

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 183

11 FEBRUARY 2014

PAGES 22008 TO 22143



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1 [PROCEEDINGS ON 11 FEBRUARY 2014]
 2 [09:22] CHAIRPERSON: The Commission resumes.
 3 Provincial Commissioner, you're still under oath. Mr
 4 Burger.
 5 MR BURGER SC: Chair, we've indicated
 6 that we are likely to be about a day with our questioning
 7 but having considered the record and the evidence led so
 8 far and clearly the exigencies of timing for the
 9 Commission, I'll be able to limit my questioning and I
 10 should be, for the benefit of my learned friends, within an
 11 hour. Good morning –
 12 CHAIRPERSON: I'm pleased to hear that.
 13 Also I appreciate the general remarks you made by way of
 14 introducing what you've just said.
 15 MR BURGER SC: Thank you.
 16 ZUKISWA MBOMBO: s.u.o.
 17 CROSS-EXAMINATION BY MR BURGER: Good
 18 morning, General.
 19 GENERAL MBOMBO: Good morning, Advocate.
 20 MR BURGER SC: I'm going to ask you
 21 questions. I represent Lonmin in these proceedings and I
 22 really want to debate three subjects with you. The first
 23 subject is Lonmin and operational decisions taken during
 24 the period 9 to 16 December 2012.
 25 CHAIRPERSON: I think you'll find it's

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1 August.
 2 MR BURGER SC: August 2012, thank you
 3 Chair. General, from your evidence can we agree that the
 4 decision to disperse, disarm and arrest was one taken by
 5 you as Provincial Commissioner?
 6 GENERAL MBOMBO: That is so, Mr Chair.
 7 MR BURGER SC: In fact from your evidence
 8 we learn that that was raised with Generals Annandale and
 9 Mpembe sometime on the 14th August after that body was seen
 10 near the koppie.
 11 GENERAL MBOMBO: That is so, Mr Chair.
 12 MR BURGER SC: That decision was taken
 13 without any input from the responsible Minister.
 14 GENERAL MBOMBO: As far as I know I had
 15 no input from some, anyone else.
 16 MR BURGER SC: In fact, in your evidence
 17 it appears that there was no prior agreement between you
 18 and the National Commissioner before you took that
 19 decision.
 20 GENERAL MBOMBO: That is so, Mr Chair.
 21 MR BURGER SC: You informed her and some
 22 other senior Generals that you had taken decision at that
 23 extraordinary National Management Forum meeting on the 15th
 24 of August in the evening.
 25 GENERAL MBOMBO: That is correct, Mr

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1 Chair.
 2 MR BURGER SC: And we can accordingly
 3 accept, the Commission can, that there was no contribution
 4 made to that decision by Lonmin.
 5 GENERAL MBOMBO: That is so, Mr Chair.
 6 MR BURGER SC: In fact, would it be
 7 correct to put to you that throughout this traumatic week,
 8 from your perspective Lonmin had acted as against the South
 9 African Police Service as a responsible citizen.
 10 GENERAL MBOMBO: I think so, Mr Chair.
 11 MR BURGER SC: They shared information
 12 with the South African Police Service, they made
 13 infrastructure available and they co-operated to the extent
 14 that they could have been expected to co-operate with the
 15 South African Police Service.
 16 GENERAL MBOMBO: As far as I know that is
 17 so, that is correct.
 18 MR BURGER SC: The second subject I want
 19 to address with you, Commissioner, is your recording of the
 20 events, in particular between the 13th and the 16th of
 21 August 2012. Now again from your evidence we know that
 22 there was no debriefing after the Marikana events of the
 23 16th, as was required in terms of standing order 262.
 24 GENERAL MBOMBO: That is so, Mr Chair.
 25 MR BURGER SC: We also know that in your

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1 first statement which was filed after the Roots conference
 2 on the 19th November 2012, some material facts were not
 3 dealt with.
 4 GENERAL MBOMBO: That is also true.
 5 MR BURGER SC: And I have in mind in
 6 particular you did not deal or address with the meeting of
 7 the extraordinary National Management Forum of the 15th
 8 August 2012.
 9 GENERAL MBOMBO: Are you referring to the
 10 first statement?
 11 MR BURGER SC: Your first statement, yes.
 12 GENERAL MBOMBO: That is so.
 13 MR BURGER SC: Yes. In fact, your
 14 evidence is that at the time that you were writing that
 15 statement you think you possibly could have forgotten about
 16 that incident, that's the extraordinary meeting of the
 17 National Management Forum.
 18 GENERAL MBOMBO: That could be the case,
 19 Mr Chair.
 20 MR BURGER SC: On the evidence before the
 21 Commission thus far, that's the loss of memory shared by
 22 most of the senior police generals present at the time.
 23 GENERAL MBOMBO: Repeat the question,
 24 please.
 25 MR BURGER SC: It seems that your senior

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1 generals around you, in the statements that they filed
 2 after the Roots conference, had all omitted to refer, to
 3 the extent that they knew, to that extraordinary meeting on
 4 the evening of the 15th of August 2012.

5 GENERAL MBOMBO: As I have said earlier
 6 on in this Commission, it is possible that I did not share
 7 the issue of the meeting with them.

8 MR BURGER SC: Yes. As I understand your
 9 evidence, you might even have omitted to mention that
 10 meeting during the Roots conference to the people present
 11 there.

12 GENERAL MBOMBO: That is so, Mr Chair.

13 MR BURGER SC: And we know that in the
 14 document that arose from the Roots conference, exhibit L,
 15 there's no mention of that most important meeting.

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

18 MR BURGER SC: Neither was there mention
 19 of that in the objectively speaking on behalf of the South
 20 African Police Services.

21 GENERAL MBOMBO: As you put it, Mr Chair.

22 MR BURGER SC: Yes. I want to put to you
 23 three propositions in your capacity as Provincial
 24 Commissioner. The first is that the Marikana tragedy must
 25 have been for you the most important event in your

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1 professional career during 2012.

2 GENERAL MBOMBO: That is so, Mr Chair.

3 MR BURGER SC: And the most important
 4 decision that you took as Provincial Commissioner during
 5 2012 in your official capacity was the decision to
 6 disperse, disarm and arrest, which you took on the 15th of
 7 August.

8 GENERAL MBOMBO: On the 14th of August, Mr
 9 Chair.

10 MR BURGER SC: On the 14th or the 15th.
 11 For my purposes that's not important, on the 14th and/or the
 12 15th. That was the most important decision in that whole
 13 tragedy, taken by you as Provincial Commissioner.

14 GENERAL MBOMBO: That is so, yes.

15 MR BURGER SC: And that decision really
 16 crystallised in this extraordinary meeting of the National
 17 Management Forum on the event of the 15th August 2012.

18 GENERAL MBOMBO: Maybe I should explain
 19 that this meeting, according to me, was not necessarily a
 20 meeting. You must remember, Mr Chair, I was giving a brief
 21 report to the National Commissioner. It was then up to her
 22 that I should give this meeting in front of certain people
 23 that she wanted to be present at the time.

24 MR SEMENYA SC: Sorry, did the
 25 interpreter say meeting or briefing?

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1 MR MAHLANGU: The briefing.

2 MR BURGER SC: General, I can promise you
 3 I won't go into semantic cross-swording with you. For my
 4 purposes, I've done this introduction for what my question
 5 is about. I'm looking for the record that you, as
 6 Provincial Commissioner, create to record important events.
 7 Now, as I understand from the days when I was young, a
 8 policeman, a constable carries a diary with him or her and
 9 he or she records important matters happening on his or her
 10 beat in that diary. Is that also your recollection?

11 GENERAL MBOMBO: I remember it well, Mr
 12 Chair.

13 MR BURGER SC: Yes. Now does –

14 CHAIRPERSON: I don't want to engage in
 15 semantic debates with you. A constable has a pocket book,
 16 non-commissioned people have pocket books, officers have
 17 diaries. It's just the terminology, it doesn't affect the
 18 thrust of the point you make.

19 MR BURGER SC: I'm indebted to you,
 20 Chair. So I was debating the pocket book with you of the
 21 constable, is the entry rank. Now we come to just about
 22 the second most important rank in the police. Do you have
 23 a diary as a Provincial Commissioner? Do you carry a
 24 diary?

25 GENERAL MBOMBO: It is not with me

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1 personally, it is kept in my office, Mr Chair.

2 MR BURGER SC: Is it an electronic diary
 3 or do you enter it by hand?

4 GENERAL MBOMBO: My secretary enters
 5 notes by hand.

6 MR BURGER SC: And you dictate those
 7 notes to the secretary?

8 GENERAL MBOMBO: If the need arises, yes.

9 MR BURGER SC: Yes and I take it you
 10 would only dictate notes to the secretary of important
 11 events taking place in your official function as Provincial
 12 Commissioner.

13 GENERAL MBOMBO: As you put it, Mr Chair,
 14 yes.

15 MR BURGER SC: Such as a decision to
 16 embark on a major unrest on a disperse, disarm and arrest
 17 exercise.

18 GENERAL MBOMBO: I did not see the need
 19 for that, Mr Chair.

20 MR BURGER SC: Or an important meeting
 21 which you attend with the National Commissioner and the
 22 eight other Provincial Commissioners where you convey to
 23 them the most important decision you've taken in a year.
 24 That is something which should be dictated to your
 25 secretary and be entered into your diary, is it not?

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1 GENERAL MBOMBO: I did not see the need
2 for that.

3 MR BURGER SC: Why not?

4 GENERAL MBOMBO: Because firstly,
5 according to me that was not a meeting, it was just a
6 briefing.

7 MR BURGER SC: No, but the decision to
8 disperse, disarm and arrest was a decision taken by you
9 which led to the death of 34 people, a most important
10 decision. My question to you is why was that not dictated
11 to your secretary, if you didn't do it, and enter it in
12 your diary shortly after the 16th August 2012?

13 GENERAL MBOMBO: Mr Chair, I make many
14 decisions. Books that govern my functions do not dictate
15 that I should note down every decision that I make. As I
16 say, this decision was noted in the police books, in the
17 occurrence book on the 13th of August. Everything else that
18 was taking place there, the entry of the 13th of August was
19 there, it told the people what to do, the people who were
20 there.

21 MR BURGER SC: No, but you've just told
22 the Commission that that most important decision, and we've
23 agreed it was your most important decision of the year, was
24 taken on the 14th of August. So let's get our chronology
25 clear and let me come back to my question. How does it

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1 happen that you do not record in your diary the most
2 important decision you take in that fateful period and the
3 most important meeting you attend in that fateful period?
4 How does that happen?

5 GENERAL MBOMBO: As I've said, Mr Chair,
6 the books that govern my functions do not dictate that I
7 should write down every decision in my diary.

8 MR BURGER SC: Yes. Do you accept today
9 that you should have made an entry in your diary of those
10 two important events, the decision of DDA and the meeting
11 on the evening of the 15th August? Do you accept that
12 should have been recorded, then we would have had it in
13 your statement, we would have had it in exhibit L, we would
14 have had it in the opening and the Commission would have
15 been assisted from the beginning on what are clearly
16 important events in this unfolding drama?

17 GENERAL MBOMBO: As you put it, I think I
18 accept that it would have been helpful.

19 MR BURGER SC: That's the first level of
20 book entry and I'm looking for the reason why we don't find
21 a record made by you of the two most important events of
22 August 2012. Do you prepare weekly or monthly or annual
23 reports in your capacity as Provincial Commissioner?

24 GENERAL MBOMBO: Mr Chair, we make
25 quarterly reports.

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1 MR BURGER SC: And to whom do you make a
2 quarterly report?

3 GENERAL MBOMBO: To the National
4 Commissioner.

5 MR BURGER SC: That is in writing?

6 GENERAL MBOMBO: That is correct, Mr
7 Chair.

8 MR BURGER SC: And when was the quarterly
9 report made to the National Commissioner after the events
10 of August 2012? Would that be in September or in December
11 of that year?

12 GENERAL MBOMBO: I can't recall right
13 now, but it must have been made.

14 MR BURGER SC: No, I accept it was made.
15 I'm trying to get the month because I'm going to ask you
16 for that report. When would you have made your quarterly
17 report after 16 August 2012?

18 GENERAL MBOMBO: Mr Chair, we do make
19 quarterly reports. It could have been made at the end of
20 that quarter but I cannot remember the month, as you are
21 asking now for the month.

22 CHAIRPERSON: Is the first quarter
23 January to March?

24 GENERAL MBOMBO: The first quarter is
25 April, May, June –

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1 CHAIRPERSON: The first quarter is April
2 to June.

3 GENERAL MBOMBO: Yes.

4 CHAIRPERSON: So the second quarter is
5 July to September.

6 GENERAL MBOMBO: Yes.

7 CHAIRPERSON: These events took place in
8 the second quarter.

9 GENERAL MBOMBO: That is so, Mr Chair.

10 CHAIRPERSON: So the second quarterly
11 report would've been made at the end of September, after
12 the incident –

13 GENERAL MBOMBO: Maybe in October, Mr
14 Chair.

15 CHAIRPERSON: Thank you.

16 MR BURGER SC: September, October 2012, I
17 accept that's near enough for my purposes. And do you
18 agree with me that you should've dealt, in that report to
19 the National Commissioner, with the decision you had taken
20 which led to the tragedy, the DDA decision, and the meeting
21 of the 15th of August with the top brass in the SAPS in
22 South Africa, when you conveyed that decision to him. Do
23 you accept that that should have been included in your
24 quarterly report after this tragedy?

25 GENERAL MBOMBO: I will not agree

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1 entirely, Mr Chair, because the quarterly reports that we
 2 submit have got a template. I then do not remember being
 3 asked for decision that I'd taken.

4 MR BURGER SC: No, Commissioner, the
 5 Marikana tragedy is not a template affair. It is the most
 6 important tragedy which happened on your beat in 2012. You
 7 don't need a template to report on that to the person who
 8 appointed you under section 6 of the South African Police
 9 Services Act. That must come naturally that you report on
 10 that, don't you agree?

11 GENERAL MBOMBO: That is so, Mr Chair.

12 MR BURGER SC: And do you accept that
 13 your failure to report these two incidents to the National
 14 Commissioner, with hindsight, was an oversight by you?

15 GENERAL MBOMBO: I'm not sure how, what
 16 you mean by saying it's a failure because I did not say I
 17 did not report.

18 MR BURGER SC: Did you report these two
 19 important events to the National Commissioner in
 20 September/October 2012?

21 GENERAL MBOMBO: That is so, Mr Chair.

22 [09:42] MR BURGER SC: I asked something, I don't
 23 know the answer. I don't know whether the evidence leaders
 24 have a copy of that report. So I don't want to ask
 25 unnecessarily, but if you have not produced it, will you

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1 make that report available to the Commission?

2 GENERAL MBOMBO: Mr Chair, remember that
 3 exhibit L is our explanation about everything that happened
 4 in Marikana which we could recall. That is also the
 5 explanation we presented to the national commissioner.

6 MR BURGER SC: Well, that doesn't help us
 7 at all, because we know that these two important events
 8 were omitted from exhibit L, so to give the national
 9 commissioner exhibit L is to tell her nothing of your
 10 important decision and it does not remind her of the
 11 important meeting she attended hours before the tragedy
 12 unfolded. That's my problem.

13 GENERAL MBOMBO: Mr Chair, I'm not sure
 14 if there is a problem there, because as counsel puts it, I
 15 was with her in that meeting or the briefing that you're
 16 talking about.

17 MR BURGER SC: Commissioner, may we have
 18 a copy of the report you filed, or was the report simply
 19 sending the national commissioner exhibit L?

20 GENERAL MBOMBO: That is exactly what we
 21 sent to her, Mr Chair.

22 MR BURGER SC: But then there's the major
 23 problem in the South African Police Services in the form of
 24 reporting by provincial commissioners to the national
 25 commissioner, because what you did seems to me to be a

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1 perfunctory function. This is not a report, a quarterly
 2 report of what happened in the North West precinct under
 3 your beat in a most important period, sending her a summary
 4 of the Roots document.

5 GENERAL MBOMBO: Mr Chair, I'm not sure
 6 if we understand each other. When I was talking about the
 7 quarterly report, you then had a question as to whether I
 8 reported about the incident at Marikana. I then responded
 9 by saying we report by means of a template. You were then
 10 correct, telling the truth, when you said the Marikana
 11 issue was not a template affair. I thought you were then
 12 saying it should have had its own report. That is why my
 13 answer is it does not mean that I did not report, because
 14 we made exhibit L available to the national commissioner,
 15 who presented that exhibit - who presented it as our report
 16 about the incident that occurred. The quarterly report has
 17 its own function. It's got information as they need it in
 18 a quarterly report.

19 MR BURGER SC: That's the template report
 20 you complete every quarter, is that right?

21 GENERAL MBOMBO: The quarterly report,
 22 yes.

23 MR BURGER SC: But in that, as you
 24 understand it, you're not called upon to report on
 25 important events such as your decision to embark on a DDA

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1 exercise leading up to the Marikana incident, and reminding
 2 her of the important get together on the evening of the 15th
 3 of August. Those things are not mentioned in the quarterly
 4 report.

5 GENERAL MBOMBO: Although they are not
 6 mentioned, Mr Chair, she knew that I was with her in that
 7 briefing.

8 MR BURGER SC: And I want to put to you
 9 that not mentioning those incidents in a quarterly report
 10 is an omission on your part – was an omission on your part.

11 GENERAL MBOMBO: I do not deny that, Mr
 12 Chair.

13 MR BURGER SC: Is the provincial
 14 commissioner subject to a peer review? We know in the
 15 professions, once a year or perhaps more regularly,
 16 partners and professional assistants review each other to
 17 see how people perform and what the perception is, how
 18 people perform. Against that backdrop, is there a peer
 19 review system amongst provincial commissioners and the
 20 South African Police Service?

