can we go to	15	are and make sure that we maintain law and order by
16	JJJ168? Right, now these are the notes which were made, I	16	policing in the manner in which they are trained to do.
17	think, by Adv Moolman, then Captain Moolman, on the morning	17	MR BUDLENDER SC: But it goes further.
18	of the 16th August at 06H00. You see what it says on the	18	As you announced, General, at the media briefing that
19	first page, "Notes made 16 August 2012 06H00." Do you see	19	morning, it goes further than just maintaining law and
20	that, General?	20	order in a general way. You had decided that that was the
21	GENERAL MBOMBO: I see, Chairperson.	21	last day, that if they didn't hand down their arms, hand
22	MR BUDLENDER SC: Then can you turn over	22	over their arms, the police would intervene to take the
23	to the second page and you'll see the fourth line says the	23	arms away from that. Is that correct?
24	following, it's	24	GENERAL MBOMBO: It is so, Chairperson,
25	"D-day." Now we know D-day is the term which Captain Adriao	25	because there was no – there was no other reason why it
	Page 21581		Page 21583
1	Page 21581 later used to describe your decision, remember that?	1	Page 21583 should be postponed to wait for another day, not knowing
1 2	Page 21581 later used to describe your decision, remember that? GENERAL MBOMBO: I see that, Chairperson.	1 2	Page 21583 should be postponed to wait for another day, not knowing what would be happening to the lives of people and their
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	Page 21584		Page 21586
1	in the light of what you told us, what I've read to you	1	MR BUDLENDER SC: Yes. Then can we go to
2	from the National Commissioner's statement as to what the	2	what General Mpembe said, that's day 149. It's page – the
3	Provincial Commissioner told her the night before, comes as	3	pages are numbered from 1 to 90-something. Could we go to
4	a surprise to you?" "Major-General Annandale: Vra	4	page 94? Yes, page 94 please. I beg your pardon, this is
5	u of ek verras sal wees as u dit aan my voorhou?"	5	page 149. Sorry – sorry, I was right the first time, page
6	"Chairperson: Well, it's been put to you. I've	6	94. I'm confusing myself.
7	read to you what the National Commissioner said the	7	CHAIRPERSON: As long as you don't
8	Provincial Commissioner told her the night before, so	8	confuse the witness.
9	obviously you didn't know about it, you've told us. So now	9	MR BUDLENDER SC: It's usually more
10	that you've heard, it's been read to you, do you find it,	10	effective to confuse the witness than confuse yourself,
11	are you surprised?" "Major-General Annandale:	11	Chair.
12	Voorsitter, ek is seker verras want dit was nooit so	12	CHAIRPERSON: A good Chairman doesn't
13	oorgedra nie." Do you see all of that?	13	allow that.
14	CHAIRPERSON: Do you understand all of	14	MR BUDLENDER SC: Right, you see page 94
15	that? Provincial Commissioner, sorry, do you understand	15	and then can we go down towards the foot of the page?
16	the Afrikaans?	16	Well, just back a little, right. Mr Chaskalson says to
17	GENERAL MBOMBO: I did, Mr Chairperson.	17	General Mbombo, So what then was the relevance of the call
18	CHAIRPERSON: I just want to see, do you	18	from the Provincial Commissioner on the Wednesday night?
19	understand Afrikaans?	19	What did she tell you that you didn't know already?"
20	GENERAL MBOMBO: Not very well, Mr	20	Major-General Mpembe, "Chairperson, it was to say where
21	Chairperson.	21	will the people report because the other deputies need to
22	CHAIRPERSON: Aright, well perhaps we can	22	somebody, a contact person when those resources are coming
23	go back to the beginning. You understood, you see what's	23	they need to know to whom are they reporting on the other
24	said there, line 15 in English and then on page 8662 the	24	side. That is the purpose which I am trying to explain.
25	answer is, Major-General Annandale says, Chairman, I hear	25	Mr Chaskalson: So the only purpose of her call was
		_	
	D 04505		D 01505
1	Page 21585 totally what you say or entirely what you say. I can only	1	Page 21587 to tell you that you needed to appounce yourselves to the
1	totally what you say or entirely what you say. I can only	1	to tell you that you needed to announce yourselves to the
2	totally what you say or entirely what you say. I can only testify about what my experience was, my interaction with	2	to tell you that you needed to announce yourselves to the other provincial deputies to say I'm the contact person,
	totally what you say or entirely what you say. I can only testify about what my experience was, my interaction with General Mbombo, Chairman, and she never communicated or		to tell you that you needed to announce yourselves to the other provincial deputies to say I'm the contact person, when people report they must report to me?" And Major-
2 3	totally what you say or entirely what you say. I can only testify about what my experience was, my interaction with	2 3	to tell you that you needed to announce yourselves to the other provincial deputies to say I'm the contact person, when people report they must report to me?" And Major- General Mpembe says, "Correct." Let me see what goes on
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1	Page 21588 MR BUDLENDER SC: But you told him	1	Page 21590 GENERAL MBOMBO: I told them, Mr
2	something even more important than that. You told him as	2	Chairperson, just as I have said already.
3	the operational, as the overall commander that the	3	MR BUDLENDER SC: Well, if that's the
4	following day, if the strikers don't lay down their weapons	4	truth then General Annandale didn't tell the truth and
5	they must be taken away from them. You told him that.	5	neither did General Mbombo. Isn't that so?
	GENERAL MBOMBO: Because at that time	6	GENERAL MBOMBO: I would not know that,
6			
7	during the same night he had told me, he had told me about	7	Mr Chairperson.
8	the decision that they had come to, what Mr Mathunjwa had	8	MR BUDLENDER SC: But you accept that
9	said to him.	9	what they say is inconsistent with what you say is the
10	MR BUDLENDER SC: Yes, that would be the	10	truth. You say you told them and they say you didn't.
11	natural thing for you to say when he said Mr Mathunjwa says	11	GENERAL MBOMBO: What I'm saying, Mr
12	he believes they'll hand over the weapons, for you to say	12	Chairperson, is what I told them.
13	well, that's fine but if they don't, we're going to take	13	MR BUDLENDER SC: Right. Now it's
14	them away.	14	obvious that one of the most important issues in
15	GENERAL MBOMBO: I said so, yes.	15	understanding stage 3 on the 16th of August is who decided
16	CHAIRPERSON: And in fact implement stage	16	that it should be implemented and when that was decided, do
17	3, is that right?	17	you agree with that?
