

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 185

14 FEBRUARY 2014

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<p>1 [PROCEEDINGS ON 14 FEBRUARY 2014]</p> <p>2 [09:06] CHAIRPERSON: The Commission resumes. I</p> <p>3 hope everybody has turned his or her cell phone off.</p> <p>4 You're still under oath, Provincial Commissioner.</p> <p>5 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.</p> <p>6 CHAIRPERSON: Mr Mpofu.</p> <p>7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p> <p>8 Thank you very much, Chairperson. Good morning, General.</p> <p>9 GENERAL MBOMBO: Good morning, Counsel.</p> <p>10 MR MPOFU: And Happy Valentine's Day to</p> <p>11 you and all the ladies are wearing red today.</p> <p>12 GENERAL MBOMBO: Thank you.</p> <p>13 MR MPOFU: No, all the ones are wearing</p> <p>14 red for Valentine's Day, thank you, including you, General.</p> <p>15 GENERAL MBOMBO: Thank you.</p> <p>16 MR MPOFU: And Commissioner Hemraj.</p> <p>17 CHAIRPERSON: But are even the AMCU</p> <p>18 ladies wearing red today?</p> <p>19 MR MPOFU: Yes, it's just for today,</p> <p>20 Chairperson. General, we were busy with what I'm going to</p> <p>21 argue was a missed opportunity of what in shorthand we'll</p> <p>22 call the Mathunjwa mission, and just to recap, your</p> <p>23 evidence is that you did not know that the Mathunjwa</p> <p>24 mission was still active, correct?</p> <p>25 GENERAL MBOMBO: Can you explain what you</p>	<p>1 MR MPOFU: Okay –</p> <p>2 CHAIRPERSON: In other words you denied</p> <p>3 it –</p> <p>4 MR MPOFU: No –</p> <p>5 CHAIRPERSON: - allegation was that you</p> <p>6 took political considerations into account and you say</p> <p>7 that's not true, so you denied the allegation. So he's</p> <p>8 right the way he summarises it.</p> <p>9 MR MPOFU: Yes, Chairperson, it's a</p> <p>10 matter of language. I think what she means is not only do</p> <p>11 I deny it, it is not so. It's just a language –</p> <p>12 CHAIRPERSON: Alright.</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: I think she's being</p> <p>15 careful. She doesn't want to be seen to agree to things</p> <p>16 unless she understands what she's agreeing to.</p> <p>17 MR MPOFU: Yes. No, I thought –</p> <p>18 CHAIRPERSON: It might be a ball from the</p> <p>19 back of the hand or something –</p> <p>20 MR MPOFU: Yes, no, later it could be</p> <p>21 used against her. That's correct. Thank you, Chairperson.</p> <p>22 But putting that denial aside, you do accept that if indeed</p> <p>23 you had taken into account political considerations, that</p> <p>24 would be grossly irregular and improper, correct?</p> <p>25 GENERAL MBOMBO: That would have been the</p>
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<p>1 mean by active?</p> <p>2 MR MPOFU: Well, your impression – and we</p> <p>3 now know with the benefit of hindsight that that impression</p> <p>4 was wrong – was that the Mathunjwa mission, peace mission,</p> <p>5 was finished and had failed, correct? By the time you</p> <p>6 issued the instruction, that is.</p> <p>7 GENERAL MBOMBO: Oh, that is correct,</p> <p>8 yes.</p> <p>9 MR MPOFU: And had you known that the</p> <p>10 Mathunjwa mission was still ongoing, it would have been</p> <p>11 improper for you to issue that instruction if you had</p> <p>12 known, correct?</p> <p>13 GENERAL MBOMBO: That is correct. If I</p> <p>14 knew, I would have waited.</p> <p>15 MR MPOFU: Yes. Now I will then, I'll</p> <p>16 show you later that you, either you actually knew that the</p> <p>17 mission was still ongoing, or that you ought to have known,</p> <p>18 but that I will do later. You understand?</p> <p>19 GENERAL MBOMBO: I hear you.</p> <p>20 MR MPOFU: Also just to round off one</p> <p>21 issue, I accept that you have denied that you took into</p> <p>22 account political considerations in ordering the operation,</p> <p>23 correct?</p> <p>24 GENERAL MBOMBO: I do not deny that. It</p> <p>25 is not like that. That is not how I work, Mr Chair.</p>	<p>1 case, Mr Chair, yes.</p> <p>2 MR MPOFU: Thank you. And similarly if</p> <p>3 you had taken into account other improper and ulterior</p> <p>4 motives which are not permissible in terms of police work,</p> <p>5 it would also be grossly improper and irregular, correct?</p> <p>6 GENERAL MBOMBO: That is so, yes.</p> <p>7 MR MPOFU: Right, now just for clarity</p> <p>8 sake, is it correct that this operation, although it</p> <p>9 started as a local Marikana issue and grew to become a</p> <p>10 provincial operation, that by the time of the massacre it</p> <p>11 was a national operation, correct?</p> <p>12 GENERAL MBOMBO: That is correct, Mr</p> <p>13 Chair, because we had mobilised police officers from all</p> <p>14 over the country.</p> <p>15 MR MPOFU: Right, thank you. Also you do</p> <p>16 accept that although your primary concern as the police was</p> <p>17 the issue of peacekeeping, but the root cause of the</p> <p>18 conflict there was the labour issue, or the wage dispute,</p> <p>19 correct?</p> <p>20 GENERAL MBOMBO: That is so, yes.</p> <p>21 MR MPOFU: Okay, just for the record, it</p> <p>22 took me about half a day to get that concession from the</p> <p>23 National Commissioner.</p> <p>24 CHAIRPERSON: You don't have to remind us</p> <p>25 of that. We're fully aware of it.</p>