21 GENERAL MBOMBO: Can you please explain
 22 your question?

23 MR BURGER SC: The question is, where you
 24 judge your own performance and you're judged your
 25 performance as a provincial commissioner by your immediate

<p style="text-align: right;">Page 22024</p> <p>1 officers around you, people of an equal rank or perhaps a 2 rank just below you, is there that peer review in the South 3 African Police Service on a provincial commissioner level. 4 GENERAL MBOMBO: Yes, there is, and it is 5 led by the national commissioner. 6 MR BURGER SC: And when did you peer 7 review take place, conducted by the national commissioner, 8 after the 16th of August 2012? 9 GENERAL MBOMBO: I remember the one of 10 June in 2013. 11 MR BURGER SC: And where did that take 12 place? 13 GENERAL MBOMBO: The national 14 commissioner's office. 15 MR BURGER SC: Was that in Pretoria, or 16 Midrand, where is that? 17 GENERAL MBOMBO: In Pretoria, Mr Chair. 18 MR BURGER SC: And who attended that 19 review? Who was present? 20 GENERAL MBOMBO: It's normally the 21 national commissioner and her deputies, who are concerned 22 with that function. 23 MR BURGER SC: How many people in total, 24 apart from you, being present there? 25 GENERAL MBOMBO: That one I remember</p>	<p style="text-align: right;">Page 22026</p> <p>1 GENERAL MBOMBO: That is so, Mr Chair. 2 MR BURGER SC: Anything else discussed 3 during that review that you remember? 4 GENERAL MBOMBO: It mostly ended there, 5 our discussion ended there, Mr Chair. 6 MR BURGER SC: No, but surely you also 7 discussed the communication system problems, which you told 8 the Commission which played a role in this incident? 9 Surely that was raised by the national commissioner, the 10 radios didn't work, the people didn't know what was going 11 on, or was that not discussed? 12 GENERAL MBOMBO: Mr Chair, I'm only 13 talking about what I was asked by the national 14 commissioner. I won't remember what was not asked. She 15 wanted to know about the officers, police officers who were 16 there. 17 MR BURGER SC: Fair enough, fair enough, 18 I can't ask you what was not asked, but we know that was 19 not asked by the national commissioner? 20 GENERAL MBOMBO: That is so, Mr Chair. 21 MR BURGER SC: Let me ask you then now, 22 because I have a whole list of things which I think should 23 have had been attended to after that – 24 CHAIRPERSON: Before you ask about that, 25 may I ask a question? Who was the other person present?</p>
<p style="text-align: right;">Page 22025</p> <p>1 there were two of them. I was the third person, not 2 counting the secretary. 3 MR BURGER SC: And was the Marikana 4 incident discussed during that review? 5 GENERAL MBOMBO: That is so, Mr Chair. 6 MR BURGER SC: Was it discussed what had 7 gone wrong which led to the death of 34 people on the 16th? 8 GENERAL MBOMBO: Not in that way, Mr 9 Chair. 10 MR BURGER SC: So how was the Marikana 11 incident discussed at your peer review with the national 12 commissioner in June of last year? What was said about it? 13 How were you reviewed on your performance during that 14 incident? 15 GENERAL MBOMBO: The national 16 commissioner was mostly interested in the way the operation 17 was conducted, taking into account the resources that were 18 present, available to the officers, especially what we were 19 doing to help the officers who were there. 20 MR BURGER SC: What you were doing to 21 help the South African police service officers that were 22 there? 23 GENERAL MBOMBO: That is correct. 24 MR BURGER SC: Is that by way of 25 psychological assistance after the event?</p>	<p style="text-align: right;">Page 22027</p> <p>1 You said there were only three of you, apart from the 2 secretary – the national commissioner, you and who was the 3 third person? 4 GENERAL MBOMBO: It was General Masemula. 5 CHAIRPERSON: How do you spell his name? 6 GENERAL MBOMBO: M-A-S-E-M-U-L-A. 7 CHAIRPERSON: Thank you. And you say the 8 secretary was also present? 9 GENERAL MBOMBO: That is correct, Mr 10 Chair. 11 CHAIRPERSON: Was the secretary making 12 notes about what was discussed? 13 GENERAL MBOMBO: I think so, Mr Chair, 14 but I'm not sure. I remember that she was handing over 15 certain documents to the commissioner that she was asking 16 for. 17 MR BURGER SC: Do you get a report after 18 that peer review from the national commissioner to give you 19 your report, like a school report, and this says you've 20 done well, you've got A for this and a B for this and D for 21 this, or don't you get a feedback on that evaluation? 22 GENERAL MBOMBO: We do get it, Mr Chair. 23 MR BURGER SC: Did you get such a 24 feedback? 25 GENERAL MBOMBO: That is so, yes.</p>

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1 MR BURGER SC: If that has not already
2 been produced to the Commission, do you have any objection
3 to give us a copy of that?
4 GENERAL MBOMBO: I have no objection, Mr
5 Chair, but remember also that it would be feedback
6 concerning my functions. It's in a template form.
7 MR BURGER SC: Well, if we see it, we'll
8 see what the template means then. It sounds very
9 mechanical to me, but let me not express a view until I see
10 the template, but that really – I'm now busy with my third
11 subject, and this is what was done post-Marikana? We know
12 you were not asked at that peer review on communication
13 systems. Can I ask you, how many police personnel are
14 under your command in the North West province? How many
15 people are you in charge of in the police service?
16 GENERAL MBOMBO: It's about 10 500, Mr
17 Chair.
18 MR BURGER SC: And what is the budget for
19 your province – the annual budget? How much money does it
20 cost to run the North West province police service under
21 your stewardship? You know?
22 GENERAL MBOMBO: It's 467 million in this
23 financial year, Mr Chair. That's excluding the salaries.
24 MR BURGER SC: So let me then go to the
25 first issue which has been raised in your evidence, and

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1 that was the problem with communication systems in August
2 2012. What did you do after that incident to address this
3 problem which manifested, the communication system failure
4 during the Marikana exercise?
5 GENERAL MBOMBO: We wrote a letter to the
6 national office asking for assistance, and what we thought
7 of doing as a short-term approach was to buy a mobile
8 command centre. We bought that. We took it to a place
9 where it was connected, wires were connected to it. That
10 is now the equipment that assists us in an operation. We'd
11 then drive this to that place where the operation is.
12 Although it's not fully functional like a Tetra, but it
13 does try and cover a reasonable distance. We had requested
14 for a Tetra long ago, but because of financial constraints,
15 we were told that we'll be introduced to another system
16 called Simulcast. They are already starting with
17 connecting this system in certain places, especially in
18 Rustenburg, the whole platinum there. What I was told
19 concerning the problems that we are experiencing in
20 connecting this system was the shortage of sites. I am
21 told by people who know that it will also not work exactly
22 like a Tetra.
23 MR BURGER SC: The first unit you
24 referred to, is that a mobile unit, a vehicle which drives
25 around?

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1 GENERAL MBOMBO: That is correct, Mr
2 Chair.
3 MR BURGER SC: You say it's not fully –
4 GENERAL MBOMBO: It's not a vehicle, it's
5 a caravan with all the communication equipment. We'd then
6 tow it to the place where it's needed.
7 MR BURGER SC: I see. And you say it's
8 not fully functional, what does that mean?
9 GENERAL MBOMBO: It functions fully, Mr
10 Chair. What I'm trying to explain is that it is unable to
11 cover a long distance or area. Maybe I should make an
12 example. If we are using it and we placed it in
13 Rustenburg, we are still unable to link the whole province,
14 like Rustenburg, Potchefstroom, Mafikeng, but we can cover
15 places nearest to Rustenburg.
16 MR BURGER SC: Good. That was the one
17 problem area you identified in your evidence last week.
18 The second one was that there's certainly not sufficient
19 video material of what happened on the 16th at scene 1 and
20 scene 2. The video material recording by the SAPS is sadly
21 lacking, and you identified that quite fairly as a problem
22 area. Now, you were not asked about that, I take it, at
23 your peer review? The national commissioner did not ask
24 you about that?
25 GENERAL MBOMBO: That is so, Mr Chair.

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1 MR BURGER SC: Now, let me ask you. What
2 has been done since the 16th August about that problem of an
3 absence of video recording of crowd control, where we just
4 don't have a record of what happened during incidents like
5 this? What did you do about that?
6 GENERAL MBOMBO: We have acquired video
7 cameras, Mr Chair. We have three units of the, unit of the
8 POP, and I think one unit received six or seven video
9 cameras.
10 [10:02] Our head office also trained additional police
11 officials in the use of those cameras.
12 MR BURGER SC: What about the other two
13 POP units, do they not have video cameras yet?
14 GENERAL MBOMBO: As I've said we have
15 three units and one unit each receives about six or seven
16 cameras, which means we got about 21 cameras or 18 cameras,
17 I'm not quite sure of the figure right now.
18 MR BURGER SC: I understand –
19 MR SEMENYA SC: Chair, for the record
20 there was an interpretation problem where the interpreter
21 said one instead of each, just for the record.
22 MR BURGER SC: Thank you, Commissioner, I
23 understand your answer on that. The third problem that you
24 identified as what had gone wrong at Marikana was probably
25 the obvious one. You said the fact that we seriously

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1 injured people, I think what you meant in saying is the
2 fact that people were killed there. That was a major
3 problem, do you agree?
4 GENERAL MBOMBO: That is so, Mr Chair.
5 MR BURGER SC: Now in that context,
6 you've heard the evidence that hearses had been ordered
7 before the incident and 4 000 rounds of sharp ammunition
8 had been ordered before the incident, I don't want to go
9 back into that, we have the evidence. What I want to ask
10 you is this, did you afterwards enquire into this? Why
11 would people order hearses prior to what happened and why
12 were 4 000 rounds of sharp point ammunition ordered prior
13 to that fateful day?
14 GENERAL MBOMBO: Mr Chair, I've answered
15 that question or those questions in my previous evidence.
16 If I can start with the hearses, I said I did not have
17 knowledge of that and it is not a normal thing to happen
18 during our operations. And I further explained that after
19 I had learnt about this I asked the person who was
20 responsible for this order of the hearses. He then gave
21 his reasons that they had encountered problems on the 13th
22 when they needed those vehicles to transport the people who
23 were injured on the 13th. And he also said it was not his
24 instruction that the vehicle should come to Marikana or
25 that there should be four in number. And about the

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1 ammunition that was ordered I did not have any knowledge
2 about that as well. But when I became aware of it I
3 enquired as to how did it happen and I was told that they
4 were sent back, they were not even used because no one was
5 there to receive them. They did not know who was supposed
6 to receive them.
7 MR SEMENYA SC: Again, Chair, for
8 interpretation sake, the hearses were to transport deceased
9 bodies, not the injured.
10 MR GOIRANA: Excuse, Mr Chair, the
11 witness did not mention deceased, the Advocate mentioned
12 people who were injured, seriously injured and she still
13 talked about people who were injured.
14 MR MAHLANGU: Mr Chair, the word used
15 again, as I said in Xhosa words can be – because the word
16 used by the General actually in the context referred to
17 deceased people. But the word [African language] in Xhosa
18 can mean injured or deceased.
19 MR MPOFU: No, Chairperson, I'm sorry, I
20 disagree with that. This witness at least has used the
21 word differently. She uses a word which is respectful when
22 she talks about the deceased, where she says [Africa
23 language] in other words those who have departed. And she
24 uses a different word when she talks about the injured
25 which is [African language].

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1 MR BURGER SC: Commissioner, you and I
2 will go ahead in our second languages and try to understand
3 each other.
4 CHAIRPERSON: Provincial Commissioner,
5 you've heard this debate about the word you used and can
6 you help us, what word did you use and – I mean your
7 English is good enough, I'm sure, to be able to tell us how
8 you intended it to be interpreted. So can you help us on
9 that?
10 GENERAL MBOMBO: Thank you, Mr Chair, can
11 I explain it? Mr Mpofu is correct about his statement.
12 I'm trying to respect the people who have passed on and
13 when I talk about people who were injured there I'm
14 referring to the people who have passed on. But it is true
15 that in Xhosa being injured is the word I've used in this
16 case but in my case I was referring to people who had
17 passed on.
18 MR BURGER SC: Commissioner, the fourth
19 problem that was identified and which was not addressed
20 during your peer evaluation process, but which you told us
21 about in evidence, was the problems with command and
22 control. And I think the example you gave was that
23 Brigadier Calitz was unaware of the shooting. The shooting
24 happened and he wasn't aware of that and you thought that
25 was a problem with command and control. Do you remember

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1 that criticism that you levied at the operation?
2 GENERAL MBOMBO: I remember that, Mr
3 Chair.
4 MR BURGER SC: Yes, when did you become
5 aware that Brigadier Calitz, being the operational
6 commander was unaware of the shooting at scene 1 when it
7 happened?
8 GENERAL MBOMBO: That is after that
9 incident, Mr Chair, when he was explaining to us.
10 MR BURGER SC: And when did he explain
11 that to you, was it on the 16th or when after the incident
12 itself?
13 GENERAL MBOMBO: The night of the 16th
14 after the National Commissioner had arrived.
15 MR BURGER SC: The operational
16 commissioner then explained to you that he was unaware of
17 the shooting being the operational commander while the
18 shooting took place?
19 GENERAL MBOMBO: That is so, Mr Chair.
20 MR BURGER SC: And you appreciated that
21 that's a problem in your command structure in the North
22 West province, is that correct?
23 GENERAL MBOMBO: I'm not sure if you're
24 trying to say it is a problem or a command problem of the
25 North West structure. Can you please explain?

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1 MR BURGER SC: Your phrase you used was
 2 there were problems with command and control. I'm happy to
 3 stay with that and I'm giving you the example. Problems
 4 with command and control. Brigadier Calitz, the
 5 operational commander, doesn't know that people are being
 6 shot. You, Provincial Commissioner, hear about that 20
 7 minutes after the event. The National Commissioner then
 8 hears about it half an hour later while South Africa sees
 9 it happening about seven minutes after the event. Clearly
 10 a problem with the command structure, isn't that correct?
 11 GENERAL MBOMBO: That is your view, Mr
 12 Chair.
 13 MR BURGER SC: What is your view,
 14 Commissioner?
 15 GENERAL MBOMBO: I agree the way that I
 16 put it that there were command and control problems in that
 17 operation.
 18 MR BURGER SC: Yes, yes.
 19 GENERAL MBOMBO: But that does not mean
 20 that there are command and control problems in the province
 21 of North West as you put it.
 22 MR BURGER SC: You realised on the
 23 evening of the 16th of August that a contributing factor to
 24 this tragedy was the problems with command and control
 25 which played out during the shooting at scene 1.

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1 GENERAL MBOMBO: I'm saying that's what
 2 we heard.
 3 MR BURGER SC: Yes, now what I'm busy
 4 with and I'm asking you what did you do to address that
 5 after the 16th of August because we're not 16 months later.
 6 You run a huge province with a massive budget and more than
 7 10 000 people employed, what did you do to address that defect
 8 that manifested on the 16th of August?
 9 GENERAL MBOMBO: As I was saying, Mr
 10 Chair, after we identified problem areas there our head
 11 office is busy trying to look into those problems, how to
 12 fix some of those problems. There are people who have been
 13 taken for training although not the complete, full number
 14 has been taken for the training.
 15 MR BURGER SC: Commissioner, help us.
 16 What does it mean you'll look into the problems and people
 17 are being taken for training? Can you give us the facts
 18 please? What is being done in the North West province
 19 under your watch to address the command and control problem
 20 which manifested on the 16th of August? What in hard terms?
 21 GENERAL MBOMBO: Mr Chair, let me
 22 explain. The fact that there were problems in that
 23 operation does not mean those are the problems of that
 24 province only, alone that province of North West. That is
 25 why we asked that when the problems that were identified in

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1 this operation should be looked at by the national office
 2 and be done for the whole province, not only because of
 3 that operation. All the provinces, not only in the
 4 province of North West.
 5 MR BURGER SC: No that can't be right.
 6 It is not a country-wide problem. Your first
 7 responsibility is the province of North West. You're
 8 responsible for North West. This tragedy happens in your
 9 province, under the guidance of the senior staff on your
 10 staff, North West senior police. That's where the problem
 11 manifested, so the point to start clearly is in North West
 12 province, under you, Commissioner, put it right. The rest
 13 of the country must then be the responsibility of the
 14 National Commissioner and eight other provincial
 15 commissioners. But your first responsibility certainly is
 16 your province. You can't delegate that up.
 17 GENERAL MBOMBO: I do not deny that, Mr
 18 Chair. But as I'm saying all the problems experienced
 19 there were not only concerning North West province. That
 20 is why we agreed with national office that this problem
 21 should be dealt with looking into all the provinces.
 22 Maybe, as you put it, that the problem happened in North
 23 West, that is true. That is so, but in order for our
 24 people to be helped we asked that in all the interventions
 25 that we have there should be people going there as priority

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1 from our province. There should be people going there from
 2 our province, in other words our province should be
 3 prioritised.
 4 MR BURGER SC: People going where?
 5 GENERAL MBOMBO: For training
 6 interventions that are being conducted.
 7 MR BURGER SC: And when was request
 8 directed and to whom?
 9 GENERAL MBOMBO: Already in 2012, Mr
 10 Chair, we had that discussion.
 11 MR BURGER SC: No, I'm asking when was
 12 that request directed and to whom. Did you direct the
 13 request?
 14 GENERAL MBOMBO: I did not do it
 15 personally but we were speaking in a meeting and I raised
 16 issues like all the other people who were raising things
 17 that had to be looked at urgently.
 18 MR BURGER SC: But, Commissioner, this is
 19 a strange way to run a province. You sit in a meeting and
 20 you raise issues. Do you ask the National Commissioner to
 21 prioritise your staff on courses and if so, I want to ask
 22 you where was it done? May I see the minutes and may I
 23 then ask the National Commissioner what she did about it?
 24 That's clearly the way you run a big organisation.
 25 GENERAL MBOMBO: As I'm say, Mr Chair,

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1 that we were sitting in a meeting where we were talking
 2 about these things. We then came to an agreement that
 3 there should be certain interventions that are conducted.
 4 One of those meetings that made us to talk about these
 5 interventions or the other reason is that a letter that was
 6 sent by Colonel Vermaak. From the head office ORS where
 7 all the POP units are trained they took a decision to
 8 conduct intervention training and they also took a decision
 9 to review the curriculum and from what I know they're busy
 10 with that

11 CHAIRPERSON: Now which letter of Colonel
 12 Vermaak are you referring to? There are two exhibits
 13 before us. One, a letter he wrote in May, dealing with the
 14 incident in Klerksdorp and making certain recommendations
 15 and the second one is a letter he wrote in December where
 16 he dealt amongst other things with Marikana. Is it one of
 17 those two letters which was discussed at this meeting you
 18 have just been talking about?

19 [10:22] GENERAL MBOMBO: The one of December, Mr
 20 Chair.

21 CHAIRPERSON: Yes.

22 GENERAL MBOMBO: General Annandale
 23 brought it up in that meeting and said we have this letter,
 24 we should look how to address the issues mentioned in that
 25 letter.

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1 CHAIRPERSON: Mr Burger, is this an
 2 appropriate time to take a comfort break?

3 MR BURGER SC: Indeed.

4 CHAIRPERSON: We'll now take a comfort
 5 break.

6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [10:32] CHAIRPERSON: The Commission resumes. Provincial
 8 Commissioner, you're still under oath. Mr Burger.

9 ZUKISWA MBOMBO: s.u.o.

10 CROSS-EXAMINATION BY MR BURGER (CONTD.):
 11 Thank you, Chair. Commissioner, we're dealing with those
 12 aspects of the August 2012 incident which might be improved
 13 upon, which you identified as having been problem areas and
 14 the fourth one you'll remember we're dealing with is what
 15 you term problems with command and control, where you gave
 16 as an example the fact that Brigadier Calitz was unaware of
 17 the shooting at scene 1 while it was happening. Do you
 18 remember that?

19 GENERAL MBOMBO: I remember, Mr Chair.

20 MR BURGER SC: Yes. And just before the
 21 tea adjournment you referred the Commission to the letter
 22 written by Lieutenant-Colonel Vermaak in December 2012,
 23 that's exhibit HHH68, where he lists a number of problem
 24 areas he had identified during the Marikana investigation.
 25 Do you remember that?

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1 GENERAL MBOMBO: I remember.

2 MR BURGER SC: The first one he
 3 identifies in his paragraph 11 on page 3 of that exhibit,
 4 he says, "During the unrest at Lonmin, Amplats and Impala,
 5 the following shortcomings were identified." And then 11.1
 6 he says, "Members don't have commanders with experience in
 7 charge of unrest scenes," a problem that he identifies.
 8 Now I put to you, that really runs parallel to your
 9 criticism that problems with command and control were being
 10 experienced during the Marikana exercise.

11 GENERAL MBOMBO: Mr Chair, again I want
 12 to explain that when I raised this criticism about command
 13 and control, that it is a problem, it does – I do not mean
 14 that the people who were in control there do not have
 15 skills. I think they would be able to explain the problems
 16 that they experienced there, that caused this problem.

17 MR BURGER SC: No, that's not correct,
 18 with great respect. If you identify problems with command
 19 and control with regard to Brigadier Calitz being unaware
 20 of the shooting when it happens, it's clearly a problem
 21 with Calitz's command. He is operational commander, 18
 22 people get shot by the police and he doesn't know it.
 23 Clearly a problem with command and control, don't you
 24 agree?