18	GENERAL MBOMBO: At that time, Mr	18	GENERAL MBOMBO: I agree with that, yes,
19	Chairperson, I wasn't talking of stage 3. I was saying	19	sir.
20	that these people had to be disarmed.	20	MR BUDLENDER SC: Now you, in your first
21	MR BUDLENDER SC: And the only way of	21	statement you did not mention your decision of the 15th of
22	disarming them was stage 3. That was the tactical phase.	22	August. Your statement to the Commission, you didn't
23	GENERAL MBOMBO: According to how it was	23	mention your decision of the 15th of August. Why not?
24	planned, yes, that is correct.	24	GENERAL MBOMBO: Chairperson had earlier
25	MR BUDLENDER SC: Yes, and then can we	25	mentioned that that statement did not, was not totally
	Dago 21590		Page 2150
1	Page 21589 look at what Colonel Scott says. Now Colonel Scott was the	1	Page 2159' completed, did not have all the facts. It did not only
1	look at what Colonel Scott says. Now Colonel Scott was the	1 2	completed, did not have all the facts. It did not only
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1	also didn't mention that decision in its presentation to	1	MR BUDLENDER SC: Chair, the witness –
2	the Commission, exhibit L. Can you explain why that wasn't	2	CHAIRPERSON: She's not sure. The cross-
3	done?	3	examiner is entitled to follow up, proceed asking further
4	GENERAL MBOMBO: Chairperson, I think I	4	questions on that point but I think there's substance in
5	need to explain here that according, to my knowledge, in my	5	what Mr Semenya says, the point has been dealt with quite
6	statement I did mention that I am the person who gave the	6	extensively but I'll allow you to ask one more question
7	instruction, yes, after receiving a short briefing from	7	along the lines that you've indicated, to endeavour to
8	General Mpembe. I think where the mistake cropped in, in	8	clarify the uncertainty the witness has stated existed.
9	my statement, what was forgotten, is where I did not	9	MR BUDLENDER SC: But Chair, I don't
10	mention that I had already made the decision already on the	10	think there is any longer any uncertainty. The witness had
11	13th and the 14th – no, no, 14 and 15, on the 14th and the	11	previously answered in relation to the first matters, the
12	15th, sorry Mr Chairperson. I want to explain this to make	12	omission from her statement and the omission from the
13	it clear, Mr Chairperson, that when making this decision I	13	opening statement. She has not yet explained the omission
14	was making this decision in order that the people who were	14	from exhibit L and that's why I put that to her again. It
15	there at the place where they were working had to know what	15	is now answered and I don't need to take it further.
16	it is that they were to do in terms of the SOP and the law.	16	CHAIRPERSON: Mr Semenya, I think that's
17	What was expected of them and me was that there should be	17	correct actually. I'll allow Mr Budlender to proceed.
18	peace there and that could only happen, Mr Chairperson, if	18	MR BUDLENDER SC: Now, Lieutenant-
19	we did get the weapons, remove them or take them away from	19	General, I want to put to you that it's not only a matter
20	them. This is why I did not, from time to time, keep on	20	that the decision was not disclosed. I'm going to put to
21	telling them this is what you do and they knew what was to	21	you that in fact the SAPS presented a case to this
22	be done. My decision was a strategic decision depending on	22	Commission which is inconsistent with your having made the
23	the decisions they would make there, Mr Chairperson,	23	decision on the night of the 15th August. I don't expect
24	depending on how they saw the circumstances.	24	you to comment on that. I'm going to show you why I say
25	MR BUDLENDER SC: Lieutenant-General, on	25	that, but you understand the point I'm seeking to make.
	Page 21593		Page 21595
1	the night of the 15th of August you decided that if the	1	Page 21595 MR SEMENYA SC: No Chair, I don't – I
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	Page 21596		Page 21598
1	CHAIRPERSON: No, no, according to the	1	your evidence of what happened because it says on this
2	copy which is in your cross-examination bundle, it's six	2	version, the stage 3 will be implemented if escalation, if
3	lines from the foot of the page. The last line on the	3	the situation escalates but you had already decided that it
4	slide as we have it exhibited is in fact on the next page.	4	was going to be implemented regardless of escalation if
5	The document we have concludes with the words "when that	5	they didn't hand over their weapons. Is that not correct?
6	decision is taken" at the foot of the first page.	6	GENERAL MBOMBO: That's why, Mr
7	MR BUDLENDER SC: Do you see the	7	Chairperson, I say my decision was a decision at a
8	paragraph – thank you, Chair – do you see the paragraph	8	strategic level depending on that operational or tactical
9	starting, "Deployment will be done?"	9	level when it would be executed, how and for what reason.
10	GENERAL MBOMBO: I see the paragraph that	10	MR BUDLENDER SC: No, Lieutenant-General,
11	says "Deployment for the day," it's a 2.2 paragraph.	11	that's not going to help. You announced to the public at
12	MR BUDLENDER SC: No, no, go further	12	9:30 that morning that "We are ending this situation
13	down. No, you've got the wrong document, I'm afraid.	13	today," correct?
14	Let's look at it on the screen. Can you look at it on the	14	GENERAL MBOMBO: It is correct.
15	screen.	15	MR BUDLENDER SC: You told, said the same
16	CHAIRPERSON: The document to which you	16	thing to the television interviewer, correct?
17	have been referred is the –	17	GENERAL MBOMBO: It is so.
18	GENERAL MBOMBO: I've got –	18	MR BUDLENDER SC: I accept that what
19	CHAIRPERSON: - final version of the	19	still had to be decided was the time when it would happen
20	minutes of the meeting, the JOC meeting at 6AM on the	20	but what you had decided was already decided, is it would
21	morning of the 16th. It's not the – we've already seen the	21	be that day, on the Thursday, correct?
22	manuscript copy but this is a final version which was	22	GENERAL MBOMBO: And then the time would
23	produced at some stage during the Roots meeting and this is	23	have depended on the people who were to execute the –
24	exhibit TT4, is it, Mr Budlender?	24	depending on whether they saw it to be correct at the time,
25	MR BUDLENDER SC: Yes, TT4, Chairperson.	25	depending on circumstances and according to information
20		20	
	Page 21597		Page 21599
1	Page 21597 CHAIRPERSON: Have you now got that	1	Page 21599 they had received.
1 2		1 2	
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			Dago 21404
1	Page 21604 morning of the 16th of August, right? Trust me, that's what	1	Page 21606 CHAIRPERSON: And is that what you said
2	it's talking about. Now I want to read you what it says.	2	also in the interview you had with eTV on the Thursday?