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1 MR MPOFU: Ja, thank you, Chairperson. I
 2 withdraw the reminder. Okay, now going back to what we
 3 were discussing yesterday, because of that it is self-
 4 evident that the shortcut to resolving the whole situation
 5 would have been to resolve the underlying issue, in other
 6 words the labour issue, so that not only do you not have a
 7 violent labour action, but you have no labour action at
 8 all, if it's possible, correct?
 9 GENERAL MBOMBO: Please repeat the
 10 question.
 11 MR MPOFU: I'm saying I do appreciate
 12 that the primary concern of the police was the peacekeeping
 13 because this, although you and I have agreed that it was a
 14 labour, the root cause was a labour issue, it was
 15 unfortunately accompanied by some violence and that's why
 16 you were involved, correct?
 17 GENERAL MBOMBO: Yes.
 18 MR MPOFU: That I understand. What I'm
 19 saying is that it was also the approach of the police that
 20 the best way to deal with the situation would have been to
 21 resolve the underlying issue, which was the labour issue as
 22 between the two parties, labour and the employer, correct?
 23 GENERAL MBOMBO: That was part of our
 24 attempt, but it was not the reason why we were there.
 25 MR MPOFU: Yes, no that I appreciate, but

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1 you also appreciated that if the underlying issue was
 2 resolved, that might remove the reason why you were there.
 3 GENERAL MBOMBO: We had such a thought.
 4 MR MPOFU: Yes, now it was also well – or
 5 let me start with this. When you had your first encounter,
 6 as it were, with Lonmin, they effectively misled you as to
 7 what the real problem was. Is that correct?
 8 MR VAN AS: I have to object to that, Mr
 9 Chairman.
 10 CHAIRPERSON: I don't see on what basis
 11 you can object. He hasn't explained to us – he's put a
 12 proposition and he's going to explain it to us.
 13 MR MPOFU: Okay, maybe –
 14 MR VAN AS: If he explains it, then –
 15 CHAIRPERSON: Yes, so the objection was
 16 premature.
 17 MR MPOFU: Yes. Thank you, yes.
 18 Alright, to circumvent that problem let me put it this way.
 19 When you had your first encounter with Lonmin you were told
 20 that uppermost was a problem between NUM and AMCU, correct?
 21 GENERAL MBOMBO: Yes, that is what they
 22 were saying.
 23 MR MPOFU: Yes, and secondly you were
 24 told that Lonmin did not know who these people were, they
 25 were faceless people who were not their employees, correct?

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1 GENERAL MBOMBO: That is what they were
 2 saying, yes.
 3 MR MPOFU: And only later you learned
 4 through your own interactions with the strikers that the
 5 underlying issue was actually a wage dispute and their
 6 request to be addressed or to talk to the employer,
 7 correct?
 8 GENERAL MBOMBO: Yes, that's what we
 9 heard.
 10 MR MPOFU: And in fact, I can't remember
 11 which one, but members of the police effectively had to
 12 cross-examine the Lonmin people until such time that they
 13 conceded that those people were there employees. I
 14 remember, I think somebody said, "Well, if those are not
 15 your employees, then where are your employees?", something
 16 like that, which was a very good question.
 17 GENERAL MBOMBO: There was such a talk.
 18 We showed them some photos and they saw on the photos that
 19 some of the strikers were their employees.
 20 MR MPOFU: And then as I say through your
 21 own direct interaction it was made abundantly clear to
 22 SAPS, it was made abundantly clear, and repeatedly so, that
 23 the protesters had one single demand and refrain, which was
 24 to be addressed or to talk to the employer, "Umlungu,
 25 Umqeshi," whichever term they used, but whenever you