25 GENERAL MBOMBO: I agree with you there

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1 but it does not make him a commander that does not have
 2 skills. He may be able to explain what causes those
 3 problems or what caused those problems on that day.

4 MR BURGER SC: What I want to know really
 5 is, and this is my subject, what did you do about that
 6 problem? You're now aware that there's something wrong if
 7 your operational commander is unaware of the shooting
 8 happening very nearby him, by people under his control,
 9 there's a major problem there. What do you do about that
 10 post 16 August 2012? You're officer commanding North-West
 11 Province.

12 GENERAL MBOMBO: He explained his
 13 reasons, Mr Chair.

14 MR BURGER SC: I'm not asking him, I'm
 15 asking you, Commissioner. You're in charge. The
 16 responsibility rests with you and there may well be
 17 submissions upon your responsibility for the Marikana
 18 incident so I'm asking you today what did you do when you
 19 become aware of this problem, serious problem involving
 20 your officer commander and 18 people being shot?

21 GENERAL MBOMBO: If there is a need for
 22 us or for me to do something, I will get the opportunity to
 23 do that after this Commission, but for the moment he's one
 24 of the people who are lined up for training again, to be
 25 retrained.

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1 MR BURGER SC: No, Commissioner. You're
2 in charge of 10 500. In August 2012 you become aware of a
3 defect in your command structure - I don't want to go
4 through it again – involving Calitz. There's a major
5 problem there. You clearly can't wait for this Commission
6 to bring out a report - when, we don't know - because you
7 run 10 500 people in the meantime. We are 16 months down
8 the line. You may well have other incidents in your
9 province as you had. What have you done to address these
10 problems or do you wait one day for the report to come out?
11 GENERAL MBOMBO: As I'm saying, Mr Chair,
12 if there is a need for something to be done or for me to do
13 something, I am still going to do that when the time allows
14 after this Commission. At the moment all the things that
15 are being look at, at head office, Brigadier Calitz is one
16 of those.
17 MR BURGER SC: Commissioner, I want to
18 put in fairness to you that with hindsight and in view of
19 this debate I have with you, it would've been proper for
20 you to take steps soon after the 16th August 2012 to address
21 these problems with command and control of which you were
22 aware.
23 GENERAL MBOMBO: Not after we'd agreed
24 with the National Commissioner that we will wait for the
25 Commission to do its function. Police officers who were

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1 supposed to come and testify should be allowed to do that
2 without fear about steps that are going to be taken against
3 them.
4 MR BURGER SC: Do you tell the Commission
5 there's an agreement between you and the National
6 Commissioner that remedial steps, like the one we're
7 debating, will not be implemented until such time as this
8 Commission has brought out a report?
9 GENERAL MBOMBO: That is so, Mr Chair.
10 MR BURGER SC: When was that agreement
11 reached?
12 GENERAL MBOMBO: It was in 2012, Mr
13 Chair.
14 MR BURGER SC: Do we have a minute of
15 that?
16 GENERAL MBOMBO: I'm not sure if there
17 are minutes about that, but the National Commissioner also
18 testified in this Commission and she explained that.
19 MR BURGER SC: And at what occasion was
20 that decision taken, so that we can look for the minute if
21 there is a minute? Was that a National Management Forum or
22 was it a private discussion between you and the National
23 Commissioner? When and where did that happen?
24 GENERAL MBOMBO: Mr Chair, I will not be
25 sure about when it was and where, but I'm sure that she

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1 mentioned that in this Commission.
2 MR BURGER SC: I find it quite startling
3 that important decisions like that are taken and you can't
4 tell us when it was taken, where it was taken, whether
5 there's a minute of that, nothing of that you can help us
6 with.
7 GENERAL MBOMBO: That's unfortunately the
8 case.
9 MR BURGER SC: There's a fifth problem
10 which I want to address with you of which you must be aware
11 and it is this. These are two important meetings held on
12 the 16th of August, one at 6 o'clock in the morning and one
13 at 13:30 in the afternoon. It transpired on the evidence
14 that the minutes of those meetings were finally settled
15 after the Roots conference or during the Roots conference –
16 CHAIRPERSON: No – no, that's not
17 correct, as I understand it, in respect of the 1:30
18 meeting. Those minutes I believe, Mr Budlender will be
19 able to correct me, were given to IPID before the Roots
20 meeting but the – is that correct, Mr Budlender?
21 MR BUDLENDER SC: That's my
22 understanding, Chair.
23 CHAIRPERSON: But the 6 o'clock minutes,
24 which are the significant ones I think for the purposes of
25 your question, those were only finalised after several

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1 recensions, as it were, or additions at or after Roots and
2 they deviate in significant respects from the manuscript
3 notes kept, taken at the meeting at 6 o'clock on the
4 Thursday morning.
5 MR BURGER SC: I'm indebted to you,
6 Chair.
7 CHAIRPERSON: The problem –
8 MR BURGER SC: I'll put my proposition
9 narrower.
10 CHAIRPERSON: Ja, as far as the 1:30
11 minutes are concerned, they predate Roots.
12 MR BURGER SC: Let me limit the
13 proposition. Commissioner, let me put that more correctly.
14 There was an important meeting at 6 o'clock on the morning
15 of the 16th of August, attended by you. It transpired that
16 the minutes of that meeting were only finalised during or
17 after the Roots conference. Now, that's clearly a problem,
18 isn't it, that minutes of meetings are not
19 contemporaneously kept and prepared. Do you agree with
20 that?
21 GENERAL MBOMBO: Mr Chair, let me first
22 correct that. The meeting of the 15th at 6 o'clock, I was
23 not present at that meeting. Maybe to answer the second
24 part or the second question, you may be correct in your
25 statement but that depends on the people who were taking

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1 those minutes as to what happened.
 2 MR BURGER SC: No, I don't blame you for
 3 that. I just say that is an event that happened and that,
 4 I'm asking you, do you agree should not happen? Important
 5 meetings held by the SAPS should be minuted
 6 contemporaneously and the minutes should be prepared
 7 shortly thereafter.
 8 GENERAL MBOMBO: I agree with you there,
 9 Chair.
 10 MR BURGER SC: Now let me come back to
 11 the old question I'm asking you. Did you do anything about
 12 that practice after 16th of August to stamp it out, to stop
 13 people first from going to Potchefstroom before they settle
 14 minutes? Did you do anything about that?
 15 GENERAL MBOMBO: That is one of the
 16 lessons we've learnt, Mr Chair, and we are trying our level
 17 best that it does not happen again.
 18 MR BURGER SC: How do you try that? What
 19 do you do, as the Provincial Commissioner, to stop that
 20 practice? What did you do, not what do you do? What did
 21 you do?
 22 GENERAL MBOMBO: We learnt that it is a
 23 problem, we spoke about it with my management that we
 24 should guard against this and it was not a normal
 25 occurrence.

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1 MR BURGER SC: Commissioner, do you have
 2 a system of giving commands to your subordinate officers,
 3 sort of an order which comes out once a week to say this
 4 week and henceforth the following will happen, signed by
 5 the Provincial Commissioner or how do you give instructions
 6 down into the ranks? What I'm really asking is how would
 7 your rank and file know about this discussion that you say
 8 you had, it shouldn't happen again?
 9 GENERAL MBOMBO: Mostly in my meetings
 10 with my deputies I explain to them what I want to be done
 11 and how it should be done. Minutes are taken in those
 12 meetings. Sometimes we agree that a letter should be
 13 written to inform everybody.
 14 MR BURGER SC: And how frequent are these
 15 meetings you have with your senior officers?
 16 GENERAL MBOMBO: Every Monday in a week.
 17 MR BURGER SC: Is your evidence that
 18 we'll have a Monday meeting minute recording that this
 19 practice of settling minutes after meetings should stop
 20 henceforth and from now on minutes should be kept
 21 contemporaneously? Will you be able to produce a minute
 22 like that?
 23 GENERAL MBOMBO: I think, Mr Chair, if it
 24 was discussed in that meeting there will be minutes to that
 25 effect.

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1 MR BURGER SC: And will you produce those
 2 minutes to the Commission in due course please,
 3 Commissioner?
 4 GENERAL MBOMBO: I'll try and do that.
 5 CHAIRPERSON: If it wasn't discussed at
 6 that meeting, when was it discussed?
 7 GENERAL MBOMBO: I did not get the
 8 question, Mr Chair.
 9 CHAIRPERSON: We're talking about the
 10 minutes of the meetings that take place every Monday and
 11 you said if that decision in respect of the contemporaneous
 12 writing of minutes was taken at a Monday meeting it will be
 13 in the minutes, so what I ask you is if it wasn't taken at
 14 the Monday meeting, when was it taken? Was it taken at
 15 some other meeting or could it have been taken at some
 16 other meeting if it wasn't taken at the Monday meeting?
 17 GENERAL MBOMBO: I think so, Mr Chair.
 18 CHAIRPERSON: And would that meeting, if
 19 it wasn't the Monday meeting, also have been minuted?
 20 GENERAL MBOMBO: Mr Chair, all the
 21 meetings I attend with the people helping me in the
 22 province, those meetings are minuted.
 23 CHAIRPERSON: So if it's not, if this
 24 particular decision is not minuted in a Monday meeting
 25 minute but in some other meeting, will you be able to

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1 provide the minutes of that meeting?
 2 GENERAL MBOMBO: I'll be able to look for
 3 them, Mr Chair.
 4 MR BURGER SC: I must put to you,
 5 Commissioner, that if those minutes are not produced I will
 6 submit to the Commission that the administrative processes
 7 and the decision making processes in the North-West
 8 Province SAPS leave much to be desired. You may comment on
 9 that, but that's the submission I'll make.
 10 GENERAL MBOMBO: I have no comment, Mr
 11 Chair.
 12 MR BURGER SC: Just in concluding, there
 13 was a recording made –
 14 CHAIRPERSON: Are you moving – I'm sorry,
 15 are you moving away from the minutes?
 16 GENERAL MBOMBO: Yes, I am.
 17 CHAIRPERSON: I'd like to ask a question
 18 about it. You said that the writing of minutes, the
 19 writing up of minutes of a meeting sometime after the
 20 meeting took place is not a normal occurrence. Now we know
 21 that that is not what happened in respect of the 6 o'clock
 22 meeting on Thursday the 16th August, minutes were written up
 23 substantially later. That is therefore, you say, not a
 24 normal occurrence. Do you know why there was a departure
 25 from the normal practice in respect of that particular

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1 meeting?

2 GENERAL MBOMBO: I'm not sure, Mr Chair,

3 of the reason for that.

4 CHAIRPERSON: Did you enquire?

5 GENERAL MBOMBO: I won't lie, Mr Chair, I

6 did not.

7 MR BURGER SC: Can I follow up from that?

8 There is an unusual occurrence under your guard. A minute

9 of a most important meeting is not contemporaneously

10 prepared but it's prepared after Potchefstroom. You

11 realise that, you don't enquire. May I ask you why you

12 don't ask?

13 GENERAL MBOMBO: From the way it

14 happened, Mr Chair, I thought the people responsible for it

15 have got important reasons or valid reasons. That is why I

16 did not deem it fit to criticise or enquire about it.

17 MR BURGER SC: But that can't be an

18 answer. Something unusual happens, you know it's unusual.

19 You don't enquire because you think it's not unusual, they

20 can explain it. That's a circuitous answer. That can't be

21 correct, Commissioner. Do you want to give me another

22 answer why you didn't enquire as to that unusual feature?

23 [10:52] GENERAL MBOMBO: I do not have any other

24 reason, Mr Chair.

25 MR BURGER SC: And you accept that the

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1 responsibility for these criticisms eventually rests with

2 the Provincial Commissioner.

3 GENERAL MBOMBO: I agree with you exactly

4 there.

5 MR BURGER SC: Just finally –

6 CHAIRPERSON: Have you finished with the

7 minutes?

8 MR BURGER SC: I have, with the minutes.

9 CHAIRPERSON: I'd like to answer another

10 question about it. We have had put before us not only the

11 final minutes, the ones to which your attention has been

12 drawn by Mr Burger, but also the manuscript notes that were

13 taken at the meeting itself. Have you seen that document,

14 the manuscript notes of the meeting taken at 6 o'clock in

15 the morning on Thursday, the 16th August?

16 GENERAL MBOMBO: I have seen it here, Mr

17 Chair, as it is part of the exhibits.

18 CHAIRPERSON: Have you compared what

19 appears on the first page of those minutes, of those

20 manuscript minutes, with what appears in the final version

21 which is before us as an exhibit which was prepared and

22 settled at or after the Roots conference?

23 GENERAL MBOMBO: I slightly did have a

24 look at it, Mr Chair.

25 CHAIRPERSON: Did you see significant

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1 differences?

2 GENERAL MBOMBO: I saw the differences,

3 Mr Chair, and I took it the person who was writing by hand

4 was in a hurry.

5 CHAIRPERSON: Well, one of the first

6 paragraphs on the first page says, "Today is D-day."

7 Sorry, that says "D-day" and then it continues to explain

8 what's going to happen. Now that paragraph is totally

9 absent from the final version which was originally put

10 before this Commission. Did you notice that difference?

11 GENERAL MBOMBO: I saw it, Mr Chair.

12 CHAIRPERSON: Did you ask any questions

13 why that paragraph and that whole concept of D-day was

14 absent from those minutes?

15 GENERAL MBOMBO: Mr Chair, I remember

16 asking myself about those differences.

17 CHAIRPERSON: You asked yourself and

18 obviously you couldn't give an answer. Did you ask anybody

19 else who could give an answer?

20 GENERAL MBOMBO: Unfortunately, Mr Chair,

21 I did not ask anyone about those.

22 CHAIRPERSON: Thank you.

23 MR BURGER SC: Thank you, Chair. Just

24 finally, Commissioner, there was the recording made of the

25 discussion between you and the Lonmin officers on the 14th

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1 of August. I just want to put the timing to you.

2 According to my instructions that discussion took place in

3 the afternoon round about 4:30. Could that be correct?

4 GENERAL MBOMBO: As I've said earlier on,

5 Mr Chair, I'm not sure about the time. That could be

6 correct.

7 MR BURGER SC: Thank you, Chair.

8 CHAIRPERSON: Thank you, Mr Burger. Ms

9 Barnes, are you going to be the next to cross-examiner?

10 MS BARNES: Yes, thank you, Chair.

11 CHAIRPERSON: On behalf of AMCU?

12 MS BARNES: That's right.

13 CHAIRPERSON: Yes, please proceed.

14 GENERAL MBOMBO: Chairperson –

15 CHAIRPERSON: Sorry, Provincial

16 Commissioner, what did you want to say?

17 GENERAL MBOMBO: Mr Chair, can I get two

18 minutes? The break we had was too short.

19 CHAIRPERSON: Well, I was going to take

20 the tea break at quarter past 11. Would it suit your

21 convenience if we take it now?

22 GENERAL MBOMBO: It does, Mr Chairman.

23 CHAIRPERSON: We'll now take the

24 adjournment.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:28] CHAIRPERSON: The Commission resumes.
 2 When we took the adjournment, I was told that it was
 3 necessary for the provincial commissioner to see a video
 4 clip which she had not previously seen. I take it you've
 5 now seen the clip, Provincial Commissioner?
 6 GENERAL MBOMBO: It is so, Chairperson.
 7 CHAIRPERSON: Well, you're still under
 8 oath, I take it the answer still stands. Advocate Hemraj
 9 wants to ask you a question before Ms Barnes begins her
 10 cross-examination.
 11 COMMISSIONER HEMRAJ: General, if we had
 12 to look at that diary that you keep, what sort of – well,
 13 let me ask you this, if we had to look at the diary, would
 14 we find other operational decisions that you've taken
 15 recorded in your diary?
 16 GENERAL MBOMBO: I'm not sure of that,
 17 Chairperson.
 18 COMMISSIONER HEMRAJ: Well, is it a
 19 practice that make to record operational decisions that you
 20 take in your diary?
 21 GENERAL MBOMBO: As I said, Chairperson,
 22 that is not a practice. I don't always do that.
 23 COMMISSIONER HEMRAJ: And the second
 24 aspect I'd like some clarity on –
 25 CHAIRPERSON: Sorry, you want the second

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1 aspect, I'd like to ask a question. So you do record some
 2 decisions in your diary, do you?
 3 GENERAL MBOMBO: If it's something that I
 4 want my office to remind me about, Chairperson, I do.
 5 CHAIRPERSON: Are those the only
 6 decisions that record in your diary?
 7 GENERAL MBOMBO: That's what I remember,
 8 Chairperson, yes.
 9 CHAIRPERSON: Yes, thank you.
 10 COMMISSIONER HEMRAJ: When you identified
 11 one of the problems with command and control insofar as
 12 Brigadier Calitz is concerned, and not knowing about the
 13 deaths, can you clarify for me whether the problem, as you
 14 see it, is in him not having control of the situation or
 15 proper command, or is there a lack of communication from
 16 the other commanders and reporting to him, or both?
 17 GENERAL MBOMBO: As I said, Chairperson,
 18 those who were assisting him, were supposed to assist him
 19 on [inaudible], did not tell him what was happening.
 20 COMMISSIONER HEMRAJ: Yes, thank you.
 21 CHAIRPERSON: Do you accept that when he
 22 was parked 100 metres away from koppie 3 at scene 2, that
 23 he couldn't hear the shots?
 24 GENERAL MBOMBO: As you said,
 25 Chairperson.

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1 CHAIRPERSON: You believe that story, do
 2 you?
 3 GENERAL MBOMBO: I do believe it,
 4 Chairperson, for the reasons that he gave.
 5 CHAIRPERSON: Thank you. Ms Barnes.
 6 CROSS-EXAMINATION BY MS BARNES: Yes,
 7 thank you, Chair. Good morning, General. I represent AMCU
 8 in this Commission.
 9 GENERAL MBOMBO: Good morning, Advocate.
 10 MS BARNES: Chair, before I start perhaps
 11 we could mark the new exhibits that we seek to introduce?
 12 CHAIRPERSON: Housekeeping?
 13 MS BARNES: Yes.
 14 CHAIRPERSON: The next exhibit will be
 15 LLL8. What is that?
 16 MS BARNES: That would be the statement
 17 of Lieutenant-Colonel Vermaak, which is dated the 21st of
 18 January 2014.
 19 CHAIRPERSON: Is this different from the
 20 statement that we have before us?
 21 MS BARNES: Yes, it is. It's a new
 22 statement that's come only a few days ago, Chair.
 23 CHAIRPERSON: LLL8 is a statement by
 24 Lieutenant-Colonel Vermaak dated 21 January 2014. Yes,
 25 that's LLL8.