3	"The police's deployment would be in line with stage 4 of	3	Was there any mention of escalation? We're not interested
4	the operation strategy, a show of force, prepositioning. A	4	in the manner you were going to do it. I'm not interested
5	full deployment would be done in accordance with the	5	in what people's training was. It's a simple question.
6	strategy, meaning that the barbed wire trailers with their	6	Was stage 3 going to be implemented, in other words was an
7	Nyalas would be prepositioned but not deployed. If the	7	operation to be launched to take the weapons away from
		, 8	unwilling strikers who wanted to hang on to them and didn't
8	situation were to escalate, stage 3 would be implemented."	9	want to hand them over, was that stage going to be launched
9	You see that?		
10	GENERAL MBOMBO: I see that, yes, Sir.	10	only if there was an escalation? That's the question.
11	MR BUDLENDER SC: You saw that in the	11	What's the answer?
12	police presentation before it was made?	12	GENERAL MBOMBO: It is so, Mr
13	GENERAL MBOMBO: I see it.	13	Chairperson.
14	MR BUDLENDER SC: Is it correct?	14	CHAIRPERSON: That was never mentioned to
15	GENERAL MBOMBO: It is so.	15	anybody, it wasn't mentioned to the National Commissioner,
16	MR BUDLENDER SC: So stage 3 was only	16	was it? The National Commissioner would have believed that
17	going to be implemented if the situation escalated?	17	your instruction was, and your intention was if the weapons
18	GENERAL MBOMBO: As I've already said,	18	aren't handed over, even if there is no escalation, stage 3
19	Sir, if they saw that the situation allowed.	19	will be implemented because we have to get the weapons away
20	MR BUDLENDER SC: No, no, if the	20	from the people by the end of the day. Isn't that what you
21	situation escalated, not if it allowed it. It says "if the	21	were conveying to the National Commissioner? Or am I
22	situation were to escalate," so stage 3, we must understand	22	misunderstanding?
23	this means stage 3 would be implemented only if the	23	GENERAL MBOMBO: Chairperson, my
24	situation escalated.	24	intention mostly was that we get the weapons. That is what
25	GENERAL MBOMBO: As far as I know it	25	I mentioned to the National Commissioner, Chairperson, that
1	Page 21605	1	Page 21607
1	would have been whether it was correct to be implemented,	1	we had to get these weapons. But there was still hope that
2	would have been whether it was correct to be implemented, including the escalation.	2	we had to get these weapons. But there was still hope that we would get them, that we would get them peacefully.
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	Page 21608		Page 21610
1	Thursday wasn't going to be D-day if the, despite what had	1	Do you say that what you told the world at large
2	been told at the media conference, if the operational	2	through the media briefing was that you were going to end
3	commanders or the commanders on the ground, all the people	3	the matter on the 16th if there was escalation? Did you say
4	in the JOC, thought it wouldn't be safe, it would be too	4	that?
5	risky to implement stage 3 on that day? Is that what	5	GENERAL MBOMBO: Unfortunately,
6	you're saying?	6	Chairperson, I did not explain what it is that we are going
7	GENERAL MBOMBO: Chairperson, the	7	to do if they did not give us the weapons, because I did
		8	not want to explain the nitty-gritty of that, the police
8	decision that I had made wasn't that - it was going to		
9	depend on what they saw the situation as being on the	9	plan. This is what does not appear there which you wish
10	ground.	10	should have been on the –
11	CHAIRPERSON: So does that mean that	11	MR BUDLENDER SC: No, I don't want to
12	Thursday might not have been D-day, despite what you'd	12	appear there how the police will execute it, which I'll
13	said?	13	accept you were not announcing. What you were announcing
14	GENERAL MBOMBO: It was my wish, Mr	14	is that that day you were going to end the matter, and you
15	Chairperson, it was my wish that on that day we take the	15	said that without any qualification and you said that to
16	weapons, but that decision, Mr Chairperson, depended on how	16	the world at large at a media briefing which was specially
17	the commanders under me saw the situation.	17	arranged for the purpose. Is that correct?
18	CHAIRPERSON: I'd asked the question I	18	GENERAL MBOMBO: It is so, Chairperson.
19	wanted to ask.	19	But as I said, as I've already said, it depended on the
20	MR BUDLENDER SC: Could we play AAA13?	20	people who were going to put the operation into action.
21	Let's see what you actually said.	21	They would have decided, depending on whether the situation
22	[VIDEO SHOWN]	22	permitted.
23	That's what you said.	23	MR BUDLENDER SC: Could we look at JJJ88?
24	GENERAL MBOMBO: I saw, yes.	24	Let's see what else you said. It's not, apparently it's
25	MR BUDLENDER SC: You didn't say we will	25	not enough. It's not going to help. I don't want to go
	Page 21609		Page 21611
1	Page 21609 end this maybe if it's convenient at the time or if it	1	Page 21611 around this in circles. I want to put it to you, I want to
1 2		1 2	•
	end this maybe if it's convenient at the time or if it		around this in circles. I want to put it to you, I want to
2	end this maybe if it's convenient at the time or if it escalates. You said, "Today we are ending this matter."	2	around this in circles. I want to put it to you, I want to remind you that you're giving evidence under oath, firstly.
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1	Page 21612 one of those four occasions said depending if the	1	Page 21614 CHAIRPERSON: What do you say about that?
		1	5 5
2	circumstances allow. Correct?	2	GENERAL MBOMBO: It is correct.