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1 interacted with them that was the constant refrain,
 2 correct?
 3 GENERAL MBOMBO: That is what I heard,
 4 yes, Mr Chair.
 5 MR MPOFU: In fact when the very first
 6 encounter happened with the police, with General Mpenbe – I
 7 won't take you through the transcript, but you can take it
 8 from me that about 10 times the strikers in interacting
 9 with General Mpenbe were saying two things; we are not
 10 fighting, we want to talk to the employer. You're aware of
 11 that? Or when General Mpenbe was reporting to you did he
 12 mention that?
 13 GENERAL MBOMBO: I remember that, Mr
 14 Chair.
 15 MR MPOFU: And even on the following day,
 16 that would be now the 14th, 15th, and even on the 16th
 17 whoever was caring to listen, whether it was the police,
 18 whether it was Mr Mathunjwa, whether it was Bishop Seoka,
 19 they were making that same demand, we would like to be
 20 addressed by the employer. You remember that? Or you're
 21 aware of that?
 22 GENERAL MBOMBO: I remember hearing that
 23 from the police, yes.
 24 MR MPOFU: Yes, and the evidence here of
 25 both Mr Magidiwana and Mr Phatsha is that they felt that

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1 the employer owed them that interaction, even if their
 2 demand for R12 500 was not going to be met. In other words
 3 even if it was just to explain or to say when it will come,
 4 I think that's what Mr Magidiwana said. Are you aware of
 5 that evidence, or that sentiment? But more importantly,
 6 were you aware it around the time of the event?
 7 GENERAL MBOMBO: I do not remember about
 8 Mr Magidiwana's evidence.
 9 MR MPOFU: Okay, fair enough. You didn't
 10 follow Mr Magidiwana's evidence in the media or here in the
 11 Commission?
 12 GENERAL MBOMBO: No.
 13 CHAIRPERSON: But the general proposition
 14 that counsel is putting to you is that the striker's
 15 attitude was they wanted interaction with the employer,
 16 they wanted the employer's representative, I think they
 17 asked actually for the CEO, but had to come and speak to
 18 them to negotiate with them, or engage with them in respect
 19 of their wage demand. That's his question, I think.
 20 MR MPOFU: Yes.
 21 GENERAL MBOMBO: I was just saying, Mr
 22 Chair, I do not remember about Mr Magidiwana's evidence,
 23 but that is what the strikers said to the police.
 24 MR MPOFU: Okay, thank you. Thank you
 25 very much. And according to the – or let me put it this

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1 way; so when Mr Mathunjwa – just going back to the
 2 discussion that you had with me and with the Chairperson,
 3 so when Mr Mathunjwa was then saying to you on the morning
 4 of the 16th, "Yes, I've been wanting to go to the koppie,
 5 but the employer is refusing with the commitment to
 6 negotiate and have ignored me," as we've established
 7 yesterday, armed with all the knowledge that you had about
 8 this constant refrain and this singular demand, surely you
 9 would have known that this was nothing knew, this was part
 10 of what the strikers had been asking for repeatedly,
 11 correct?
 12 GENERAL MBOMBO: You must remember, Mr
 13 Chair, when I spoke to Mr Mathunjwa it's because of the
 14 reports I got from the meetings, meetings of the 15th, which
 15 I did not attend. I was told that the Lonmin management
 16 was present in those meetings. When I got this explanation
 17 I took it for granted it was a decision that was made with
 18 Mr Mathunjwa having met the people that he had to meet
 19 with.
 20 MR MPOFU: Yes, okay, I understand that.
 21 So you mean that because this whole mission had originated
 22 on the 15th when Lonmin was itself present, you thought that
 23 Lonmin must have made that commitment on the 15th? Is that
 24 what you're saying?
 25 GENERAL MBOMBO: I thought Mr Mathunjwa

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1 is making this commitment after having come to an agreement
 2 with the people he had to talk to. That is why yesterday I
 3 explained that according to me this agreement of Mr
 4 Mathunjwa, the way it was reported to me had no conditions,
 5 was unconditional.
 6 MR MPOFU: Ja, well even if that was true
 7 - and I think we went through this again yesterday – even
 8 if that's what you had initially thought, but now here was
 9 Mr Mathunjwa telling you, using the word "commitment,"
 10 saying that Lonmin is going back on its commitment to
 11 negotiate, so as a person – I can understand that as a
 12 person who was not there on the 15th you would have then,
 13 you should have then thought well, that commitment must
 14 have been made on the 15th. But you couldn't doubt that
 15 there was such a commitment because he was telling you.
 16 Even assuming that when it was first reported to you by
 17 Mpmembe or whoever else, you had mistakenly thought it was
 18 unconditional. What do you say to that?
 19 GENERAL MBOMBO: Mr Chair, I think I made
 20 a mistake by not asking Mr Mathunjwa about this commitment.
 21 [09:26] He was also supposed to tell me, say General, my
 22 purpose of going to these people and talking to them at 9
 23 o'clock depended on this and that and that.
 24 MR MPOFU: But according to exhibit L
 25 that's exactly what he did, General, that's the point I'm