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1 MS BARNES: And then the next one would
 2 be the statements of Advocate Moolman, which is dated the
 3 22nd of August 2012 - I beg your pardon, 2013.
 4 CHAIRPERSON: So LLL9 is the statement
 5 by, I think she was then a captain and now she's become –
 6 it doesn't say what her rank is, but I think she's now a
 7 Colonel, isn't she? She was a captain at the time and they
 8 upgraded the professional people in the service and they
 9 all jumped a couple of ranks. So a statement by – I
 10 suppose you better give her, her present rank, Colonel
 11 Moolman. Is she a full colonel, Provincial Commissioner?
 12 GENERAL MBOMBO: It is so, Chairperson
 13 CHAIRPERSON: Statement by Colonel
 14 Moolman dated 22 August 2013, that's LLL9. I see both of
 15 these statements are post-Roots statements. And then we
 16 have another document –
 17 MS BARNES: Yes, Chair. Chair, I may not
 18 need that document in my cross-examination, so if we might
 19 just leave that aside for the moment.
 20 CHAIRPERSON: Yes, we'll hold it in
 21 abeyance. And then we've got some new eTV footage, but I
 22 see it's already got an exhibit number, is that right?
 23 GENERAL MBOMBO: Yes, it's KKK55.
 24 CHAIRPERSON: But why is it new eTV? Was
 25 it handed in, but we haven't seen it, is that –

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1 MS BARNES: No, Chair, it's just – it's
2 termed the new eTV footage, but it is already an exhibit.
3 CHAIRPERSON: I see, thank you. Yes
4 please proceed with your cross-examination.
5 MS BARNES: Thank you, Chair. General,
6 if we could start with some evidence that you gave during
7 Mr Govender's cross-examination of you? If we could go
8 today 181 of the transcript, page 21750. If we could have
9 that on the screen please - from line 13. And you see
10 there, General, at line 13 Mr Budlender asks you, he says,
11 "And do you know that not all of the strikers were members
12 of AMCU?" And you say, "I do not know about that, Mr
13 Chair." Do you see that?
14 GENERAL MBOMBO: I see that, Chairperson.
15 MS BARNES: So is it correct that you
16 thought that all the strikers were members of AMCU?
17 GENERAL MBOMBO: I did not know how many
18 were members of AMCU and how many were members of any other
19 union.
20 MS BARNES: I'm just trying to
21 understand, General, does that answer that you gave to Mr
22 Budlender not mean that all the strikers were members of
23 AMCU?
24 GENERAL MBOMBO: That's not what I mean,
25 Chairperson. My answer is that I do not know that.

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1 MS BARNES: Alright. If you could go now
2 to exhibit –
3 CHAIRPERSON: But while we're busy with
4 that, are you still busy with this part or –
5 MS BARNES: No, I'm moving on, Chair.
6 CHAIRPERSON: Can I ask a question around
7 it? As far as I can remember the evidence, originally
8 Lonmin said they didn't know who was behind the strike,
9 they talked about faceless people, and either you or the
10 national commissioner, or both of you, urged them to have a
11 look at the video footage to see if they could identify the
12 faces, some of the faces, and I think also investigations
13 were done, I'm not sure if this is evidence, that, in
14 regard to those who were on strike, and it appeared that,
15 and this is in fact put by General Mpmembe, later to Lonmin
16 people, that some of the strikers were NUM members, some
17 were AMCU members and some – I'm not sure if it was exactly
18 put to the Lonmin people, but the evidence is that some
19 people were members of neither union. Was that your
20 understanding as well?
21 GENERAL MBOMBO: That's how I understood
22 it, Chairperson.
23 CHAIRPERSON: Yes, because both unions
24 were represented on the koppie, if I could put it that way,
25 that it was arranged that the presidents of both unions, Mr

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1 Zokwana of NUM and Mr Mathunjwa of AMCU would both be asked
2 to come to see if they could assist in bringing the
3 gathering – the armed gathering to an end, that's also
4 correct, it's it?
5 GENERAL MBOMBO: That is so, Chairperson.
6 MS BARNES: General, if we could go now
7 to exhibit FFF25. This is the occurrence book, to page 24,
8 item 1010.
9 CHAIRPERSON: There's an exhibit, I think
10 it's 0004, a meeting with people from Lonmin and General
11 Mpmembe, and on page 2 of that, it's drawn to my attention
12 by Advocate Hemraj that what was said by General Mpmembe
13 included the following, this is from line 3 on the second
14 page, "It was said that we do not know," this is General
15 Mpmembe talking to Lonmin, "It was said that do not know who
16 was doing this by this, but through the operation that is
17 taking place, people have been identified, and some of them
18 belong to both unions. They belong to both unions." And
19 then he explains, he has this request, so that is correct.
20 I think you've already said it is correct, but this
21 certainly that that is so.
22 GENERAL MBOMBO: I think it so,
23 Chairperson, yes.
24 MS BARNES: So if you could look,
25 General, at item 1010, and I'm going to read to you the

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1 situation report that was received by the JOC –
2 CHAIRPERSON: This is on page 24.
3 MS BARNES: That's right.
4 CHAIRPERSON: Of exhibit FFF25.
5 MS BARNES: That's right. I'm going to
6 read to you the situation report that was received by the
7 JOC at 25 minutes past one. This is on the 16th of August -
8 CHAIRPERSON: On the 16th.
9 MS BARNES: - 2012. It reads as follows,
10 "Papa1 reported that AMCU people addressed the group and
11 the group are unhappy, and AMCU promised that they will be
12 back after half an hour with mine management, because the
13 group are not satisfied. They said they want 12 500. The
14 group of women were still at the gathering." Do you see
15 that?
16 GENERAL MBOMBO: I see it, Chairperson.
17 MS BARNES: Now, General, we have a video
18 clip of the conversation between Mr Mathunjwa and Brigadier
19 Calitz that gave rise to this report, and I would like us
20 to play that clip now. That is part of exhibit KKK55.
21 It's part of the new eTV footage. Just to orientate
22 ourselves, we just need to play a couple of minutes of it,
23 and this is now just after Mr Mathunjwa's first address to
24 the strikers.
25 CHAIRPERSON: Now, may I ask you a

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1 question? Has this conversation we're now going to
 2 overhear, as it were, has that been transcribed? And if it
 3 hasn't been, I understand, we're going to see the clip, I
 4 take it arrangements to be put in hand to transcribe it if
 5 what is said is important.

6 MS BARNES: Yes, it is in English, Chair,
 7 but I'm sure that those arrangements could be made.

8 CHAIRPERSON: I take it – I'm sure the
 9 evidence leaders will do the necessary and arrange it with
 10 the transcribers. Ms Pillay nods her head apprehensively,
 11 so we can assume that's a yes.

12 MS BARNES: Okay, if we could play the
 13 clip, please?

14 [VIDEO SHOWN]

15 MS BARNES: Okay, stop the clip. So,
 16 General, you –

17 CHAIRPERSON: I'm sorry to interrupt you,
 18 does the tape in fact go on - the video clip go on? Does
 19 it show Brigadier Calitz in fact speaking on the radio and
 20 reporting back to the JOC what's just been said, or –

21 MS BARNES: No, it doesn't show him
 22 speaking on the radio, Chair. So could you play the clip
 23 on for just a couple of seconds further please, from where
 24 you stopped, or alternatively if you could play it again
 25 and then just go a little bit further on. Thank you.

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1 Alright, Chair, perhaps I should continue with my
 2 questions and we can try and play it again later –

3 CHAIRPERSON: Let's find out what the
 4 delay is likely to be, if we're going to see it in the next
 5 half minute, then we can carry on with it, otherwise you
 6 can come back to it. Can we get an indication as to how
 7 long it will take to find this clip again and to show us
 8 the section which follows on the part we've just been
 9 shown? Mr Wesley normally has the ability to solve these
 10 problems. Mr Wesley, can you give us your assistance?

11 MR WESLEY: Of course, Chair.

12 SPEAKER: Could the witness be asked a
 13 question again, Chairperson?

14 CHAIRPERSON: Exhibit KKK55, we've just
 15 seen part of it, and the question is - [inaudible] going
 16 instead, alright. Mr Wesley is accompanying him, so have a
 17 two-man work party - a task team dealing with the problem.

18 [VIDEO SHOWN]

19 MS BARNES: Alright, General, if I can
 20 take you back to the beginning of the clip that we've just
 21 seen, you'll agree with me that Mr Mathunjwa is saying
 22 there to Brigadier Calitz that he's going to and attempt to
 23 speak to management to try them to the table, as he puts
 24 it, and then he's going to go back to the koppie. Is that
 25 correct?

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1 GENERAL MBOMBO: I hear that, yes, he
 2 says it.

3 MS BARNES: Which meant that the
 4 negotiations were still ongoing, is that correct?

5 GENERAL MBOMBO: As I hear it, yes, he
 6 says so.

7 [11:48] MS BARNES: And do you agree with me also
 8 that what Brigadier Calitz says, when he's asked by the
 9 journalist what is going to happen now, he says, "We're
 10 going to wait and see. We're going to wait until they come
 11 back" and then as he puts it, "We will take the way forward
 12 from there." Do you agree with me?

13 GENERAL MBOMBO: I agree with you, Chair.

14 MS BARNES: Now General, you didn't get
 15 any of this information, did you?

16 GENERAL MBOMBO: It is so, I did not get
 17 it.

18 MS BARNES: You were in fact told that
 19 the negotiations had failed, correct?

20 GENERAL MBOMBO: That is what I was told,
 21 yes.

22 MS BARNES: And you were told before the
 23 13:30 JOCCOM meeting, before that time, that the
 24 negotiations had failed, correct?

25 GENERAL MBOMBO: It is so.

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1 MS BARNES: Now, General, if you had had
 2 the information that has just been revealed to us on the
 3 video clip, if you'd had the information that Mr Mathunjwa
 4 was still going to go and speak to management and then go
 5 back to the workers and if you'd had the information that
 6 your commanding officer on the ground was of the view that
 7 the police should wait and see what the position was when
 8 Mr Mathunjwa came back – I know that's a long question but
 9 if you're with me, the last part is if you'd had all of
 10 that information, would it have made any difference to your
 11 decision to implement the tactical part of the operation?

12 GENERAL MBOMBO: Certainly if – you must
 13 remember that we had allowed them a chance.

14 MS BARNES: No, General, the point is at
 15 that particular time just before your JOCCOM meeting
 16 started, if you had all the information – negotiations were
 17 still going on, Brigadier Calitz thinks you must wait and
 18 see what Mr Mathunjwa comes back with – if you had that
 19 information at half past one or just before half past one,
 20 would it have made any difference to your decision?

21 GENERAL MBOMBO: I agree, yes, that it
 22 would have been so.

23 MS BARNES: You might have decided that
 24 the tactical part of the operation should wait, is that
 25 correct, if you'd had that information?

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1 GENERAL MBOMBO: It is so.
 2 MS BARNES: But now, General, Mr
 3 Mathunjwa's evidence was that when he met you for the first
 4 time –
 5 CHAIRPERSON: Are you moving away from
 6 this point?
 7 MS BARNES: Yes, Chair.
 8 CHAIRPERSON: You told us and you
 9 repeated it now that your information was that Mr Mathunjwa
 10 had not been successful and you said that was what – as I
 11 remember your evidence – that's what Brigadier Calitz
 12 reported over the radio. Now, what was put to you
 13 previously was that very entry that Adv Barnes referred to,
 14 1010. You said you weren't aware of that entry. Let me
 15 read it to you. P1, I think it's clear that's a mistake,
 16 it should be papa1 –
 17 GENERAL MBOMBO: Mm.
 18 CHAIRPERSON: - "reported that the AMCU
 19 people addressed the group and the group were unhappy and
 20 AMCU promised they'll be back after half an hour with the
 21 mine management because the group were not satisfied. They
 22 said they want R12 500. The group of women were still at
 23 the gathering." That was what was recorded in the
 24 occurrence book. Now, it appears from the video clip that
 25 we've just seen that that was, what is here recorded is

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1 correct, that what Mr Mathunjwa said to Brigadier Calitz
 2 and what Brigadier Calitz then said to him in reply and to
 3 the reporter, is in accordance with this entry in the
 4 occurrence book. Do you agree with that?
 5 GENERAL MBOMBO: I agree with that,
 6 Chairperson.
 7 CHAIRPERSON: Do you persist in your
 8 evidence that Brigadier Calitz gave a different report
 9 which you heard before you gave the instruction that you
 10 gave? Did you persist in that evidence under oath in the
 11 light of both the video clip and the entry in the
 12 occurrence book?
 13 GENERAL MBOMBO: According to the report
 14 I received, Chairperson, that was the only thing I knew,
 15 that which was reported to me.
 16 CHAIRPERSON: You didn't get the report
 17 which is recorded in the occurrence book, is that what
 18 you're saying?
 19 GENERAL MBOMBO: I was not told in this
 20 manner, Mr Chair.
 21 CHAIRPERSON: And the report that you
 22 heard was not recorded in the occurrence book but another
 23 report was, which appears to be have been correct.
 24 GENERAL MBOMBO: Unfortunately when
 25 General Mpembe told me, he did not mention this was an

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1 entry in the OB. He only said to me this is what papa1 is
 2 reporting.
 3 CHAIRPERSON: So it's General Mpembe's
 4 fault, he wrongly reported to you what Brigadier Calitz had
 5 said over the radio, is that what you're saying?
 6 GENERAL MBOMBO: That's what I heard from
 7 him, yes, Chairperson.
 8 CHAIRPERSON: This was never in General
 9 Mpembe's evidence. Anyway, that's a matter that we don't –
 10 we can take up, not necessarily take up with you. Anyway
 11 you persist in your evidence that what you've told us is
 12 what General Mpembe told you and it appears to have been
 13 incorrect. Would you agree to that –
 14 GENERAL MBOMBO: Chairperson, yes, I
 15 persist in that way because I think he also wrote it in his
 16 second statement.
 17 CHAIRPERSON: Just for the sake of those
 18 of us who have to read the record later, the evidence that
 19 you gave to which I referred appears at page 21613 on the
 20 4th of February 2014.
 21 MS BARNES: General, Mr Mathunjwa's
 22 evidence before this Commission was that when he met you
 23 for the first time outside the JOC on the 16th of August
 24 2012, he was told that you were now in command of the
 25 operation and that what he – I'll take you to the relevant

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1 paragraph of his statement in a moment but that's what he
 2 says and you say that's not correct, am I right?
 3 GENERAL MBOMBO: I'm still saying,
 4 Chairperson, that that is not correct.
 5 MS BARNES: If you could look, if we
 6 could go to exhibit NN, which is Mr Mathunjwa's statement,
 7 to page 20 paragraph 68, just so that you can be clear on
 8 what Mr Mathunjwa said. Paragraph 68, page 20.
 9 GENERAL MBOMBO: I will have to look –
 10 MS BARNES: It's on the screen now,
 11 General, you can follow it on the screen and I'll read it
 12 out. "At the base we met Major-Generals Mpembe, Annandale
 13 and Naidoo. I then also met the Provincial Commissioner
 14 Mbombo who was the person who had spoken to me over Mr
 15 Mokwena's telephone. General Mpembe introduced the AMCU
 16 delegation to the Provincial Commissioner" – sorry – "to
 17 the Provincial Commissioner Mbombo and said that she was
 18 now in charge of the operation. Mbombo confirmed that she
 19 was in charge of the operation and said that this thing
 20 must end today because it is costing the state a lot of
 21 money." Do you see that?
 22 GENERAL MBOMBO: I see it, Chairperson.
 23 MS BARNES: Now you say that's not
 24 correct, Mr Mathunjwa was never told that you were in
 25 charge of the operation, is that right?

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1 GENERAL MBOMBO: I did not say that to
2 him in my words, Mr Chairperson. I don't remember General
3 Mpmembe saying that to him in that manner. What I do
4 remember General Mpmembe saying was that he introduced me as
5 this is the person who is charge of the police in this
6 province.
7 MS BARNES: Where he says that you said
8 this thing must end today because it is costing the state a
9 lot of money, do you say you also didn't say that?
10 GENERAL MBOMBO: During our discussion
11 mention was made that my hope is – and it is my wish that
12 this thing ends today because it is costing a lot of money.
13 MS BARNES: So you confirm that you did
14 say that to Mr Mathunjwa?
15 GENERAL MBOMBO: It is so.
16 MS BARNES: I'd like us to go now to
17 exhibit L, that's the police presentation, and I'd like us
18 to play the video that forms part of slide 187. If we can
19 play this clip from beginning to end, please.
20 [VIDEO SHOWN]
21 MS BARNES: Now General, you would've
22 heard the journalist there saying that the Provincial
23 Commissioner had now taken charge of the operation, did you
24 hear that?
25 GENERAL MBOMBO: I heard that,

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1 Chairperson.
2 MS BARNES: And he's reporting on the
3 interview that he's just had with Mr Mathunjwa. So what's
4 happened is that Mr Mathunjwa has told him that the
5 Provincial Commissioner, being yourself, has now taken
6 charge of the operation, do you agree?
7 GENERAL MBOMBO: What I think the
8 journalist is saying, taken charge of the situation, not
9 the operation.
10 CHAIRPERSON: There may be a difference
11 between the two so we must get the correct wording.
12 MS BARNES: Chair, whether it's operation
13 or situation makes no difference for my purposes, Chair.
14 Do we want to play it again to be clear, General?
15 GENERAL MBOMBO: I've heard it,
16 Chairperson. What I'm saying is – but if he was saying
17 that I have now taken over as the person in charge of the
18 operation, that wouldn't be true.
19 MS BARNES: Well, either way, General, my
20 question to you is why would Mr Mathunjwa have told this
21 journalist that you were now in charge of either the
22 situation or the operation at Marikana if he had not been
23 told that?
24 GENERAL MBOMBO: I would not be sure,
25 Chairperson, but what I've already said that was said by

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1 General Mpmembe, said to him, was that this lady is the
2 person in charge of the police in this province.
3 MR SEMENYA SC: Chair, I think if we play
4 the video clip again we will hear that the journalist says
5 Mr Mathunjwa is told that by Lonmin people.
6 CHAIRPERSON: Play it again, please.
7 MS BARNES: It could have been. It's not
8 – I agree that that is ambiguous. It appears that it was
9 Mr Mathunjwa's interview –
10 CHAIRPERSON: Well, let's listen to it –
11 MS BARNES: But if it was Lonmin, again
12 it makes no difference for my purposes.
13 CHAIRPERSON: Well, let's listen to it
14 again just to make sure what it says.
15 MR SEMENYA SC: And they can't put
16 propositions that are wrong if it makes no difference to Ms
17 Barnes –
18 CHAIRPERSON: No, Mr Semenya, I'm saying
19 let's play it again. I'm on your side for the moment, so
20 don't fight with me.
21 MS BARNES: Can we play the clip again,
22 please?
23 [VIDEO SHOWN]
24 CHAIRPERSON: I think it does appear
25 clear that Mr Semenya is right, that the remark, the

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1 statement about the witness being in charge of the
2 situation is attributed by Mr Mathunjwa, I take it he's the
3 person the reporter was referring to although he couldn't
4 remember the surname, was attributed by Mr Mathunjwa to the
5 Lonmin people he'd spoken to.
6 MS BARNES: Well, General, I'm going to
7 give you an opportunity to comment because we're going to
8 argue that this clip corroborates, it's contemporaneous, as
9 in at the moment corroboration of Mr Mathunjwa's version
10 that he had received information that you were now in
11 charge of the operation or the situation. Would you like
12 to comment on it.
13 MR SEMENYA SC: I must insist that –
14 we've just had this thing again. Ms Barnes cannot
15 articulate it as an operation, in charge of the operation.
16 It doesn't say so.
17 CHAIRPERSON: She corrected herself.
18 When she said operation then she changed it to situation,
19 so I think that point has been dealt with. She put the
20 question now in a way which made it clear that she was not
21 attributing this information about the witness being in
22 charge to General Mbombo, sorry, to General Mpmembe but she
23 put it in a way which covered the situation – sorry,
24 situation is the wrong word – which covered what we've
25 seen, namely that he appears to be saying that's what he

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1 was told, admittedly at that time, by people from Lonmin.
2 So that is really the question. I don't think I can rule
3 that out of order. So that's the question, do you
4 understand the question, Provincial Commissioner? What is
5 put to you is that contemporaneously with these events at
6 the very time when, just before the operation commenced, Mr
7 Mathunjwa said that he had just been told, as it were, by
8 Lonmin that you were in charge of the situation. Do you
9 have any comment to make about that?

10 GENERAL MBOMBO: I just want to explain,
11 to make the difference here, Mr Chairperson, that being in
12 charge of an operation and being in charge of a situation
13 are two different things.