3	GENERAL MBOMBO: It is so. Unfortunately	3	CHAIRPERSON: Let me ask the last
4	what I knew, Mr Chairperson, was that the people serving	4	question before we take the adjournment. Mr Mathunjwa
5	under me who were going to execute the operation knew that	5	hadn't come back yet. The meeting started at 1:30. Mr
6	they had to look at all these angles.	6	Mathunjwa, as we know, was late in going to the koppie
7	MR BUDLENDER SC: Can I just ask one last	7	after you'd told him he had, was obliged to go and convince
8	question on this? I think we've spent enough time on it.	8	the people to lay down their arms. He went; he was still
9	Was it your decision that the disarming would take place	9	busy, he hadn't come back yet, or he may have - I'm not
10	only if there was escalation?	10	sure if he was still busy but he hadn't come back yet
11	GENERAL MBOMBO: That was my intention,	11	before 1:30. The meeting started at 1:30 and practically
12	but it would have, the operation would have depended on the	12	the first thing that's minuted is, "The Provincial
13	people that were actually charged with executing the	13	Commissioner instructed Major General Annandale to proceed
14	operation.	14	with the implementation of stage 3 of the operational
15	MR SEMENYA SC: Chair, it seems to me	15	plan." That appears from exhibit EE. You hadn't yet got
16	that the witness may better understand the question if it	16	feedback from Mr Mathunjwa that he'd been unsuccessful in
17	is explained what is meant by escalation, otherwise I see	17	convincing the people, as you'd told him he was obliged to
18	this rotating, if that would help.	18	do, or obliged to endeavour to do. Mr Mathunjwa hadn't
19	CHAIRPERSON: I was proposing to take the	19	come back yet and reported to you that he was unable to
20	penultimate adjournment before we proceed till 2 o'clock -	20	convince the people. That's correct, isn't it?
21	MR BUDLENDER SC: Can I ask one question,	21	GENERAL MBOMBO: Chairperson, there was
22	Chair?	22	no agreement made that Mr Mathunjwa would revert back to
23	CHAIRPERSON: Yes, certainly. This last	23	me, and secondly, Chairperson, whilst he was up there
24	one, we'll then take the adjournment and when we resume	24	talking to the protesters, Brigadier Calitz was present
25	we'll go straight through till 2 o'clock.	25	there. As a result of a report received by me from General
20		20	there. As a result of a report received by the from benefat
	Page 21613		Page 21615
1	MR BUDLENDER SC: Thank you, Chair.	1	Mpembe it was said that Brigadier Calitz had reported to
2			
2	Lieutenant General Mbombo, you made the decision, you gave	2	him that Mr Mathunjwa had been there and he did not agree
3	Lieutenant General Mbombo, you made the decision, you gave the instruction at 13:30 on the 16th that stage 3 must be	2 3	
			him that Mr Mathunjwa had been there and he did not agree
3	the instruction at 13:30 on the 16th that stage 3 must be	3	him that Mr Mathunjwa had been there and he did not agree with the people and that he had left, and then they
3 4	the instruction at 13:30 on the 16th that stage 3 must be implemented. Correct?	3 4	him that Mr Mathunjwa had been there and he did not agree with the people and that he had left, and then they observed what was going on then there.
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1	Page 21616 GENERAL MBOMBO: Correct, Chairperson.	1	Page 21618 the Provincial Commissioner who already announced that
2	MR BUDLENDER SC: Alright. Now I really	2	extraordinary session the night before." Do you see that?
3	would like to move on to another –	3	GENERAL MBOMBO: Yes, I see, Chairperson.
4	GENERAL MBOMBO: But let me explain this,	4	MR BUDLENDER SC: Is that correct?
5	Mr Chairperson. According to me when I made the decision,	5	GENERAL MBOMBO: It is so, yes.
6	the decision was not made based on the escalation of the	6	MR BUDLENDER SC: Alright, and then can I
7	situation. My decision was based on mainly that we bring	7	show you another passage. I'm not going to ask you
8	the violence to an end by removing the weapons from the	8	questions about it because we just go around in circles if
9	people. That is what confuses me about this escalation.	9	I do but I want to take you to day 1, the transcript of day
10	MR BUDLENDER SC: Thank you.	10	136, page 14482. Now at 14482 Mr Chaskalson is questioning
11	MR MAHLANGU: Sorry, I just –	11	Brigadier Calitz – I beg your pardon, questioning Colonel
12	MR BUDLENDER SC: I'm sorry.	12	Scott about the question of threats that were allegedly
13	GENERAL MBOMBO: Because the escalation	13	made. You'll see at the top of page 14482 there's this
14	did not come from me, the word "escalation," it came from	14	discussion about what Captain Adriao said and the fear for
15	the people who were involved in the operation.	15	safety because of the crowds changing and so on. Do you
16	COMMISSIONER HEMRAJ: General, can I just	16	see that? And then can you now go to – that's the context
17	ask you, at the time that you conveyed your decision to the	17	and then at the foot of the page line 24 Mr Semenya
18	officers commanding on the 15th, did you use the term D-day?	18	intervenes and he says the following. "Chair, I am aware
19	GENERAL MBOMBO: It's not so,	19	that the evidence of General Mpembe, amongst others, is
20	Chairperson, I never used that word.	20	that there was an escalation in tension leading up to the
21	MR BUDLENDER SC: General, I'd like to	21	phase, or stage 3, but as far as SAPS' case is concerned,
22	show you two passages in the record of this Commission.	22	there was going to be a stage 3 if the arms were not
23	Could we go to day 156, the transcript on day 156, to page	23	voluntarily surrendered by 9 o'clock as promised. That's
24	17685. There you'll see Brigadier Calitz is giving	24	our case." Do you see that?
25	evidence and there's a discussion, I'm asking questions,	25	GENERAL MBOMBO: I see that, Chairperson.
	Page 21617		
	5	1	Page 21619
1	there's a discussion about the briefing which took place	1	MR BUDLENDER SC: Is that correct?
2	there's a discussion about the briefing which took place after the JOCCOM meeting and then at line 8 – briefing of	2	MR BUDLENDER SC:Is that correct?GENERAL MBOMBO:It is so, Chairperson.
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	Page 21620		Page 21622
1	report at 11:55. It says, "Brigadier Tsiloane reported	1	GENERAL MBOMBO: I wouldn't say it was
2	that the President of AMCU just left the base on his own to	2	misleading, Chairperson.
3	visit the group at the koppie and he left the rest of the	3	MR BUDLENDER SC: You don't think it was
4	group of AMCU behind and the Lonmin branded Combi with	4	misleading to say negotiations have come to an end when in
5	other members of AMCU drove to the koppie and Captain	5	fact the party on the other side says I'm coming back in
6	Seleke of mobile operations escorted them. Then the next	6	half an hour, I'm still trying. You don't think that's
7	one I want you to look at is 1006, 12:12 and the next	7	misleading?
8 9	situation report. P1, now P1 is papa1, is it? Is that	8 9	GENERAL MBOMBO: Because I did not know of that at the time.