14 CHAIRPERSON: How do they differ in this
15 case?

16 GENERAL MBOMBO: According to me, I had a
17 person who was in charge of the operation there. Me, as
18 the Provincial Commissioner, the head of the police in that
19 province, being present there, I was there to see to it
20 that things are being done correctly and to assist where it
21 would be necessary.

22 CHAIRPERSON: Does that put you in charge
23 of the situation?

24 GENERAL MBOMBO: I'm not very sure of the
25 meaning of being in charge of a situation, what it really

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1 actually means. That is why I am making the difference
2 between it and being in charge of an operation.

3 MS BARNES: General, you testified that
4 you went to visit Lieutenant Baloyi in hospital on the 16th
5 of August 2012, correct?

6 GENERAL MBOMBO: It is so.

7 MS BARNES: You testified that you did so
8 in the afternoon of the 16th of August just after the JOCCOM
9 meeting, the 1:30 JOCCOM meeting, correct?

10 GENERAL MBOMBO: If you'd repeat the
11 question please?

12 MS BARNES: Your evidence is that you
13 went to visit Lieutenant Baloyi in the hospital in the
14 afternoon of the 16th of August after the JOCCOM meeting
15 which had taken place from 1:30 to two, correct?

16 GENERAL MBOMBO: It is so.

17 [12:08] MS BARNES: Was that the Ferncrest
18 hospital in Rustenburg where Lieutenant Baloyi was?

19 GENERAL MBOMBO: Correct, Chairperson.

20 MS BARNES: How did you get there, how
21 did you get to the hospital, how did you travel there?

22 GENERAL MBOMBO: I was driving.

23 MS BARNES: If we can go again to exhibit
24 FFF25 to page 24, item 1005, it says there "Situation
25 report, chopper 1 reported that there are other choppers on

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1 air which they don't know. General Mpembe confirmed that
2 as Lonmin chopper with PC General Mbombo as she was
3 visiting the place." Now where were you going to at this
4 stage, General, in the chopper?

5 GENERAL MBOMBO: I remember, Chairperson,
6 that on that day and I'm just not certain of the time, what
7 time it was, that I was in a chopper, went to look up there
8 at the mountain. I don't remember the time exactly.

9 MS BARNES: Sorry, what were you doing in
10 the chopper? I didn't understand your answer.

11 GENERAL MBOMBO: I was looking at the
12 situation on the koppie, as to what the situation was.

13 MS BARNES: If we could now got to the
14 transcript today 178, page 21378, line 10. Now your
15 counsel, Mr Semanya, says to you "Mr Mathunjwa's evidence
16 is that you were leaving to attend the torch bearing
17 ceremony of the African National Congress." Do you see
18 that? We're now talking about the 16th of August, 2012.

19 GENERAL MBOMBO: I see this, Chairperson.

20 MS BARNES: Your answer is then the
21 following, "Chairperson, that is a blue lie. I have not
22 been involved in any torch ceremony of the African National
23 Congress, though I knew at the time that there was an
24 occasion of that sort in the province."

25 GENERAL MBOMBO: That is true,

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1 Chairperson.

2 MS BARNES: I'm not sure whether a blue
3 lie is better or worse than a white lie but in any event
4 what I need to put to your counsel, General, is what your
5 counsel put to you there was not in fact accurate. It was
6 not Mr Mathunjwa's evidence that he alleged that you went
7 to an ANC torch bearing ceremony. What Mathunjwa said was
8 that he'd been told by General Mpembe that you'd gone to an
9 ANC torch bearing ceremony. So it was not something that
10 Mr Mathunjwa claimed to have direct knowledge, it was
11 something that he claimed was reported to him. Do you
12 understand that?

13 GENERAL MBOMBO: As you say, Chairperson.

14 MS BARNES: Is that your understanding?
15 Were you told that it was General Mpembe who Mr Mathunjwa
16 said told him you had gone to an ANC torch bearing
17 ceremony?

18 GENERAL MBOMBO: If I remember well I
19 think this was mentioned in his statement.

20 MS BARNES: So you understood that what
21 Mr Mathunjwa said was that this something he'd been told by
22 General Mpembe, you understood that?

23 GENERAL MBOMBO: As you say, yes I
24 understand you well.

25 MS BARNES: Sorry, General, I'm still not

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1 clear. It's not about understanding me, do you understand
2 that Mr Mathunjwa said that that was told to him by General
3 Mpmembe, did you understand that?
4 GENERAL MBOMBO: I say, Chairperson, that
5 as you are putting it to me that could be what she is
6 saying.
7 MS BARNES: General, you're still not
8 answering the question. Did you understand, when you were
9 giving your evidence in chief in this Commission and your
10 counsel was leading you, did you understand that what Mr
11 Mathunjwa said was not that he knew that you went to a
12 torch bearing ceremony but that General Mpmembe told him
13 that you had gone to an ANC torch bearing ceremony.
14 GENERAL MBOMBO: Let me respond to you in
15 this way, Mr Chairperson, I did not hear that from General
16 Mpmembe. What I heard was that it was mentioned by Mr
17 Mathunjwa. Which is way I was saying he is referring to
18 the blue lies, that's where the blue lies come in. But if
19 you are putting it now, I am saying it could true what he
20 said to you that he heard this from General Mpmembe.
21 MS BARNES: Okay, let me try again,
22 General. Did your counsel tell you that Mr Mathunjwa said
23 that it was General Mpmembe who told him that you had gone
24 to an ANC torch bearing ceremony?
25 GENERAL MBOMBO: As you see on the

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1 screen, Chairperson, my counsel says Mr Mathunjwa's
2 evidence. Now I took it that when Mr Mathunjwa testified
3 before this Commission that is what he said.
4 CHAIRPERSON: There's a distinction
5 between what General Mpmembe allegedly said as to where you
6 were going and where you had gone and Mr Mathunjwa was
7 saying that you had gone there. Now you, in this passage
8 that's been on the screen are in effect accusing Mr
9 Mathunjwa of telling a lie. I take it you now concede that
10 you can't say Mr Mathunjwa was telling a lie because you
11 weren't there, you don't know the facts, that if there was
12 wrong information given to the effect that you had gone to
13 this torch bearing ceremony. According to Mathunjwa it had
14 been given to him by General Mpmembe. So if there was a lie
15 told, it's possible it was told by General Mpmembe and on
16 what Mr Mathunjwa says there's no basis for saying from
17 your own knowledge that Mr Mathunjwa was telling a lie. Is
18 that correct, do you understand the distinction?
19 GENERAL MBOMBO: Chairperson, if,
20 Chairperson, Mr Mathunjwa had mentioned when he was giving
21 evidence that he was told by General Mpmembe my response to
22 that, Mr Chairperson, was that there could have been a
23 misunderstanding or that General Mpmembe did not give a true
24 explanation.
25 MS BARNES: Yes, so you accept that Mr

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1 Mathunjwa may have been given incorrect information by
2 General Mpmembe.
3 GENERAL MBOMBO: If it was given to him
4 by General Mpmembe.
5 MS BARNES: Now, General, you were aware
6 on the 16th of August 2012 that there was an ANC torch
7 bearing – or rather let me correct myself, that the ANC
8 torch, centenary torch was in the North West province,
9 correct?
10 GENERAL MBOMBO: I was very much aware of
11 that, yes.
12 MS BARNES: And, General, were you
13 scheduled to attend an ANC torch bearing ceremony on the
14 16th of August 2012?
15 GENERAL MBOMBO: It was not intention
16 whatsoever to attend that ceremony.
17 MS BARNES: Had you been invited to
18 attend an ANC torch bearing ceremony on that day?
19 GENERAL MBOMBO: I knew that it was in my
20 province, I knew it was there but I am not certain as to
21 the invitations, whether I was invited because the letter
22 that I had in my possession was only mentioning that it
23 would be there and where it would be on the day.
24 MS BARNES: And it was to be held on that
25 day, the 16th of August.

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1 GENERAL MBOMBO: I think so, I think it
2 was on that day.
3 MS BARNES: Excuse me, General, I didn't
4 hear your answer.
5 GENERAL MBOMBO: I think so, I think it
6 was on that day, the 16th of August.
7 CHAIRPERSON: The true position, as far
8 as I understand it, is that the ANC torch made a tour of
9 the country and spent some time in each of the provinces
10 and it spent time in the North West and the 16th of August
11 happened to be the last day when it was in the North West
12 because it then left. It was taken I suppose to the
13 Northern Cape, so I assume that the place that it was at on
14 the 16th - it wasn't just one ceremony, there were
15 ceremonies at each stop as it were in the province. Now I
16 assume the place where it was on the 16th must have been
17 close to the Northern Cape border because the next stop was
18 in the Northern Cape. So I think that's the true factual
19 position. According to the press cutting which was given
20 to us by Ms Barnes, I don't know how to pronounce it, but
21 it's K-G-O-M-O-C-O, that's the correct spelling. Do we
22 have a Tswana speaker in the house who can tell us how to
23 pronounce it? Sorry, Kgomoco, now do you know Kgomoco,
24 it's in your province? Is it close to the Northern Cape
25 border?

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1 GENERAL MBOMBO: It is so, Chairperson.
 2 CHAIRPERSON: And how far is it from
 3 Rustenburg where you went?
 4 GENERAL MBOMBO: It's more than 200
 5 kilometres from Rustenburg, but I don't know how much more.
 6 CHAIRPERSON: The other point, because we
 7 know that you left at about 2 o'clock, towards the end of
 8 the 1:30 JOCCOM meeting. You left at about 2 o'clock and
 9 you got at about 3:20. Is that right? Or you would put it
 10 in police speak, 15:20, is that right?
 11 GENERAL MBOMBO: That's correct,
 12 Chairperson.
 13 CHAIRPERSON: So there's no way you could
 14 have driven 200 K's in one direction, been at the ceremony
 15 and come back in that time, is that correct?
 16 GENERAL MBOMBO: I don't think so,
 17 Chairperson.
 18 CHAIRPERSON: Even with blue lights. So
 19 I take it we can accept without any difficulty that there's
 20 no way that you could have gone to Kgomoco, attended a
 21 ceremony with the torch and come back again by 15:20. So
 22 you have what looks like a convincing alibi as far as that
 23 allegation is concerned. Would you agree?
 24 GENERAL MBOMBO: It is correct,
 25 Chairperson.

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1 MS BARNES: of course, General, if you'd
 2 taken the Lonmin chopper you could probably have made the
 3 torch bearing ceremony, but I'm not putting that to you,
 4 seriously, General. Chair, perhaps if we could introduce
 5 the SABC article and make it an exhibit because it does
 6 confirm that the centenary torch was in the North West on
 7 the 16th of August 2012.
 8 CHAIRPERSON: And that it left for the
 9 Northern Cape on the same day. All right so that'll be
 10 LLL10. How would we describe it? SABC News Report, dated
 11 16 August 2012 at 11:19am, exhibit LLL10.
 12 MS BARNES: General, you referred a few
 13 moments ago to a letter you received in relation to the
 14 torch bearing ceremony. Could you tell us where that
 15 letter came from and what the contents of that letter were?
 16 GENERAL MBOMBO: I am not certain where
 17 it came from, Mr Chairperson, but I think it must have been
 18 from the premier of the province.
 19 CHAIRPERSON: Ms I don't want to stop
 20 you if this has got further relevance, but I must say I
 21 think we've reached probably the outer limits of relevancy
 22 at this stage. Unless there's something you want to bring
 23 to my attention. But this letter, I take it, it wasn't
 24 just about the last stop of the torch in the North West
 25 province because it was supposed to be in your province for

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1 a few weeks surely, on its way through the country. Is
 2 that right?
 3 GENERAL MBOMBO: It is correct,
 4 Chairperson, yes. Before the torch left the Limpopo
 5 province, Mr Chairperson, we had received the letter
 6 informing us as to when it would be in our province.
 7 CHAIRPERSON: Ms, Barnes, what do you say
 8 about my point about the outer limits of relevancy?
 9 MS BARNES: Chair, I'm moving on. I just
 10 want to ask the General before I do about her diary. We
 11 have requested, General, your diary for that particular
 12 week, the week of the 12th to the 16th of August as far back
 13 as November last year. I take it that request, well I'm
 14 not sure if that request has been conveyed to you, perhaps
 15 I should ask you. I presume though that you would have no
 16 difficulty in handing your diary for that period to us.
 17 GENERAL MBOMBO: It is so.
 18 MS BARNES: General, if we could go now
 19 to your amplified statement which is exhibit LLL1 to
 20 paragraph 35. If I could read paragraphs 35 and 36 to you.
 21 We are now, General, to orientate you, on the 13th of August
 22 2012. Paragraph 35 reads "Having given the instruction to
 23 Mpembe and made OB entry as above, I've left for
 24 Potchefstroom with Naidoo." So this is now you giving the
 25 instruction to General Mpembe to go and deal with the

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1 strikers at the railway line. Then 36 reads as follows,
 2 "While on the way to Potchefstroom I received a telephone
 3 call from Mpembe who informed me that members of SAPS were
 4 attacked and that one was severely injured and two killed.
 5 That two protestors were shot dead apparently by the police
 6 and one person had died apparently from a stab wound." So
 7 there you are giving evidence about the telephone call that
 8 you received from General Mpembe after the incident on the
 9 13th. Now, General, what you don't mention in your
 10 statement or indeed in your evidence in chief is the
 11 telephone call that you received from General Mpembe before
 12 the confrontation on the 13th while he was still at the
 13 railway line.
 14 GENERAL MBOMBO: I don't remember that
 15 call, the call you are referring to. Not that I'm denying
 16 that he could possibly have phoned me.
 17 MS BARNES: Okay, let's look at General
 18 Mpembe's evidence about that telephone call. If we go to
 19 the transcript day 103, page 11126, line 23, now what's
 20 happening here, General, is that Mr Ngalwana who's leading
 21 General Mpembe in evidence is showing him the video of the
 22 interchange between the General and the strikers next to
 23 the railway line. So if we can read from line 23, Mr
 24 Ngalwana says "is that" seemingly "you," there should be a
 25 you there, "on the telephone, General?" General Mpembe

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1 says "Correct, Chairperson." Mr Ngalwana then says "With
2 whom are you communicating there?" Mpembe says "I was
3 communicating with the JOC and also informing the
4 Provincial Commissioner about the situation that I'd
5 encountered." Mr Ngalwana "Do you remember in precise
6 terms what the nature of the conversation was, the contents
7 of what you were telling them?" General Mpembe "I informed
8 the JOC that the strikers seemed to co-operate to hand over
9 their weapons, precisely the reason that I have given to
10 the Commission, that I have taken a decision that we will
11 escort them. The same I did communicate to the Provincial
12 Commissioner and she said to me I'm the best placed person
13 on the ground to take a decision and she agreed with me."
14 And Mr Ngalwana says "Right, so you took the decision that
15 you took, can we continue with the clip?" Now, General, do
16 you not recall that telephone call from General Mpembe?
17 [12:28] GENERAL MBOMBO: I do not remember it,
18 Chairperson, but it is possible that he phoned me.
19 MS BARNES: Because you see, General, his
20 evidence, as you will have seen, is that he – what he said
21 to you is that he had taken a decision that he was going to
22 escort the strikers to the koppie with their weapons and
23 that you agreed with that decision. That's General
24 Mpembe's evidence.
25 GENERAL MBOMBO: As you said,

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1 Chairperson, but I am saying I do not remember a discussion
2 between me and him pertaining to that but I would not
3 dispute that it did take place and truly if it did, as he
4 says, he was the person on the ground who was in a better
5 position to see what - the situation.
6 MS BARNES: General, you had earlier
7 given General Mpembe an instruction that the strikers at
8 the railway line must be dispersed and they must be
9 disarmed, their weapons must be taken away from them,
10 correct?
11 GENERAL MBOMBO: It is so, Chairperson.
12 MS BARNES: General Mpembe was now
13 phoning you and saying he was not going to disarm the
14 strikers, he was going to escort them to the koppie with
15 their weapons. Now surely, General, if General Mpembe had
16 said that to you, you would've remembered it.
17 GENERAL MBOMBO: I totally do not
18 remember this. I heard him giving evidence to that effect,
19 Chairperson, but I still could not remember.
20 MS BARNES: Not only does General Mpembe
21 say to you he's not going to do what you instructed him to
22 do but instead he's going to escort the strikers with their
23 weapons, but he says you agree with him. Now surely,
24 General, if that had happened you would've remembered it.
25 GENERAL MBOMBO: I totally do not

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1 remember at this stage.
2 MS BARNES: And of course a little while
3 later there is, you get news of a horrific confrontation
4 and five people are dead. And earlier, according to
5 General Mpembe, he's told you what he's going to do, which
6 has now gone horribly wrong and five people are dead.
7 General, are you seriously telling this Commission that you
8 – that if you received that telephone call you wouldn't
9 have remembered it?
10 GENERAL MBOMBO: Chairperson, I see no
11 reason why I would deny that if I did remember it.
12 CHAIRPERSON: How long does it take to
13 travel from Marikana to Potchefstroom?
14 GENERAL MBOMBO: About an hour and 30
15 minutes or so, Chairperson.
16 CHAIRPERSON: Thank you. And what time
17 did you leave Marikana? If you can't remember, you can't
18 remember obviously.
19 GENERAL MBOMBO: I don't remember,
20 Chairperson.
21 MS BARNES: General, General Mpembe says
22 that he spoke to you on that occasion at the JOC to explain
23 to you what he was going to do and that he also spoke to
24 Brigadier Calitz and told him what he was going to do.
25 Now, Brigadier Calitz also doesn't remember that

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1 conversation.
2 GENERAL MBOMBO: Me, Chairperson, I do
3 not remember it.
4 MS BARNES: Well, General, what should
5 the Commission make of this? We have General Mpembe who
6 gives very detailed evidence about a critically important
7 conversation that he has with you and Brigadier Calitz and
8 both yourself and Brigadier Calitz tell the Commission that
9 you have no recollection of it. What should the Commission
10 make of that?
11 GENERAL MBOMBO: I think you would agree
12 with me, Chairperson, that I have no reason to lie to the
13 Commission about something that I do not remember.
14 MS BARNES: If we stay on your amplified
15 statement, General, and go to paragraph 37 – Chair, I'm
16 moving on to a new topic, I don't know if the Chair is
17 inclined to take a comfort break at this time or –
18 CHAIRPERSON: I think it's appropriate,
19 particularly as the Provincial Commissioner is under cross-
20 examination and has been so for some time, I think it's
21 only fair to her that we – I take it you'd like a comfort
22 break at this stage? I know you're too polite to ask for
23 it but I take it you would welcome it, is that right?
24 GENERAL MBOMBO: I would appreciate it,
25 Chairperson.

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1 CHAIRPERSON: Alright, we'll take the
2 comfort break now.
3 [COMMISSION ADJOURNS COMMISSION RESUMES]
4 [12:44] CHAIRPERSON: The Commission resumes. Provincial
5 Commissioner, you're still under oath. Ms Barnes.
6 ZUKISWA MBOMBO: s.u.o.
7 CROSS-EXAMINATION BY MS BARNES (CONTD.):
8 Thank you, Chair. So General, if we could go to your
9 amplified statement LLL1 at paragraph 37, you say "Naidoo
10 and I immediately returned to Marikana and at the JOC we
11 were brief by Mpembe on the circumstances that led to the
12 injuries and the killing of the SAPS members." So you're
13 now talking about turning around as you were on your way to
14 Potchefstroom, turning around, going back to the JOC and
15 then getting briefed by General Mpembe. Now you've given
16 evidence about that briefing that you got from General
17 Mpembe and I'm not going to revisit that evidence. Are you
18 with me?
19 GENERAL MBOMBO: It is so.
20 MS BARNES: All I want to do is I want to
21 ask you one specific question about that briefing and in
22 order to do that I need to refer you to the latest
23 statement by Lieutenant-Colonel Vermaak, which is LLL8,
24 that's the document that was made a new exhibit this
25 morning.

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1 CHAIRPERSON: What paragraph are you
2 referring to?
3 MS BARNES: It's paragraph 12 but now,
4 General, because my Afrikaans is extremely poor I have
5 prepared a translation of this paragraph 12 which might
6 also be of assistance –
7 CHAIRPERSON: Well, if your Afrikaans is
8 very poor did you prepare it yourself?
9 MS BARNES: No, certainly not, Chair. It
10 may also –
11 CHAIRPERSON: Is it the whole paragraph
12 you want to focus on or just what –
13 MS BARNES: Yes, it's the whole of
14 paragraph 12 and I propose to read the translation of the
15 paragraph.
16 CHAIRPERSON: May I suggest you read it
17 slowly and Mr Burger and others who understand Afrikaans
18 will follow it slowly and if there are things wrong we'll
19 do a Semenza or Mpofu and complain about the translation,
20 but hopefully we won't have to do that.
21 MS BARNES: Thank you, Chair. It's a
22 long paragraph, I do need to go through it, General, if
23 you'll just bear with me and try and follow. Upon the
24 Provincial Commissioner's instruction, all commanding
25 officers who had been involved had to attend a mediation

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1 session - I'm not sure that mediation is quite the correct
2 word but in any event – from the 27th of August 2012 to the
3 6th of September 2012 at Potchefstroom.
4 CHAIRPERSON: Nabetracting isn't
5 mediation, I think it's –
6 MR MAHLANGU: Debriefing.
7 CHAIRPERSON: Mr Burger, it's your home
8 language, how would you translate it?
9 MR BURGER SC: No, I'd rather have a
10 proper translation than try to do it piecemeal on the run.
11 Nabetracting is a debriefing, really, of –
12 MS BARNES: Yes, we are in the process of
13 obtaining an official translation but unfortunately we
14 haven't been able to do that yet.
15 CHAIRPERSON: Well, perhaps nabetracting
16 is the only word that's been wrongly translated. Let's
17 carry on. You've heard what Mr Burger says it is.
18 MR MAHLANGU: It's correct, Chairperson,
19 nabetracting in Afrikaans would be debriefing.
20 MS BARNES: In order to prepare for a
21 submission to the Provincial and National Commissioners.
22 It was during this period that discussions took place with
23 regard to what had happened. On the 5th of –
24 CHAIRPERSON: No – no, that's a very,
25 very free translation. In this period there was worked

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1 with, through – the occurrences were worked through
2 carefully. I would think that's probably an accurate
3 translation – "was daar noukeurig deur die gebeure gewerk."
4 16 says had been, the occurrences had been worked through
5 carefully. Alright, well, I'll try and Mr Burger will help
6 me if I get –
7 MR BURGER SC: Chair, I wonder, time is
8 so precious, whether my learned friend shouldn't put her
9 questions. We're going to sit and translate a document now
10 till lunch time.
11 MS BARNES: It's just one paragraph and
12 in order for the witness to understand the question I need
13 her to understand the paragraph.
14 CHAIRPERSON: Is this your last question?
15 Can't you ask another question till lunch time? During the
16 lunch time we can do something about the paragraph and then
17 you can, immediately we resume after lunch you can then ask
18 your question. That's probably the sensible way forward,
19 isn't it?
20 MS BARNES: I can, I can deal with
21 another topic now. Chair, what is the suggestion, that the
22 witness reads the translation over lunch or –
23 CHAIRPERSON: Well, okay. Provincial
24 Commissioner, in your CV you told us that you speak and
25 write Afrikaans so will you be able to manage this

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1 paragraph yourself or would you like Mr Mahlangu to help
2 you?

3 GENERAL MBOMBO: I'll ask for assistance,
4 Chairperson. I am not very good in this language.

5 CHAIRPERSON: Well, Mr Mahlangu, will you
6 be prepared to assist the witness?

7 MR MAHLANGU: I will do so.

8 CHAIRPERSON: During the lunch
9 adjournment.

10 MR MAHLANGU: I will.

11 CHAIRPERSON: Alright, thank you. Okay,
12 so that problem is solved. Now let's carry on with your
13 next point, Ms Barnes.

14 MS BARNES: What I'd like to deal with
15 next, General, is the matter of what Colonel Vermaak told
16 you after the incident on the 13th of August 2012 when he
17 telephoned you and again you have testified on this and I'm
18 not going to revisit your evidence. I simply want to do
19 one thing and that is that I want to highlight two
20 additional pieces of evidence which are relevant to what
21 you said in that regard and I want to then ask you
22 questions based on that. So before I take you to those two
23 pieces, these two additional pieces of evidence, your
24 testimony was that when Colonel Vermaak phoned you on the
25 13th of August 2012 after the incident, he did not say that

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1 General Mpembe had been threatened and he did not report
2 that to you and you were therefore dubious about that
3 claim, is that correct?

4 GENERAL MBOMBO: That's what I said,
5 Chairperson, yes.

6 MS BARNES: Now the first piece of
7 additional evidence that I'd like to refer you to is the
8 evidence of General Annandale. It is transcript day 86,
9 page 9051 and it's line 10, lines 10 to 19. Mr Bizos is
10 cross-examining General Annandale and he says, "Did the
11 Provincial Commissioner at any of those meetings raise the
12 question that you had reported to her, that General
13 Mpembe's life was in danger, did she mention it at any of
14 those meetings?" And then General Annandale answers and
15 I'll have to –

16 CHAIRPERSON: I'll do it.

17 MS BARNES: Thank you.

18 CHAIRPERSON: Chairman, correction. I
19 did not report it to the Provincial Commissioner. I
20 mentioned in my evidence that Lieutenant-Colonel Vermaak
21 informed me, as also is mentioned in his statement, that he
22 had reported it to telephonically to the Provincial
23 Commissioner. "Chairperson: It's in the
24 statement, Lieutenant-Colonel Vermaak's statement that he
25 had reported it to the Provincial Commissioner." "Mr Bizos

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1 SC: I'm sorry." And then it goes on. Is that the
2 whole passage that you need?

3 MS BARNES: Yes, Chair, thank you very
4 much. So you see, General, there General Annandale is
5 saying that he was told by Colonel Vermaak that Colonel
6 Vermaak had reported these direct to you telephonically on
7 the 13th. Do you see that?

8 GENERAL MBOMBO: As it stands, yes, I see
9 it.

10 MS BARNES: Do you still maintain that no
11 such report was made to you?

12 GENERAL MBOMBO: I am certain about it, I
13 am still standing there.

14 MS BARNES: If I could take you now to
15 the statement of Colonel Moolman, that's LLL9, and if we
16 could go to page 8 paragraph 16, Moolman says the
17 following, "After this I walked along the side of the road
18 next to the veld into the direction where I saw the
19 helicopter and where some other activity was going on.
20 This was approximately 200 metres from the area where I saw
21 the stabbing incident. On the way there I noticed
22 Lieutenant-Colonel Vermaak running from the direction of
23 the open veld with the structures or houses further away.
24 He looked upset and he shouted at me to get Major-General
25 Mpembe away from the scene as they wanted to kill him. I

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1 could not hear if he said who they were but I went to
2 Major-General Mpembe and I informed him of this. After I
3 had informed Major-General Mpembe of this, he got into the
4 Nyala that I had been in and they drove away." Now, when
5 General Mpembe reported to you in his briefing on the
6 evening of the 13th what had happened, did he mention this
7 interaction with Colonel Moolman to you?

8 GENERAL MBOMBO: I don't remember that,
9 Chairperson.

10 MS BARNES: Did you ever speak to Colonel
11 Moolman about what had happened on the 13th?

12 GENERAL MBOMBO: She was part of the
13 briefing but I did not notice – I did not specifically
14 speak to her though she was part of the briefing.

15 MS BARNES: Because General, this is yet
16 another person who experienced General Vermaak in a state
17 of concern over General Mpembe and –

18 CHAIRPERSON: Colonel Vermaak.

19 MS BARNES: - the threat that had been
20 made.

21 CHAIRPERSON: Colonel Vermaak.

22 MS BARNES: I beg your pardon, Colonel
23 Vermaak and the threats that had been made on his life, do
24 you see that?

25 GENERAL MBOMBO: It is so, Chairperson.

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1 I take it that he had a responsibility to mention that to
 2 me. I don't remember her mentioning, or him.
 3 MR MAHLANGU: General?
 4 GENERAL MBOMBO: Her.
 5 MR MAHLANGU: I don't remember her
 6 mentioning it to me.
 7 MS BARNES: Is your evidence still,
 8 General, that you're dubious about whether those threats
 9 were actually made?
 10 GENERAL MBOMBO: According to the report
 11 I received, Chairperson, as I have already mentioned I
 12 wasn't told of any murder threat.
 13 MS BARNES: But you were told by General
 14 Mpembe later that evening on the 13th.
 15 GENERAL MBOMBO: Later that evening when
 16 I heard this being discussed by certain people.
 17 MS BARNES: Now, would it be –
 18 CHAIRPERSON: You say you heard it being
 19 discussed later that evening?
 20 GENERAL MBOMBO: During that night,
 21 Chairperson, the police were talking about it and that's
 22 when I started hearing about it. That's when I started
 23 following it up, sir.
 24 MS BARNES: General, your evidence is
 25 that when you spoke to General Mpembe later that evening he

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1 told you that Vermaak had told him about the threat but you
 2 were sceptical as to whether that was true, isn't that
 3 correct?
 4 GENERAL MBOMBO: He only mentioned that,
 5 he only told me after I'd questioned him, what is it that
 6 I'm hearing about you? I did mention, I did say when I
 7 gave evidence here, Chairperson, my doubts about why the
 8 person involved did not mention this to me.
 9 CHAIRPERSON: These allegations of course
 10 were quite serious, weren't they? If they were true they
 11 were very serious, weren't they?
 12 GENERAL MBOMBO: If they were true, yes
 13 Chairperson, they are indeed serious, you are right, Chair.
 14 CHAIRPERSON: Now did you – I know you
 15 were doubtful as to whether the allegations were correct
 16 for the reasons you've given but weren't the allegations
 17 sufficiently serious for you to follow them up by asking
 18 someone like Colonel Moolman for example, you were there,
 19 can you throw any light on this because we know what light
 20 she would have thrown on it if you'd asked her. Did you
 21 not consider that an appropriate thing for you to do in the
 22 circumstances?
 23 GENERAL MBOMBO: There are people who
 24 were present there, Chairperson, that I asked about this
 25 thing, which people did not have details confirming this

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1 allegation.
 2 CHAIRPERSON: Did you not initiate an
 3 investigation afterwards? I mean here was one of your
 4 deputy commissioners making a very serious allegation to
 5 you, admittedly on a hearsay basis, of what he'd been told
 6 by somebody else. If it was true it was a very serious
 7 misconduct on the part of the people who, to quote Colonel
 8 Moolman's statement, wanted to kill Deputy Commissioner
 9 Mpembe? This is very serious, isn't it?
 10 GENERAL MBOMBO: That is true,
 11 Chairperson, it is a serious thing. I also took it to be
 12 that serious, with the intention of making those
 13 investigations. When I spoke to General Mpembe about this
 14 he said to me that he personally did not suspect or hear or
 15 see any people that wanted to kill him. I had a discussion
 16 after some time with Colonel Vermaak, trying to find out
 17 more about this incident, trying to find out exactly what
 18 it is that he had said to me. He said to me yes, what I
 19 wanted, what I was saying to you is exactly what you are
 20 saying, that he saw General Mpembe's position as something
 21 that could cause a problem in the circumstances in the
 22 situation in which they were.
 23 MR SEMENYA SC: Interpretation, I think
 24 the witness is saying the emotional –
 25 GENERAL MBOMBO: Emotional state.

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1 MR SEMENYA SC: - state in which Mpembe
 2 is, may create further problems.
 3 MR MAHLANGU: I said the condition, that
 4 could mean the emotional state.
 5 GENERAL MBOMBO: Emotional state, yes.
 6 MR MAHLANGU: Confirmed by the General
 7 here. And he said that is the reason that he wanted him
 8 removed from the scene. In his own words, Chairperson, he
 9 said to me General – referring to me – you know what kind
 10 of a person General Mpembe is. My reply was, yes, I know
 11 him. I said yes, I believe that all of you were shocked
 12 about what happened and I said to him that is why I had
 13 said to you I had already instructed him that all of you
 14 return back to the JOC. He could not give me details, Mr
 15 Chairperson, which could have been followed, which would
 16 have resulted in this thing being followed through.
 17 CHAIRPERSON: Are you saying, let me just
 18 make sure I understand you. Are you saying that Colonel
 19 Vermaak still persisted in the allegation that some of the
 20 officers had wanted to kill General Mpembe and that's why
 21 he removed him from the scene but he couldn't take it any
 22 further than that? Is that what you're saying?
 23 GENERAL MBOMBO: No, that's not what I'm
 24 saying.
 25 CHAIRPERSON: Well, what are you saying?

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1 GENERAL MBOMBO: He said to me when I
2 questioned him, when I asked him, because of his, the state
3 in which he was, emotional state, he thought of removing
4 him because he could cause problems, like a senior person
5 in this operation.
6 CHAIRPERSON: So are you saying that he
7 never, he never ever told you that threats had been made in
8 effect against General Mpmembe's life?
9 GENERAL MBOMBO: According to me,
10 Chairperson, I don't remember him saying that.
11 CHAIRPERSON: It was never ever mentioned
12 to you at all, not even later on that evening?
13 GENERAL MBOMBO: As I say, Chairperson,
14 later on after some time when I questioned him, when I
15 started questioning him thoroughly, that is what he told
16 me.
17 [13:04] I questioned him on this day, Chairperson,
18 because I wanted us to talk about this day. I wanted to
19 know what did is the cause, where this thing started. He
20 could not give me sufficient details which could have
21 allowed me to carry on with an investigation.
22 CHAIRPERSON: Sorry, I want to make sure
23 I understand you. When you say he told me about this thing
24 did he tell you that threats had been made against General
25 Mpmembe's life, but were they vague and unsubstantiated,

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1 without supporting detail? Is that why you could take the
2 matter no further?
3 GENERAL MBOMBO: If the Chairperson could
4 repeat the question, Sir.
5 CHAIRPERSON: Did Colonel Vermaak tell
6 you that threats had made against General Mpmembe's life and
7 that's why he had to remove him from the scene. But was he
8 told you so vague and unsubstantiated and lacking in detail
9 that you could take the matter no further? Is that what
10 you're saying?
11 GENERAL MBOMBO: That is correct,
12 Chairperson. That allegation that he was going to be
13 killed, he couldn't say who it is that was going to kill
14 him.
15 CHAIRPERSON: I take it the group of
16 people, one or other member of whom had said this was
17 fairly small and I would have imagined that a detective of
18 average ability who was put onto the case might have been
19 able to find who the people were. Or wouldn't you agree
20 with that?
21 GENERAL MBOMBO: It could be so,
22 Chairperson. This is one of the things that is going to be
23 considered, investigations being done after this
24 Commission.
25 CHAIRPERSON: Oh they're waiting until

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1 after the Commission to investigate this, is that what
2 you're telling us?
3 GENERAL MBOMBO: But that is not the
4 reason why I did not investigate, but what I'm saying,
5 Chairperson, all the allegations that we receive we will
6 follow them.
7 CHAIRPERSON: Anyway we will hear what
8 Colonel Vermaak has to say about this in due course. I
9 think it's appropriate for us to take the lunch adjournment
10 at this stage. Sorry you were going to say something,
11 Commissioner Hemraj, you've got your microphone on.
12 COMMISSIONER HEMRAJ: No, I was going to
13 suggest that we take lunch.
14 CHAIRPERSON: Two minds with a single
15 thought. We will take lunch. Come back at 2 o'clock.
16 [COMMISSION ADJOURNS COMMISSION RESUMES]
17 [14:12] CHAIRPERSON: The Commission resumes.
18 I'm sorry we resumed late, but we had housekeeping matters
19 to attend to in chambers which took longer than I
20 anticipated. Provincial Commissioner, you're still under
21 oath? Ms Barnes.
22 CROSS-EXAMINATION BY MS BARNES (CONTD):
23 Thank you, Chair. General, earlier this morning you said
24 that when speaking to Colonel Vermaak about what had
25 happened on the 13th of August and how General Mpmembe had

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1 been distressed on the scene, Colonel Vermaak said to you,
2 "You know what kind of person General Mpmembe is", and you
3 said, "Yes, I know." Do you recall that?
4 GENERAL MBOMBO: I remember that,
5 Chairperson.
6 MS BARNES: What did you mean by that?
7 GENERAL MBOMBO: I was meaning that I
8 know he could be stressed if he finds himself under such
9 circumstances.
10 MS BARNES: And you knew that on the 13th
11 of August, after the incidents that happened, he had been
12 highly distressed, correct?
13 GENERAL MBOMBO: As I was told by Colonel
14 Vermaak, yes.
15 MS BARNES: You were also told by Colonel
16 Vermaak that General Mpmembe was in a state, such as he was
17 likely to create a confusion and could end up causing more
18 harm, correct?
19 GENERAL MBOMBO: As Colonel Vermaak said
20 it, yes.
21 MS BARNES: And in addition to that, you
22 had been told, at least by the evening of the 13th of
23 August, that there had been threats made upon General
24 Mpmembe's life, correct – by members of SAPS?
25 GENERAL MBOMBO: As I said, yes, I heard

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1 this thing discussed there.

2 GENERAL MBOMBO: So at least by the

3 evening of the 13th of August, you had information that

4 there had been a loss of confidence by at least certain

5 members of SAPS in General Mpembe's leadership, correct?

6 GENERAL MBOMBO: I am not sure when you

7 speak of lack of – loss of confidence.

8 MS BARNES: The information you'd

9 received, General, was that SAPS members were threatening

10 the life of General Mpembe, because they were not happy

11 with the instructions he'd given. Isn't that correct?

12 GENERAL MBOMBO: That's what I heard,

13 yes, being said, but he denied that there was such a thing.

14 MS BARNES: Therefore it follows that you

15 had information that at least some SAPS members had lost

16 confidence in the leadership of General Mpembe, correct?

17 GENERAL MBOMBO: If you put it in that

18 manner, yes.

19 MS BARNES: Now surely, General, in those

20 circumstances where you had information that General Mpembe

21 was highly distressed, behaving in a confused manner at the

22 scene, and that there'd been threats on his life by members

23 of SAPS, surely in those circumstances you had a duty to

24 remove him as overall commander?

25 GENERAL MBOMBO: I did exactly that, but

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1 I wanted to do that, but because of the reasons that he

2 gave me and the way I saw him when he gave us this

3 explanation, I then did not do so.

4 MS BARNES: And you conducted no

5 investigation into the information that you received about

6 the threats on General Mpembe's life, correct?

7 CHAIRPERSON: [Microphone off, inaudible]

8 said that, Ms Barnes. When I asked her before – she's

9 already said that. She says it's one of the things they're

10 holding over till after the Commission, that was her

11 evidence before lunch.

12 MS BARNES: We will argue, General, that

13 in the circumstances with which you were faced on the 13th

14 of August, that – or perhaps before I put it to you, it's

15 correct that you have the authority to remove General

16 Mpembe as overall commander of the operation, is that

17 right?

18 GENERAL MBOMBO: It is so.

19 MS BARNES: And only you had that

20 authority, is that correct?

21 GENERAL MBOMBO: If you'd repeat the

22 question.