	Brigadier Calitz? GENERAL MBOMBO: Yes.		
10	MR BUDLENDER SC: "P1 reported that the	10 11	CHAIRPERSON: You now know because the
11	AMCU member arrived and they addressed the media. They	12	occurrence book has been put to you. The question now is,
12 13	then went to the group together with the media. The group	12	in the light of what you now know, will you accept that the
14	of women are also at the gathering." Then the next one,	13	report that was made to you was misleading? GENERAL MBOMBO: Not totally, Chairperson
15	1008 that's at 12:35, situation report. "Papa1 reported	15	
16	that 24 Media group busy with AMCU leaders." Next one	16	CHAIRPERSON: And if it was partially
17	1009, 13:05 situation report, "Papa1 reported that	17	misleading, the question is who made this partially
18	everything still under control, AMCU still addressing the	18	misleading report to you?
19	people." "1010, 13:25 situation report. Papa1 reported	19	GENERAL MBOMBO: The report was made to
20	that the AMCU people addressed the group and the group are	20	me by General Mpembe. Why I'm saying not totally, even
21	unhappy and AMCU promised that they will be back after half	21	here in the OB entry, sir, is the report from papa1 which
22	an hour with the mine management because the group are not	22	says that the people are not happy. That is a report
23	satisfied. They said they want R12 500. The group of	23	possibly that is saying the mood of the people had changed.
24	women were still at the gathering." Now is that the report	24	MR BUDLENDER SC: - go there, Lieutenant-
25	which you heard from Brigadier Calitz which you referred to	25	General, because that will take us on another deviation.
	Page 21621 when you were giving evidence before the break?		Page 21623
1			The people were uphappy the group were uphappy but you cay
1		1	The people were unhappy, the group were unhappy but you say
2	GENERAL MBOMBO: I am not sure of what	2	General Mpembe never told you that Mr Mathunjwa was still
2 3	GENERAL MBOMBO: I am not sure of what report General Mpembe was referring to but the report I	2 3	General Mpembe never told you that Mr Mathunjwa was still in the midst of his attempts and he was going to, he said
2 3 4	GENERAL MBOMBO: I am not sure of what report General Mpembe was referring to but the report I received had mentioned that the negotiations had failed,	2 3 4	General Mpembe never told you that Mr Mathunjwa was still in the midst of his attempts and he was going to, he said he'd be back in half an hour. You were never told that.
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1	MR BUDLENDER SC: Well, whose fault is it	1	and I'm hoping we can make quicker progress here, in your
2	if it's not General Mpembe's fault?	2	interests and in mine – and the Commission's. Now, we know
3	GENERAL MBOMBO: I wouldn't be sure	3	that Captain Letloko and Brigadier Mahlalela are
4	because even that which appears on the OB has been written	4	responsible for the minutes of the NMF, do you know that?
5	by a human being.	5	GENERAL MBOMBO: That's correct, sir.
6	MR BUDLENDER SC: I don't understand	6	MR BUDLENDER SC: And they were both
7	that. Who was at fault for not giving you the full report?	7	present at the extraordinary session at which you discussed
8	GENERAL MBOMBO: The person who was	8	Marikana.
9	supposed to give me a report was General Mpembe and indeed	9	GENERAL MBOMBO: I remember Brigadier
10	he is the person who did.	10	Mahlalela. I am not sure of the captain. He could have
11	MR BUDLENDER SC: You now say he gave you	11	been there, I don't remember.
12	a misleading report, so he is the person who is to blame.	12	MR BUDLENDER SC: Well, and it's
13	GENERAL MBOMBO: If it was a misleading	13	reasonable to assume that Brigadier Mahlalela heard what
14	report, yes, Chairperson.	14	was said at that meeting and if Captain Letloko was there,
15	MR BUDLENDER SC: You just agreed with	15	that she also heard it, correct?
16	the Chairperson that it was misleading because it didn't	16	GENERAL MBOMBO: It should be so, yes.
17	mention that the negotiations were still being attempted.	17	MR BUDLENDER SC: Let's read what was
18	GENERAL MBOMBO: It was, as I said, not	18	said at – what they recorded as having been said at that
19	totally misleading. I said so, Chairperson.	19	meeting. Could you go to exhibit JJJ177?
20	MR BUDLENDER SC: It was partially	20	GENERAL MBOMBO: I get it, sir.
21	misleading, do you accept that?	21	MR BUDLENDER SC: Now it says, "The
22	GENERAL MBOMBO: I agree with that, if I	22	National Commissioner opened the meeting" – well, firstly
23	read what appears in the OB.	23	let's see who was there. The National Commissioner, all
24	MR BUDLENDER SC: And General Mpembe is	24	Provincial Commissioners, that's nine people, Divisional
25	to be blamed for misleading you.	25	Commissioner, Operational Response Service, that makes 11,
	Page 21625		Page 21627
1	1 490 21020		
1	GENERAL MBOMBO: As I say, it is not	1	Deputy National Commissioner Operational Services makes 12
2	GENERAL MBOMBO: As I say, it is not totally misleading. The report that he gave me is not	1 2	9
			Deputy National Commissioner Operational Services makes 12
2	totally misleading. The report that he gave me is not	2	Deputy National Commissioner Operational Services makes 12 and the Acting Divisional Commissioner CI makes 13. So
2 3	totally misleading. The report that he gave me is not totally misleading.	2 3	Deputy National Commissioner Operational Services makes 12 and the Acting Divisional Commissioner CI makes 13. So there were 13 present, is that right?
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	Page 21628		Page 21630
1	indicated that additional resources must be made available	1	MR MPOFU: Chairperson - Chairperson, I
2	upon need identification by the Provincial Commissioner,	2	don't if it's a matter of interpretation but the witness
3	North-West." Right, now let's take it step by step. Did	3	said that, she used the words interchangeably, that the
4	you make a proposal that the SAPS must disarm the strikers?	4	meeting had agreed with her proposal and decision. She
5	GENERAL MBOMBO: As I have already	5	didn't distinguish between the two things.
		_	· ·
6	mentioned that, that I had explained to them that, during	6	
7	the discussions that were taking place, that I had hoped	7	correct?
8	that there would be a solution but if this is not	8	MR MAHLANGU: Chairperson, if the
9	successful, my intention was that we take the weapons which	9	question would be repeated I –
10	are the result of the violence existing.	10	CHAIRPERSON: No, what Mr Mpofu says is
11	MR BUDLENDER SC: Right and did the	11	the witness used the expressions proposal and decision
12	meeting endorse what you said?	12	interchangeably and said that the meeting had endorsed the
13	GENERAL MBOMBO: Maybe I am not sure of	13	 agreed with the proposal and the decision. Am I
14	the meaning of the word "endorse" -	14	repeating it correctly, Mr Mpofu?
15	MR BUDLENDER SC: Well, let's take it	15	MR MPOFU: That's correct, Chairperson.
16	step by step. You say there were deliberations. Did the	16	CHAIRPERSON: Now the question is
17	meeting say that they agreed with what you had said you	17	whether, inasmuch as that's a point raised in relation to
18	were going to do?	18	the accuracy of your interpretation, what do you say about
19	GENERAL MBOMBO: They agreed with me, Mr	19	it?
20	Chairperson. Those who were to assist me with the weapons	20	MR MAHLANGU: The witness spoke of a
21	that were to be taken, agreed that –	21	decision. I am not sure if the word "proposal" was used by
22	MR SEMENYA SC: No – no. Can the	22	the witness but she could –
23	interpretation be repeated? I'm sorry, Chair.	23	MR MPOFU: Well, Chairperson, the record
24	GENERAL MBOMBO: They agreed with the	24	will speak for itself otherwise we can just rewind. It was
25	decision and the proposal that I was putting, Chairperson.	25	literally two questions ago, she said proposal and
25	decision and the proposal that I was putting, champerson.	25	incluing two questions ago, she sald proposal and
	Page 21629		Page 21631
1	Page 21629 The others who were to assist with the necessary resources	1	Page 21631 decision, with her own mouth and so did the interpreter, by
1		1	•
	The others who were to assist with the necessary resources		decision, with her own mouth and so did the interpreter, by
2	The others who were to assist with the necessary resources for this operation agreed that they would do so.	2	decision, with her own mouth and so did the interpreter, by the way. It's not your fault, she said –
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	Page 21636		Page 2163
1	classified and has been read to us, and the 9th of October,	1	that's right?
2	you never looked at any of the e-mails that you received at	2	GENERAL MBOMBO: It was supposed to be
3	all during that period? Is that what you're telling us	3	so, Mr Chairperson, but it was a mistake on my part that I
4	under oath?	4	did not do so.
5	GENERAL MBOMBO: I did look at those when	5	MR BUDLENDER SC: There were 12 other
6	I came back to the office, Mr Chairperson.	6	people, senior police officer officers present at that
7	CHAIRPERSON: When did you come back to	7	meeting, not one of them sent in a message, a reply or at
8	the office – sorry, sorry, I didn't mean to interrupt you,	8	the meeting said by the way, these minutes are not correct
9	forgive me. Please carry on with your answer.	9	in what they say took place, not one of them.
10	GENERAL MBOMBO: I took it that I would	10	GENERAL MBOMBO: I see as the e-mail
11	be able to make any corrections that I would need to if we	11	states, yes, I see it in the e-mail.
12	are in a meeting.	12	MR BUDLENDER SC: And then on the 8th of
13	CHAIRPERSON: When did you know that you	13	October Brigadier Mahlalela again sent an e-mail to the
14	wouldn't be attending the meeting on the 9th and 10th of	14	members of the NMF, which is again classified, and she
15	October?	15	again attached the minutes of the meeting, draft minutes of
16	GENERAL MBOMBO: I don't remember so	16	the meeting of the 15th of August. Did you receive that e-
17	clearly, Mr Chairperson.	17	mail?
18	CHAIRPERSON: Would you have had the	18	GENERAL MBOMBO: I must have received it,
19	opportunity before the meeting – if you didn't go to the	19	Chairperson.
20	meeting did you send your apologies?	20	MR BUDLENDER SC: Now having been given
21	GENERAL MBOMBO: I did send an apology,	21	the draft minutes for a second time, did you say oh, hang
22	sir, and also a person to represent me.	22	on, these draft minutes are not correct?
23	CHAIRPERSON: Sorry, and also?	23	GENERAL MBOMBO: I, dependent on, I will
24	GENERAL MBOMBO: And also a person to	24	 I said to myself I will find a chance in the meeting.
25	represent me in the meeting.	25	One other thing, Chairperson, this is because I did not
	5 - 21/07		5
1	Page 21637 CHAIRPERSON: Yes, you sent somebody to	1	Page 2163 think that this extraordinary meeting was part of that
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1 2 3	CHAIRPERSON: Yes, you sent somebody to represent you. Now, so there were two things you could	2	think that this extraordinary meeting was part of that meeting.
2	CHAIRPERSON: Yes, you sent somebody to represent you. Now, so there were two things you could have done if you were unhappy with the minutes. You could	2	think that this extraordinary meeting was part of that meeting. MR BUDLENDER SC: Let me just understand
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17 correct those minutes which I've noticed were wrong? 17 that that actually happened in the subsequent meeting of	
18 GENERAL MROMBO: If the extraordinary 18 October	of 9
19session had again sat, I would have had the chance.19CHAIRPERSON:No, no, all that happened	
20 MR BUDLENDER SC: Why didn't you say it 20 there was that it was said that this meeting shouldn't	
21 at one of the main meetings, saying look out, these minutes 21 adopt those minutes, they should be adopted by a subsec	-
22 are wrong, we must get the extraordinary session together 22 meeting of an extraordinary session. But no-one at that	t
23 again so that they can be corrected?23 point said oh, by the way, these minutes aren't right	
24 GENERAL MBOMBO: I did not see that as my 24 anyway, but I think that's a point that we can ignore for	•
25 problem because I was thinking that if there existed and it 25 the present purposes.	
Page 21641	e 21643
2 sit again I would have corrected. 2 sit again I would have corrected. 2 extraordinary session was a special meeting of 13 mem	mhors
3 MR BUDLENDER SC: Now we know the minutes 3 of the top management of the SAPS. We've seen who	IIIDCI 3
4 reflect what Captain Letloko and/or Brigadier Mahlalela who 4 there. Correct?	2 11/25
4 Tenect what captain Letion and/or brigadier Manaela who 4 there. Correct:	o was
5 were present and whose job was to take the minutes said 5 GENERAL MROMBO. It is so yes	o was
5 were present and whose job was to take the minutes, said 5 GENERAL MBOMBO: It is so, yes.	