23 MS BARNES: Only you had the authority to

24 remove General Mpembe as overall commander of the

25 operation, correct?

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1 GENERAL MBOMBO: As I had appointed him,

2 yes, but some other people could have mentioned that if

3 there was a need for it.

4 MS BARNES: We will argue, General, that

5 that's what you ought to have done in the circumstances.

6 I'm going to give you a final opportunity to comment on

7 that?

8 GENERAL MBOMBO: If there was a need,

9 Chairperson. If he also felt like that that he did not

10 have the capacity to go on, and if it was also clear to me

11 that he was in such a position that he would not be able to

12 proceed, I would have done so.

13 MS BARNES: Now, General, it would be

14 fair to say that the SAPS members who were present at the

15 scene on the 13th of August, and witnessed those events,

16 would have been traumatised as a result of what occurred,

17 correct?

18 GENERAL MBOMBO: It is correct.

19 MS BARNES: And you –

20 GENERAL MBOMBO: Or it is expected to be

21 so.

22 MS BARNES: And you yourself appreciated

23 at the time that those SAPS members were upset, annoyed,

24 and even angry, is that correct?

25 GENERAL MBOMBO: I thought, yes, that

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1 they were – that they were not happy, and that is why we

2 asked the assistance of people to - the EHW people to come

3 and be of assistance at Lonmin.

4 MS BARNES: Yes. And we know that,

5 General, because of what you said in your conversation with

6 Mr Mokwena, when you had the meeting with Lonmin on the 14th

7 of August. If we could go to that transcript, which is

8 exhibit JJJ192, to page 6, line 8. Alright, I'm going to

9 read from line 8, you are speaking General and you say,

10 "And failing which, these are the consequences, inaudible,

11 you should know of, so that and when I'm moving in

12 tomorrow, because tomorrow our plan is very tight and very

13 – you know, we are not going to bed tomorrow, but I said

14 let us beg now, because remember we are tied up by these

15 new amendment in our law that says we should not shoot, we

16 should not do this. You know, these things, you know from

17 Chikane's incident and all that. So I said to them if –

18 and then once again, the other thing why I delayed them,

19 remember what was happening yesterday, it was annoying the

20 cops, if we could have sent them there." And then Mr

21 Makwena says, "Emotions are high." And you say, "Emotions

22 are very high. Whatever instruction you would have given,

23 but because of the emotion. Mr Mokwena says, "They would

24 have forgotten about the instruction, yes." And you say,

25 "They will have forgotten about the instruction and I do

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1 not want a situation where people will be dead.”

2 CHAIRPERSON: 20 people will be dead.

3 MS BARNES: “20 people will be dead,” ja.

4 Now, General, what you are saying there is that because the

5 emotions among these SAPS members are high, or amongst SAPS

6 members are high, there's a real risk that they will not

7 carry out instructions, and that they will be ill-

8 disciplined and act on their emotions, is that correct?

9 GENERAL MBOMBO: I was thinking so, yes.

10 MS BARNES: And because of that, you were

11 saying that these SAPS members should not be sent into an

12 operation on Tuesday, the 14th, is that correct?

13 GENERAL MBOMBO: That's what I was trying

14 to say, yes, because at that time they were undergoing

15 counselling.

16 MS BARNES: Because you said, “that is

17 why I delayed them,” so you're referring to it not being a

18 good idea to sent them into an operation on Tuesday, the

19 14th, if we understand each other?

20 GENERAL MBOMBO: It is so.

21 MS BARNES: General, surely if there was

22 a risk that these members would act in an ill-disciplined

23 fashion on Tuesday, there was also a risk that they would

24 act in an ill-disciplined fashion on Wednesday or Thursday

25 that week?

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1 GENERAL MBOMBO: As far as I know, there

2 was a request made that members who feel they cannot go on

3 with this, would be released. We also made a request to

4 the people who were looking at them, the EHW people to look

5 at them in that manner. It is also – and that is also the

6 reason, Chairperson, I made a request to national office to

7 give us more resources, human resources, because I knew

8 some of the policemen who were there, would be leaving.

9 MS BARNES: But, General, we know that

10 SAPS members who were involved in the events of the 13th,

11 remained in the operation and were also present on the 16th,

12 isn't that correct?

13 GENERAL MBOMBO: It can be so, yes. As I

14 am saying to you that as far as I know, there was mention

15 that those of the members who felt that they were not in a

16 position to proceed, and those that the psychologist could

17 have told us that so and so is not in a position to go no,

18 would have been free to go.

19 MS BARNES: But surely, General, when

20 you, on your own version, recognised, and by your own

21 admission recognised that these members were so upset that

22 they were likely to forget instructions given to them,

23 surely it was your duty to ensure that they were removed

24 from the operation that week.

25 GENERAL MBOMBO: Remembering that that is

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1 the duty of the operational commander.

2 MS BARNES: So General Mpembe should have

3 done that?

4 GENERAL MBOMBO: Together with the other

5 people that were helping him on the ground.

6 MS BARNES: General, if I could finally

7 take you then to the statement of Lieutenant-Colonel

8 Vermaak that we were looking at earlier, to paragraph 12 of

9 that statement.

10 CHAIRPERSON: Exhibit LLL8.

11 MS BARNES: LLL8, yes, thank you, Chair.

12 CHAIRPERSON: A translation has been

13 prepared or written out by those instructing you. I think

14 the – I don't know whether we have to hand it an exhibit,

15 probably not, but if it is going to go in, I think it

16 should be typed first, but it was really to assist the

17 witness to understand the passage that you're referring to,

18 and perhaps if you read the document, we don't have to put

19 it in as an exhibit, we don't even have it to typed except

20 by the transcribers. You don't have to read into record,

21 but there may be – there are sentences, I take it, in

22 paragraph 12 that you will be relying on, and I take it you

23 will read the translation of those, am I right?

24 MS BARNES: Yes, Chair. I need to read

25 from the paragraph. I'm just going to find the correct

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1 place to start.

2 CHAIRPERSON: You see it deals with what

3 happened at Roots, and it deals with discussions that took

4 place on the 5th of September 2012 in one of the breakaway

5 groups, is that correct?

6 MS BARNES: Yes, that's right. The

7 events of the 13th of August are being discussed here, and

8 if I could start reading from the third paragraph on the

9 first page, about a third of the way through that, it says,

10 “I then suggested that we go to the beginning.” This is

11 now Lieutenant-Colonel Vermaak's statement, General, and he

12 is describing what happened in the session at Potchefstroom

13 where the events of the 13th were being discussed.

14 So he says, “I then suggested that we go to the

15 beginning where the strikers were next to the railway line,

16 and where the mistake occurred. I then made the remark

17 that some of the members were not happy were not happy

18 about decisions of the General. General Mpembe got

19 immediately angry about the remark, and insisted that I

20 must tell who said it, whereupon it was mentioned to him

21 that Colonel Merafi had made this remark about 15 minutes

22 ago. Colonel Merafi said he denied it. The question then

23 came up that I removed the General from the scene for his

24 own safety. He wanted to know from me who had made these

25 threats, that if I did not mention the names to him, he

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1 would open a case of intimidation against me. I decided
2 that I was not going to give further inputs, because the
3 General took these remarks badly. The question was raised
4 as to who it was – sorry, the question was raised as to who
5 it was that threw the teargas and the stun grenades, and
6 who gave the instructions. Captain Thupe then stood up and
7 told the General that it was him, the General, that had
8 given these instructions. The General originally denied
9 this. Three weeks later nobody wanted to admit to giving
10 such an instruction. He admitted that he could have given
11 this instruction, but that he could not have remembered
12 it.”

13 Now, what I –

14 CHAIRPERSON: No, that he could not
15 remember, not that he could not have remembered it.

16 MS BARNES: Well, that's what I've got
17 written down, I've got he –

18 CHAIRPERSON: The “have” is wrong.

19 MS BARNES: Ja. Now what I want to ask
20 you, General, is in the briefing session that you had with
21 General Mpembe on the evening of the 13th, did the General,
22 General Mpembe, say to you that he had given an instruction
23 to his members to fire teargas and/or stun grenades?

24 GENERAL MBOMBO: He did not say so to me,
25 Chairperson.

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1 MS BARNES: Did he tell you during that
2 briefing that he has given his members an instruction to
3 block the strikers?

4 GENERAL MBOMBO: He said to me it
5 appeared to him, he thought that the strikers were turning
6 towards the settlement. That he gave an instruction that
7 they should be blocked by using the Nyalas.

8 MS BARNES: Then, General, just to round
9 off, when you visited Lieutenant Baloyi in hospital on the
10 16th of August 2012, was that the first occasion that you
11 had visited Lieutenant Baloyi in hospital that week?

12 GENERAL MBOMBO: It is so, Chairperson.

13 MS BARNES: And was that the only time
14 that you visited Lieutenant Baloyi in hospital that week?

15 GENERAL MBOMBO: That's how I remember
16 it, yes.

17 MS BARNES: Thank you, General. Thank
18 you, Chair, we have no further questions.

19 CHAIRPERSON: Ms Lewis, I think you're
20 the next cross-examiner, is that correct? You appear on
21 behalf of the families, is that correct?

22 CROSS-EXAMINATION BY MS LEWIS: That's
23 correct. Good afternoon, General.

24 GENERAL MBOMBO: Good afternoon,
25 Advocate.

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1 MS LEWIS: General, as the chairperson
2 has just indicated, I represent the families of the three
3 strikers who were killed on the 13th, and 33 of the 34 who
4 were killed on the 16th. Can I ask for the transcript of
5 day 41 to be put up on the screen, please? At page 4431,
6 lines 6 to 18. General, this is the evidence-in-chief of
7 Mr Zokwana, the president of NUM, and I'm going to – you'll
8 see that his counsel, Mr Tipp, is questioning him about
9 conversations that he had with various SAPS officers, and
10 with the minister on the 12th of August 2012. And so what
11 Mr Tipp says, and I'll just read it to you is, “could he
12 give the Commission a brief outline of the persons to whom
13 he spoke, and Mr Zokwana says, “I spoke to an official in
14 the offices of the provincial commissioner, and I was not
15 satisfied with the response I was given.

16 [14:32] They didn't have enough manpower in the SAPS.
17 Then I tried to get the numbers of the minister's office
18 and I was able to talk to somebody in his office and they
19 left a message on his cell. He called me back when I was
20 on the way to Jo'burg and I raised my concern to the fact
21 that unless there were enough number of SAPS personnel to
22 restore law and order on the mine, many lives will be
23 lost.” So General, we can see from this that on the 12th of
24 August Mr –

25 MR MAHLANGU: General wants to say

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1 something.

2 GENERAL MBOMBO: I'm lost where the
3 counsel was reading.

4 MS LEWIS: Sorry, I think I gave the
5 wrong reference.

6 CHAIRPERSON: It's not written on the
7 screen, Ms Lewis.

8 MS LEWIS: It's 44, could we take it to
9 page 4434?

10 CHAIRPERSON: Let's go on then. We've
11 now got 4434 on the screen.

12 MS LEWIS: Lines 4 to 15.

13 CHAIRPERSON: Alright, let's have that
14 enlarged, 4 to 15?

15 MS LEWIS: Yes.

16 CHAIRPERSON: Perhaps we should go to it
17 again because the witness, I think, got lost.

18 MS LEWIS: Alright.

19 CHAIRPERSON: And she'd like an
20 opportunity to catch up, wouldn't you? So Mr Tip says,
21 line 4, “Could you give the Commission a brief outline of
22 the persons to whom you spoke?” And then Zokwana says, “I
23 spoke to an official in the offices of the provincial
24 commissioner and I was not satisfied with the response I
25 was given, they didn't have enough manpower in the SAPS.

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1 Then I tried to get the numbers of the Minister's office
 2 and I was able to talk to somebody in his office and they
 3 left a message on his cell. He called me back when I was
 4 on the way to Jo'burg and I raised my concern to the fact
 5 that unless there were enough number of SAPS personnel to
 6 restore law and order on the mine, many lives will be
 7 lost." Is that where you want to stop?
 8 MS LEWIS: That's correct.
 9 CHAIRPERSON: That's the passage that Ms
 10 Lewis read to you, which I read again and you were able to
 11 follow on the screen.
 12 MS LEWIS: So General, we can see that on
 13 the 12th August Mr Zokwana spoke to someone from your
 14 offices. General, was it you to whom Mr Zokwana spoke?
 15 GENERAL MBOMBO: No, it's not me, Mr
 16 Chairperson.
 17 MS LEWIS: Was it at any stage reported
 18 to you that Mr Zokwana had phoned?
 19 GENERAL MBOMBO: I heard for the first
 20 time about this the day he, when he gave evidence.
 21 MS LEWIS: Would you know with whom he
 22 would've been likely to have spoken? Is there someone in
 23 your office to whom an enquiry like this would've been
 24 directed?
 25 GENERAL MBOMBO: I tried to make

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1 enquiries from the people that I work with. There was
 2 nobody who remembered having received a call from Mr
 3 Zokwana.
 4 MS LEWIS: And you don't keep a log or a
 5 record of any sort of phone calls or enquiries that your
 6 office receives?
 7 GENERAL MBOMBO: If this was indeed
 8 received in my office I am certain that the secretary would
 9 have noted this that there was such a phone call from such
 10 and such a person, but I did not get any such a report.
 11 CHAIRPERSON: But am I correct in
 12 assuming that this telephone call that Mr Zokwana is
 13 talking about occurred on the Sunday, the 12th?
 14 MS LEWIS: That's correct, Chair.
 15 CHAIRPERSON: Now, you were still on sick
 16 leave on the 12th, weren't you?
 17 GENERAL MBOMBO: Correct, Chairperson.
 18 CHAIRPERSON: General Naidoo was standing
 19 in for you, he was the Acting Provincial Commissioner.
 20 GENERAL MBOMBO: That is correct, Chair.
 21 CHAIRPERSON: So any phone call that was
 22 received by your office, would that have been referred to
 23 your, the person who was acting in your place, namely
 24 General Naidoo, or would this have been referred to you
 25 when you came back to your office, when you came back from

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1 sick leave?
 2 GENERAL MBOMBO: If it was on a Sunday,
 3 Chairperson, we do not work on Sunday but the truth is, as
 4 you are putting it Chairperson that if it was during the
 5 week it would have been referred to the person who was
 6 acting in my absence.
 7 CHAIRPERSON: Mr Zokwana of course
 8 doesn't say that he spoke to the official who was at the
 9 offices at the time he spoke to him, he spoke to an
 10 official in the offices. So Mr Zokwana might have had the
 11 telephone number of some official who – or his home number
 12 or cell phone number or something and that may be the
 13 answer but of course a further point arises, if the
 14 official was spoken to on a Sunday and it was a matter for
 15 the Commissioner, the probability is that the call would
 16 have been referred to the Acting Commissioner, not to the
 17 person who was on leave which is the witness. Is that
 18 right, Provincial Commissioner?
 19 GENERAL MBOMBO: I understand. You're
 20 quite right, Chairperson.
 21 MS LEWIS: Thank you. Could I now ask
 22 for the transcript of day 149 to be put up on the screen,
 23 lines 10 to 24? General, this is the evidence of Major-
 24 General Mpembe. He's being questioned by the Chairperson
 25 about phone calls that he made to you and what the

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1 Chairperson says to him is, or asks him, is "So now you had
 2 another conversation with her" – and that's referring to
 3 you – "some hours after that, which lasted for 6 minutes
 4 and 17 seconds, at 18:50 and, so it's just after 10 to 7.
 5 Now what was that about? You hadn't
 6 mentioned that. What was that about?" And
 7 General, Major-General, I should just add that –
 8 CHAIRPERSON: She's Lieutenant-General.
 9 MS LEWIS: Sorry, Lieutenant-General. I
 10 should just add that this relates to the 15th of August 2012
 11 and then you respond, "That could have been when I was" –
 12 or sorry, Mpembe responds, "That could have
 13 been when I was giving her progress of the
 14 situations that were taking place." And the Chairperson
 15 says, "What did you tell her at that time?" And Mpembe
 16 responds, "Chairperson, I was also telling her about what
 17 has transpired when the presidents were addressing the
 18 crowd, and also telling her that I was still going to hold
 19 the debriefing with each president." So what – what Major-
 20 General Mpembe told the Commission is that he had a
 21 telephone conversation with you at 10 to 7 on the 15th of
 22 August during which he reported to you what had happened
 23 when Mr Zokwana, the president of NUM, and Mr Mathunjwa,
 24 the president of AMCU, addressed the protesters on the
 25 koppie. Do you see that?

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1 GENERAL MBOMBO: I see, Chairperson.
 2 MS LEWIS: And General, presumably do you
 3 remember this telephone conversation?
 4 GENERAL MBOMBO: I had quite a few
 5 telephone calls with General Mpembe. I'm not specifically
 6 sure of this one but the truth is that he phoned me from
 7 time to time giving me that report.
 8 MS LEWIS: Well, General, during one of
 9 those telephone conversations do you remember General
 10 Mpembe reporting to you what had happened when Mr Zokwana
 11 went to address the protesters on the koppie?
 12 GENERAL MBOMBO: Yes, I do remember that
 13 he told me.
 14 MS LEWIS: So General, presumably he
 15 would have told you that Mr Zokwana was not well received
 16 when he went to go and address the protesters, correct?
 17 GENERAL MBOMBO: He said that, yes,
 18 Chairperson.
 19 MS LEWIS: And that the protesters did
 20 not want to listen to what Mr Zokwana had to say, correct?
 21 GENERAL MBOMBO: That is how he reported
 22 it, yes.
 23 MS LEWIS: And that effectively Mr
 24 Zokwana had to leave the koppie because the protesters were
 25 simply not listening to him, correct?