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1	Page 21644	1	Page 21646
1	Mpofu, Mr Mahlangu, Chair.	1	other 12 people present, on what was going on. We
2	MR MPOFU: We all agree.	2	discussed it. An offer was made to – the members agreed
3	MR MAHLANGU: I want to say, Mr	3	with what I, I told them that I wanted to disperse and
4	Chairperson, I used the word because it had been used in	4	disarm the protesters if they didn't hand over their
5	the context and I interpreted in the context.	5	weapons. The meeting agreed with me and I was offered
6	MR BUDLENDER SC: Now this meeting, the	6	additional resources if I want it.' You say that's what
7	only matter discussed at this meeting was Marikana.	7	that means?
8	Correct?	8	GENERAL MBOMBO: As I had said earlier,
9	GENERAL MBOMBO: That's all, yes.	9	Mr Chairperson, that the truth of the matter is that my
10	MR BUDLENDER SC: A meeting of 13 very	10	statement was not fully detailed. I agree that if you look
11	senior SAPS officers under the leadership of a National	11	at this paragraph you do not find what you are saying in
12	Commissioner?	12	the manner in which you say it.
13	GENERAL MBOMBO: It is so, Sir.	13	CHAIRPERSON: It's not correct that you
14	MR BUDLENDER SC: Why did you not mention	14	only apprised the National Commissioner of the situation at
15	the meeting in your statement to the Commission?	15	Marikana, you also apprised 11 other senior members of the
16	GENERAL MBOMBO: I had mentioned this in	16	police service, all of them members of the Management
17	my statement, Mr Chairperson.	17	Forum. Is that right? Why did you only talk about the
18	MR BUDLENDER SC: Not in your first	18	National Commissioner and not mention the presence of the
19	statement. You only mentioned it in your second statement	19	other persons to whom, who also received the briefing that
20	when we asked you questions about it.	20	you gave?
21	GENERAL MBOMBO: Chairperson, I mentioned	21	GENERAL MBOMBO: Chairperson, in this
22	it even in my first statement. I think I have mentioned it	22	paragraph I only mentioned my discussion with the National
23	in my first statement.	23	Commissioner after I was telephoned by General Mpembe that
24	MR BUDLENDER SC: Well, I think you're	24	there was this discussion about the events of the following
25	wrong, but let's check. If you're right and I'm wrong I	25	day at 9 o'clock. It's a decision that I had not taken yet
1 2 3	Page 21645 will apologise, but let's see if we can find it. I think you may be referring to paragraph 18 of your first statement, GGG5.	1 2	Page 21647 when I spoke to the National Commissioner and the other members who were there. That is why I agree, Mr
3		2	Chairporcan, that this statement does not explain the parts
		3	Chairperson, that this statement does not explain the parts
4	CHAIRPERSON: I'm sorry, what paragraph	4	that I had in that meeting.
4 5	CHAIRPERSON: I'm sorry, what paragraph are you –	4 5	that I had in that meeting. MR BUDLENDER SC: It goes beyond that,
4 5 6	CHAIRPERSON: I'm sorry, what paragraph are you – MR BUDLENDER SC: Paragraph 18, page 7,	4 5 6	that I had in that meeting. MR BUDLENDER SC: It goes beyond that, Lieutenant General. It doesn't explain that a meeting was
4 5 6 7	CHAIRPERSON: I'm sorry, what paragraph are you – MR BUDLENDER SC: Paragraph 18, page 7, GGG5. Is that what you're referring to, Lieutenant	4 5 6 7	that I had in that meeting. MR BUDLENDER SC: It goes beyond that, Lieutenant General. It doesn't explain that a meeting was held at all.
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1	Page 21648	1	Page 21650
1	GENERAL MBOMBO: It could be possibly so.	1	MR BUDLENDER SC: Let's make a list – CHAIRPERSON: [Microphone off, inaudible]
2	I have no other reason why I did not explain it. MR BUDLENDER SC: And you also forgot	2	
3	, , , , , , , , , , , , , , , , , , , ,	3	ask this question. If you had remembered it, would you have mentioned it at Roots?
4	when you reviewed the SAPS presentation to the Commission,	4	
5	exhibit L. You forgot then again.	5	GENERAL MBOMBO: Certainly, yes, Mr
6	GENERAL MBOMBO: Possibly so.	6	Chairperson. I would have done so.
7	CHAIRPERSON: Did you mention it at Roots	7	CHAIRPERSON: And would you have seen to
8	at the – you attended the conference from time to time at	8	it that it was incorporated in exhibit L if you'd
9	Potchefstroom Roots. Did you tell the people there about	9	remembered it?
10	the fact that there had been this meeting on the 15th and	10	GENERAL MBOMBO: It is so, Chairperson.
11	that it had been discussed, you'd made the decision	11	MR BUDLENDER SC: I'd like to go through
12	already? Did you tell them that? Did the participants at	12	with you a list of all the people who were apparently
13	Roots know about the fact that this had happened?	13	forgetful, as you were, and did not disclose either your
14	GENERAL MBOMBO: I don't remember	14	decision of the 15th of August or the meeting of the 15th of
15	explaining that to them, Mr Chairperson, because at Roots I	15	August. Right, now the first one I've got is the person
16	was not part of the discussions that were taking place	16	who prepared the SAPS opening statement. That person did
17	there. And another thing; what I told them was that I took	17	not disclose either the meeting of the 15th of August, or
18	the decision to police the area in order to maintain law	18	your decision of the 15th of August. Correct?
19	and order.	19	GENERAL MBOMBO: It is so –
20	CHAIRPERSON: What was the purpose of the	20	CHAIRPERSON: I'm sorry, Mr Budlender, I
21	Roots conference? Was it not to ascertain the relevant	21	don't mean to interrupt you, but we don't know who prepared
22	facts and to incorporate them in a presentation which was	22	the statement. We don't know who drafted it, and the
23	to be put before the Commission?	23	person who drafted it may well have been in ignorance of it
23	GENERAL MBOMBO: It was so.	24	because it hadn't been communicated at Roots and wasn't in
24	CHAIRPERSON: As part of the undertaking	24	exhibit L. So I'm not sure – it may be that certain people
25	CHAIRFERSON. As part of the undertaking	25	exhibit L. So Thi hot sure – it may be that certain people
	Page 21640		Page 21651
1	Page 21649 the Commission received that it will receive full	1	Page 21651 approved the statement after it was prepared, but I don't
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1				
1	Page 21652 CHAIRPERSON: Perhaps you can reformulate	1	Page 2	1654
2	CHAIRPERSON: Perhaps you can reformulate the question, retain the thrust but avoid the objection.		GENERAL MBOMBO: I hear you. MR BUDLENDER SC: It includes the person	20
2		2 3	MR BUDLENDER SC: It includes the person on behalf of the SAPS who submitted documents to this	
4	material matter is omitted from an opening statement, we	4	Commission, who didn't include the minutes of that	
5	say to a witness can you explain why this wasn't mentioned.	5	extraordinary session. Correct?	