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1 GENERAL MBOMBO: I was in a meeting and I
 2 did not enquire about all those particulars.
 3 MS LEWIS: Now General, you have
 4 confirmed in your evidence that, you've confirmed that the
 5 National Management Forum meeting finished at just after 9
 6 o'clock, correct, at about quarter past 9?
 7 GENERAL MBOMBO: About that time, yes. I
 8 wouldn't be certain, I wouldn't be specific.
 9 MS LEWIS: And the extraordinary session
 10 started shortly after that, correct?
 11 GENERAL MBOMBO: It is correct,
 12 Chairperson.
 13 MS LEWIS: So General, at the time that
 14 Mpembe made this phone call to you when he reported what
 15 had happened at the koppie when Mr Zokwana attempted to
 16 address the protesters, that was before the extraordinary
 17 session of the National Management Forum, correct?
 18 GENERAL MBOMBO: It is so, Chairperson.
 19 MS LEWIS: Now General, did you report to
 20 the extraordinary session what Major-General Mpembe had
 21 told you about Zokwana's reception at the koppie when he
 22 attempted to address the protesters?
 23 GENERAL MBOMBO: I am not sure. I am not
 24 sure whether I was specific about Mr Zokwana but what I did
 25 mention was that there were discussions that were going on,

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1 that were between AMCU and NUM.
 2 MS LEWIS: Alright and can I just take
 3 you back a step? When Major-General Mpembe reported to you
 4 about the reception that Mr Zokwana had received, what were
 5 your feelings about that? Were you happy to hear that Mr
 6 Zokwana had received a negative response at the koppie?
 7 MS LEWIS: Though I can't remember how I
 8 felt, but naturally one would not feel good if a person who
 9 is trying to assist you is not well received.
 10 MS LEWIS: So General, were you concerned
 11 about it?
 12 GENERAL MBOMBO: I had hoped that he
 13 would be one of the people to assist us, yes.
 14 MS LEWIS: And so, General, I would
 15 presume then that when you made your report at the
 16 extraordinary session you would've mentioned this
 17 development, that Mr Zokwana had not been well received by
 18 the protesters.
 19 GENERAL MBOMBO: Remember what I've
 20 already said before, that at the time that I was speaking
 21 in this meeting I do not remember that I had received all
 22 these details because at the time that we were having
 23 telephone calls with Mr Mpembe I did not go into, we did
 24 not go into details.
 25 MS LEWIS: Well, General, that conflicts

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1 with – that conflicts with Major-General Mpembe's testimony
 2 because he testified that he spoke to you at 10 to 7 and he
 3 reported what had happened when the presidents addressed
 4 the protesters at the koppie, correct?
 5 GENERAL MBOMBO: I hear what you say,
 6 that he said so.
 7 MS LEWIS: And you've confirmed to us
 8 that you recall Major-General Mpembe reporting to you
 9 telephonically about the fact, at least the fact that
 10 Zokwana had not been well received at the koppie.
 11 GENERAL MBOMBO: Possibly it's necessary
 12 that I repeat this. I am not certain of the details, Mr
 13 Chairperson, during the discussion with General Mpembe
 14 about his being accepted or not. What was of importance to
 15 me was the principle that there are these people discussing
 16 that they are going to be of assistance to us.
 17 MS LEWIS: Yes. General, I don't want to
 18 get into an argument with you. I think the record will
 19 speak for itself and you did, a few moments ago, concede
 20 that Major-General Mpembe reported to you at least the fact
 21 that Mr Zokwana was not well received and that the
 22 protesters did not want to listen to what he had to say.
 23 Do you want to comment on that before I move to my next
 24 point?
 25 GENERAL MBOMBO: Let me explain it, let

<p style="text-align: right;">Page 22128</p> <p>1 me verify it. I am not denying that General Mpembe could 2 have said that. I am responding to your question about the 3 meeting after nine. In that meeting I did not explain the 4 details of the conversations with General Mpembe. 5 MS LEWIS: I'm sorry, are you saying that 6 at the extraordinary session of the National Management 7 Forum you did not report on what had happened when Mr 8 Zokwana attempted to address the protesters? Is that what 9 you are – is that your response now? 10 GENERAL MBOMBO: What I'm trying to say, 11 Chairperson, what I told them was that General Mpembe had 12 reported to me that he had the presence of these people 13 with whom he's discussing and that these people had agreed 14 to go and talk to the workers on the koppie. I don't 15 remember explaining that in details or explaining in 16 details what I'd heard. 17 MS LEWIS: But General, I'm sorry, that 18 makes no sense to me. If you'd just received a call from 19 Major-General Mpembe reporting on what happened and if 20 you're now within a matter of some two hours later 21 reporting to this extraordinary session and you mention the 22 fact that these people are engaging with the protesters, 23 would you not have gone into the detail that Major-General 24 Mpembe gave you? 25 GENERAL MBOMBO: If the people that I was</p>	<p style="text-align: right;">Page 22130</p> <p>1 sticks of dynamite you may try to use, she would move from 2 that position. 3 MS LEWIS: I agree, Chairperson. I just 4 have one final question on this point. General, have you 5 ever, did you ever have a direct discussion at any other 6 point with Mr Zokwana about the events at Marikana? 7 GENERAL MBOMBO: I have never spoken to 8 Mr Zokwana. 9 MS LEWIS: Can I then ask that exhibit S 10 be put up on the screen, please, paragraph 3.5? 11 [14:52] COMMISSIONER HEMRAJ: Can we go to 12 instruction 2 or perhaps 3? 13 CHAIRPERSON: This isn't the right 14 document. Exhibit S, no it is, sorry. There we've got it. 15 MS LEWIS: General, I take it that you're 16 familiar with this document, correct? 17 GENERAL MBOMBO: It is so, Chairperson. 18 MS LEWIS: It was an instruction from the 19 National Commissioner to, amongst others, all provincial 20 commissioners which would, of course, include you, correct? 21 GENERAL MBOMBO: It is correct, Chair. 22 MS LEWIS: So, General, I'm assuming that 23 you received this instruction when it was sent by the 24 National Commissioner, correct? 25 GENERAL MBOMBO: Correct, Chairperson.</p>
<p style="text-align: right;">Page 22129</p> <p>1 talking to had an interested in those details, I could have 2 gone into those details. 3 MS LEWIS: But General, with respect, 4 they wouldn't have known what to have had an interest in. 5 You're the person there with the detailed knowledge and 6 you're briefing them. Did you not think it was relevant 7 for you to convey this information to them? 8 GENERAL MBOMBO: What I regarded as being 9 important, according to me important, was that we have 10 people up there who are trying to help us. 11 MS LEWIS: General, you've been 12 questioned at some length by Adv Budlender about what 13 happened in your meeting with Lonmin officials on the 14th 14 August and I'm not going to go back there, I don't want to 15 go back over that evidence but, General, in light of the 16 views that you expressed during that meeting about AMCU and 17 NUM and their respective positions within the platinum 18 sector, I put it to you that it's highly improbable that 19 you wouldn't have thought it relevant to convey the 20 reception that Mr Zokwana received. Would you like to 21 comment? 22 GENERAL MBOMBO: Unfortunately, 23 Chairperson, I don't remember mentioning it. 24 CHAIRPERSON: She says she doesn't 25 remember mentioning it and I don't think that however many</p>	<p style="text-align: right;">Page 22131</p> <p>1 MS LEWIS: And you gave it the 2 consideration which was due to it as an instruction from 3 the National Commissioner, correct? 4 GENERAL MBOMBO: That's correct, 5 Chairperson. 6 MS LEWIS: Now, General, paragraph 3.5 7 reads as follows, "Every time minimum force is used, a 8 review of the action taken must always be done by an 9 officer holding the rank of Captain and above, who is not 10 part of the action and was also not on the scene." Do you 11 see that, correct? 12 GENERAL MBOMBO: I see that, Chairperson. 13 MS LEWIS: General, was any review of 14 this nature ever carried out as far as you know regarding 15 what happened at Marikana? 16 GENERAL MBOMBO: If I understand you 17 correctly, Chairperson, that review you're referring to is 18 a debriefing. That we did not have. 19 MS LEWIS: General, no, my understanding 20 is that this is something that's different to a debriefing. 21 A debriefing is where the relevant officers sit together 22 and discuss what happened in order to try and learn 23 whatever lessons need to be learned from that exercise. A 24 review is where an independent and officers who did not 25 take part in the events in question, evaluate the conduct</p>

<p style="text-align: right;">Page 22132</p> <p>1 of the police officers. So my understanding is that it's 2 something that's different to a debriefing. 3 GENERAL MBOMBO: That is also dependent 4 on the outcomes of the debriefing. 5 MS LEWIS: All right. Well, General, 6 regardless of whether there was a debriefing or not, did 7 you as a provincial commissioner of the North West did you 8 take steps to ensure that a review of this nature was held 9 into the operation at Marikana? 10 GENERAL MBOMBO: We could not have 11 conducted a review, Mr Chairperson, not having a 12 debriefing. 13 MS LEWIS: General, firstly I'm going to 14 put to you again that the two things are separate. The 15 whole point of a review is that you get someone who's 16 independent from the operation to come and review whether 17 the conduct of the officers who were involved meets the 18 relevant standards. That's what I understand as being 19 required under paragraph 3.5 and so whether there was a 20 debriefing or not is irrelevant. 21 GENERAL MBOMBO: Where would that person 22 then get information if there was no debriefing conducted, 23 Chairperson? 24 MS LEWIS: Well that person could conduct 25 interviews with the officers involved.</p>	<p style="text-align: right;">Page 22134</p> <p>1 whole to take, not to conduct your own review in the 2 meantime to try and establish what went wrong. Do you want 3 to comment? 4 CHAIRPERSON: I think she should be given 5 the reasons upon which the argument will be based so the 6 witness can answer. 7 MS LEWIS: Yes, that's a fair point. 8 CHAIRPERSON: Just to say it was grossly 9 negligent, you're going to argue it was grossly negligent. 10 Now I take it, it will take some time to put the reasons to 11 her, as to why you're going to argue that. Shall we take 12 tea first? 13 MS LEWIS: We can take tea, Chair. 14 CHAIRPERSON: We will take tea, we'll 15 take the tea adjournment. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [15:36] CHAIRPERSON: The Commission resumes. Provincial 18 Commissioner, you're still under oath. Ms Lewis. 19 ZUKISWA MBOMBO: s.u.o. 20 CROSS-EXAMINATION BY MR LEWIS (CONTD.): 21 Thank you, Chair. General, the basis for our submission 22 that it was grossly negligent for SAPS not to carry out, or 23 it would've been grossly negligent for SAPS not to have 24 carried out an internal review of its own, is the fact that 25 34 people were killed, General. It's the largest number of</p>
<p style="text-align: right;">Page 22133</p> <p>1 GENERAL MBOMBO: That's not how I know it 2 to be done, Chairperson. What I know is what would then 3 happen this review would be dependent on the debriefing. 4 That person would then read the report from the debriefing 5 and then say, Chair, you should have done this and this and 6 this. 7 MS LEWIS: Well, General, as I've put to 8 you, I disagree with that, but I'm not going to argue 9 further with you. I'm going to ask the question then why 10 did you not ensure that the necessary debriefing and review 11 was carried out? 12 GENERAL MBOMBO: I've already explained, 13 Chairperson. 14 MS LEWIS: I'm sorry, can you remind me 15 what that explanation was? 16 GENERAL MBOMBO: I said after it was 17 announced that the Commission has been appointed, me, 18 Mpembe and other senior officials then agreed that we were 19 not going to conduct the debriefing because the Commission 20 would then later have to give us a complete and an 21 objective analysis. 22 MS LEWIS: Well, General, I'm putting it 23 to you because we will argue at the conclusion of the 24 proceedings that that was a grossly negligent stance for 25 you, as the Provincial Commissioner and for SAPS, as a</p>	<p style="text-align: right;">Page 22135</p> <p>1 people killed yet by the police in a single operation since 2 Sharpeville, approximately 78 people were injured or at 3 least 78 people were injured. Do you not think it was 4 important for SAPS to establish for itself what went wrong? 5 GENERAL MBOMBO: It is not that we did 6 not take it as important, Mr Chair, but because of the 7 reasons I've already given we thought of not doing the 8 review at that time. 9 MS LEWIS: And General, when it became 10 clear that the time frame for the Commission would be 11 significantly longer than what was initially thought, 12 because the initial time period was four months and by the 13 end of those four months it became clear that the 14 Commission was going to carry on for a significant amount 15 of time longer than that, did you not think it was 16 important then to conduct a review of your own? 17 GENERAL MBOMBO: Because of the reasons 18 I've already given, we did not think so. 19 MS LEWIS: And General, I'll tell you why 20 I say it was so important. The reason that it is so 21 important is for SAPS to establish what the mistakes were 22 so that those mistakes don't get repeated. 23 GENERAL MBOMBO: You are correct, that is 24 our intention to do that during the briefing when we do the 25 briefing.</p>

<p style="text-align: right;">Page 22136</p> <p>1 MS LEWIS: During the briefing after the 2 Commission finishes? 3 GENERAL MBOMBO: The Commission shall 4 have given us its recommendations as well. 5 MS LEWIS: And General, if mistakes are 6 made during public order operations in the interim and 7 people are seriously injured or killed, do you not think 8 that's grossly negligent if those mistakes could be avoided 9 by conducting a proper internal review? 10 GENERAL MBOMBO: Can you repeat the 11 question please? 12 MS LEWIS: And General, what about the 13 public order operations that take place in the interim? We 14 know that this year alone there's been a dramatic increase 15 in violent protests and there's been a dramatic increase in 16 the number of protesters killed. In your province recently 17 four protesters were killed, correct? 18 GENERAL MBOMBO: I am now not sure about 19 that question, whether that question is part of what we are 20 busy with here. 21 MS LEWIS: Yes, General, my question is, 22 you said that you'll conduct a proper debriefing and a 23 review when once the Commission is finished and it's issued 24 its report. Now what m putting to you is, there are, there 25 have been public order – there have been protests and thus</p>	<p style="text-align: right;">Page 22138</p> <p>1 stance clear, there can be no misunderstanding on that. 2 She's made her stance clear. 3 MS LEWIS: Can I ask then that page, day 4 136 be put up on the screen, please? Page 14511. General, 5 this is the evidence of Colonel Scott and what he says 6 beginning at line 3 is, "When the president gave the terms 7 of reference for the commission they needed the policies of 8 the police to be brought together to be looked at and then 9 obviously the operation weighed up against the policies." 10 And then Mr Chaskalson asks him, "And who was on that team, 11 do you know?" And then he gives a number of names, he says 12 "Brigadier Mkhwanazi, Mr Ali, Brigadier Hunter and Colonel 13 Twala." General, did you know anything about this group 14 that met on a number of occasions? 15 GENERAL MBOMBO: I know them, Mr Chair. 16 MS LEWIS: Can I ask for exhibit JJJ203 17 to be put up? 18 CHAIRPERSON: While the screen, this is 19 being looked at, may I ask you how long you are likely to 20 be? 21 MS LEWIS: Chair, I think I will finish 22 by the end of the day, by 4 o'clock. 23 CHAIRPERSON: I've just received a note 24 to say the mayor is going to have a meeting here in the 25 auditorium at 4 o'clock, so I'm told. So I was proposing</p>
<p style="text-align: right;">Page 22137</p> <p>1 public order operations in the interim and people have been 2 killed. Now it's possible, General, and I put it no higher 3 than that, it's possible that that may have been prevented 4 if a proper review of the operation at Marikana had been 5 done in the interim. 6 GENERAL MBOMBO: Although that is not 7 done, there are other things that are being done by the 8 police generally to avoid such incident as we had 9 experienced and those are not springing from a debriefing 10 or a review of the Marikana incident. 11 MS LEWIS: Yes but, General, the simple 12 point is that SAPS itself has not conducted any internal 13 review of its own, so you say, into what went wrong at 14 Marikana, correct? 15 MR SEMENYA SC: No Chair, this is 16 argumentative. Now we're spinning on the same debate. 17 CHAIRPERSON: Yes. You know I mentioned 18 to you the sticks of dynamite that you were going to use 19 and it wouldn't help you at all. The witness has stated 20 her attitude in response to the questions you've asked, 21 you've put the questions several times. I don't know that 22 any further value could be derived by the Commission from 23 repeating the question yet again and getting the same 24 answer yet again. So I think that it may be appropriate 25 for you to move on to the next point. You've made your</p>	<p style="text-align: right;">Page 22139</p> <p>1 then to adjourn at about five to or even ten to because 2 we've been asked, I've also been asked to ask everybody 3 here to remove all their belongings from the auditorium for 4 the purposed of that meeting, so that may take some time. 5 So I think when you come to the end of this point I think 6 we must adjourn. I know it means you've got to come back 7 tomorrow but I don't see an escape from it. 8 MS LEWIS: General, this is the call-up 9 instruction for that group and if we go to page 1 – 10 CHAIRPERSON: Sorry to interrupt you. 11 How long do you think this point is going to take? I know 12 it's difficult to predict but – 13 MS LEWIS: Chair, perhaps it's better to 14 adjourn until tomorrow. 15 MR MPOFU: Chairperson, may I just ask, 16 maybe something I should do off the record. Given the fact 17 that there is only Ms Lewis, the remainder of her evidence 18 and probably Mr Gumbe and as I understand it, the Human 19 Rights Commission is not available tomorrow, wouldn't it be 20 better to have those cross-examinations finished on 21 Thursday morning so that then in custody an start after 22 them because otherwise you might, we might be here tomorrow 23 for a few minutes and the expenses of just – 24 CHAIRPERSON: One of the matters we were 25 discussing during the adjournment, the tea adjournment, was</p>

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1 we understand that the police have produced a list of 85
 2 witnesses and we wanted to – we spoke to the police
 3 representatives and asked them to give us the names because
 4 we haven't been given them and statements of the witnesses
 5 or reference to the exhibits which contain the statements
 6 of these witnesses and we were proposing to spend a bit of
 7 time tomorrow working through them. So it might be
 8 sensible – I'm not sure whether they'll be ready for us
 9 first thing tomorrow morning. Perhaps I should ask the
 10 evidence leaders and the representatives of the police and
 11 the other parties to speak on this before we decide what to
 12 do. Mr Budlender?
 13 MR BUDLENDER SC: Chair, I think there's
 14 a good deal of sense, with respect, in what Mr Mpofo says.
 15 We'll be back for half of – everyone is looking so
 16 surprised. We'll be back tomorrow for half an hour or an
 17 hour –
 18 CHAIRPERSON: Yes, you shouldn't do that,
 19 he nearly fainted.
 20 MR BUDLENDER SC: It's not going to be
 21 much more than half an hour at best and if it suits
 22 everybody I'd suggest we adjourn till Thursday.
 23 CHAIRPERSON: Let me put it this way, is
 24 there anyone who opposes Mr Mpofo's application that we
 25 should not sit tomorrow?

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1 MR BURGER SC: No. We certainly from
 2 Lonmin's side, support that. I must say I'm greatly
 3 perturbed by the suggestion that there are 85 more police
 4 witnesses. We have a ruling here that we will expedite
 5 matters. Since Mr Madlanga went to the Constitutional
 6 Court in August of last year we've finished three
 7 witnesses. We now hear that there are 85 to go. We must
 8 finish by April. We just don't know how that's going to
 9 happen and we really think that we need guidance on that,
 10 so –
 11 CHAIRPERSON: Mr Burger – sorry, Mr
 12 Semenya?
 13 MR SEMENYA SC: Chair, perhaps this might
 14 help answer the concern. The list of 85 witnesses, there
 15 is a fair majority of whom we propose must be affidavit
 16 evidence that would be admitted into evidence. We do not
 17 propose leading 85 witnesses at all.
 18 CHAIRPERSON: Thank you. One of the
 19 exercises we were discussing during the adjournment with
 20 the evidence leaders and counsel for the police is
 21 identification of those issues which won't really assist
 22 the Commission in any way in regard to its final report.
 23 There are all sorts of issues that arise that could be
 24 investigated but whichever way that investigation, or
 25 whatever result may emerge from the investigation of some

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1 of these issues, it's not likely to alter the ultimate
 2 report in respect of the main points upon which we are
 3 asked by the President to report.
 4 So one of the things we want to do is to
 5 eliminate what I call non-issues or issues that are not
 6 really material and then once we've performed that
 7 exercise, we can then sensibly approach the list of
 8 witnesses prepared, presented by the police, decide which
 9 witnesses we don't need at all, which witnesses we only
 10 need affidavits from and in that way we can, we hope,
 11 reduce the volume of material that will actually have to
 12 come before us in the form of evidence, oral evidence which
 13 would be subject to cross-examination. Sorry? Yes, there
 14 are also other issues which we may come to the conclusion
 15 that we don't need any more evidence. There are a number
 16 of issues on the list that have been dealt with in evidence
 17 we have already, we may not require further evidence on
 18 these issues. So these are all matters that we're
 19 considering.
 20 The concerns Mr Burger has expressed are concerns
 21 that we share and we will certainly do our utmost to ensure
 22 that this Commission isn't prolonged unnecessarily and the
 23 point that you made, Mr Burger, is a very relevant one. On
 24 the other hand, the witnesses who have testified since Mr
 25 Madlanga went to another place were very important

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1 witnesses who did require thorough interrogation in regard
 2 to the nature of the evidence they were giving.
 3 Anyway, there doesn't seem to be anyone who
 4 opposes the application for a postponement till Thursday,
 5 so the application is granted.
 6 MR MPOFU: Thank you, Chair.
 7 CHAIRPERSON: And we will adjourn until
 8 Thursday at 9 o'clock.
 9 [COMMISSION ADJOURNED]
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