6	It's a routine matter for cross-examination, and I'm asking	6	GENERAL MBOMBO: It is so.	
7	the witness can she think of any reason why the various	7	MR BUDLENDER SC: And as far as the SAP	
8	people who approved the SAPS opening statement did not say	8	opening statement is concerned, it includes the persons	wno
9	that her decision of the 15th and the meeting of the 15th	9	approved the SAPS opening statement. Correct?	
10	should be included.	10	GENERAL MBOMBO: It can be so.	
11	GENERAL MBOMBO: I can't remember if	11	MR BUDLENDER SC: And it also includes	
12	anything was mentioned in that meeting and what the reasons	12	you because you didn't mention it in your initial	
13	why the other people you mentioned did not mention this.	13	statement.	
14	CHAIRPERSON: Mr Budlender, this is a	14	GENERAL MBOMBO: It is so.	
15	point we had before in another context. It's difficult for	15	MR BUDLENDER SC: Now I want to put it t	to
16	a witness like this to say why other people failed to do	16	you that it's very difficult to believe that it's a	
17	things. She obviously has to explain why she failed to do	17	complete coincidence that all of these people on all of	
18	things, but I'm not sure that one can expect her to say why	18	these occasions by accident failed to mention your decis	
19	other people made the same failure.	19	and this important meeting, extraordinary session. I wa	nt
20	MR BUDLENDER SC: Perhaps I can put the	20	to put it to you it's very difficult to believe that it's a	
21	question differently, Chair. Lieutenant General, I want	21	coincidence that all of them by accident failed to mentio	n
22	you to listen to my list of people who knew, must have	22	this. Would you like to comment on that?	
23	known about your decision of the 15th and who didn't mention	23	GENERAL MBOMBO: According to me, how	/
24	it, and who were aware of the meeting of the extraordinary	24	see it, I had no reason to not mention it. I accept that	
25	session on the 15th and didn't raise it. Now listen to what	25	I'd forgotten.	
	Page 21653		Page 2	1655
1	l say –	1	MR BUDLENDER SC: And they all forgot?	
2	CHAIRPERSON: I'm sorry, sorry, sorry, Mr	2	That's the only conclusion we can reach. A mass failure	of
3	Budlender, the point doesn't relate so much to that. It	3	memory.	
4	relates to where it was raised and whether it's appropriate	4	GENERAL MBOMBO: I wouldn't be sure of	
5	for it to have been raised by particular people and whether	5	that.	
6	she can answer as to why people didn't raise it. But there		MR BUDLENDER SC: Well, I want to put it	
7		6		
1 '	are a number of questions. One relates to the statement,	6 7	to you that when two important things happen and a lar	rge
8	••••		•	-
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8	are a number of questions. One relates to the statement, the opening statement. The other one of course is exhibit	7 8	to you that when two important things happen and a lar number of people in the same organisation all don't mer	ntion
8 9	are a number of questions. One relates to the statement, the opening statement. The other one of course is exhibit L itself. A number of people were present at Roots,	7 8 9	to you that when two important things happen and a lar number of people in the same organisation all don't mer them, that leads to, that makes it very difficult to	ntion
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1	Page 21656 people in that meeting who came and made statements for the	1	Page 21658
1		1	GENERAL MBOMBO: It is so, yes,
2	Commission.	2	Chairperson.
3	CHAIRPERSON: Mr Budlender, I'm sorry to	3	CHAIRPERSON: And that's not in L? Was
4	interrupt you. When you say "failed to mention it," what	4	that mentioned at the Roots' conference?
5	do you mean? Failed to mention it where? Failed to	5	GENERAL MBOMBO: I am not clear about the
6	mention it in their statement or failed to mentioned it –	6	question, Sir?
7	MR BUDLENDER SC: Chair, in their	7	CHAIRPERSON: The three gentlemen you
8	statements, in the presentation exhibit L, in the opening	8	have referred to, General Naidoo, General Mpembe and
9	statement, and in – ja, those three.	9	General Annandale, all three of them knew that you had made
10	CHAIRPERSON: Well, I would like to add	10	this decision on the Wednesday night, because you
11	another one.	11	communicated to them on the Wednesday night?
12	[13:51] CHAIRPERSON: You say you didn't mention	12	MR SEMENYA SC: Tuesday night,
13	it at Roots, you say because you forgot. Now, I take it we	13	Chairperson.
14	must assume that nobody else mentioned it at Roots, is that	14	CHAIRPERSON: Sorry, no the Wednesday
15	right? I presume if it had been mentioned I take it, it	15	night. It's the Wednesday night. I know you made another
16	would have been in exhibit L. Am I correct no one, you	16	decision on the Tuesday but we are not busy that at the
17	didn't mention it because you forgot and nobody else	17	moment. We are talking about the Wednesday one. And that
18	mentioned it either, at Roots, is that right?	18	was not mentioned at Roots either, was it? Or was it?
19	GENERAL MBOMBO: I think nobody spoke	19	GENERAL MBOMBO: I don't remember it
20	about that thing at Roots, Mr Chairperson.	20	being mentioned whilst, during my presence, Mr Chairperson.
21	CHAIRPERSON: No, you have made a number	21	CHAIRPERSON: I see, thank you.
22	of telephone calls from the meeting, or just after the	22	MR BUDLENDER SC: Chair, I am about to
23	meeting on the Wednesday night. We had the list of people	23	start a new topic, this might be a convenient time to take
24	you telephoned, they were all at Roots, weren't they?	24	the adjournment. Unless the commissioners have further
25	GENERAL MBOMBO: That is correct,	25	questions on this topic but I don't wish to explore it any
20		20	
1	Page 21657		Page 21659
1	Page 21657 chairperson. General Mpembe, General Annandale and General	1	Page 21659 further.
1	5	1 2	further.
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