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1 asking about this. He told you that the reason, you went
 2 through that with the Chairperson, he told you that the
 3 reason why when you confronted him, rightly so. Why have
 4 you not gone to the koppie or whatever words you used.
 5 Then he says the reason is because Lonmin has gone back on
 6 its commitment to negotiation. What else was he going to
 7 tell you? And your response of that, you are not
 8 interested. So what more do you expect from the man?
 9 GENERAL MBOMBO: No, I'm not sure if
 10 you're putting it correctly.
 11 CHAIRPERSON: Let's look at the slide
 12 again and see whether his summary is correct.
 13 MR MPOFU: 158, Chairperson.
 14 CHAIRPERSON: Yes I remember the –
 15 MR MPOFU: L 158.
 16 CHAIRPERSON: Exhibit L, slide 158. Now
 17 you didn't put it quite correctly, Mr Mpofo, because what
 18 it says in the last sentence of the second bullet is the
 19 following. "Mr Mathunjwa responded by saying that he'd
 20 been at the Lonmin management offices from the early
 21 morning and that they did not want to commit to continued
 22 negotiations and that was the reason for him not addressing
 23 the protestors."
 24 MR MPOFU: But that –
 25 CHAIRPERSON: No, but what it doesn't say

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1 is that they agreed the previous night to commit to
 2 continue negotiations and they were now renegeing on that
 3 commitment which was part of the point that you put to the
 4 witness.
 5 MR MPOFU: No, Chairperson, that's not
 6 what I said to the witness. I said to the witness I can
 7 understand that she wouldn't know what commitment Mr
 8 Mathunjwa was talking about and because she says you must
 9 remember, Mr Mpofu, that I was not in the meetings of the
 10 15th. So I said well then you must have then or you should,
 11 in fact I used the word should, you should have then
 12 assumed that the commitment that Mr Mathunjwa is talking
 13 about must have been made on the 15th in your absence. That
 14 was the only reference to the previous night, ja. The
 15 point I'm making now is that Mr Mathunjwa said "and that
 16 was the reason for him not addressing the protestors." The
 17 thrust of the point I'm putting now, Chairperson –
 18 CHAIRPERSON: - that I summarised
 19 correctly, but I don't know that it's – I don't that it
 20 affects the thrust of the question that you're putting to
 21 the witness. So I'll let you to proceed, I'm just
 22 commenting that I didn't think your summary was entirely
 23 correct. But I don't know that it's material for the
 24 purpose of the point that you're putting. Carry on anyway.
 25 MR MPOFU: Thank you, Chairperson. Yes,

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1 I'll leave the record to speak for itself on this. The
 2 point I'm simply making now, General, is that the – you are
 3 effectively saying well maybe Mr Mathunjwa should have
 4 explained it more. I'm saying to you what more do you
 5 expect from him than saying what is already reflected in
 6 L158 which is that after you asked him he responded by
 7 saying that he had been at Lonmin's management offices from
 8 the early morning. And that they did not want to commit to
 9 continued negotiations and that was the reason for him not
 10 addressing the protestors. It can't be clearer than that.
 11 And your response was that you're not interested
 12 in that, according to your evidence yesterday.
 13 GENERAL MBOMBO: Mr Chair, according to
 14 me, I was still on the point that at 9 o'clock the people
 15 would lay down their arms, that was not made clear to me
 16 that was dependent on negotiations and laying down of arms
 17 did not stop the process of the negotiations.
 18 MR MPOFU: Thank you, but that can't be
 19 correct too, General. Remember that you, yourself, had not
 20 placed your 100% faith in this so-called commitment of
 21 Mathunjwa's, isn't that correct?
 22 GENERAL MBOMBO: Please explain the
 23 question.
 24 MR MPOFU: Yes you, yourself, either when
 25 you were talking to General Mzembe or when you were talking

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1 to the ad hoc meeting of the National Management Forum
 2 anticipated that the Mathunjwa mission might not succeed.
 3 Isn't that correct?
 4 GENERAL MBOMBO: Why do you say so, what
 5 did I say to indicate that?
 6 CHAIRPERSON: I think Mr Mpofu's problem
 7 is he hasn't put the thing quite correctly. Let me put it
 8 to you correctly and I think the problem will disappear.
 9 There were two apparent commitments. One was a commitment
 10 by Mr Mathunjwa that he go there at 9 o'clock and speak to
 11 the strikers. That was one commitment. I suspect that you
 12 trusted him, you believed he would go at 9 o'clock, that
 13 you put your faith in his commitment to go there at 9
 14 o'clock. But the second commitment or so-called commitment
 15 or possible commitment was that the strikers would lay down
 16 their arms voluntarily. That was something that you didn't
 17 put your faith in 100% because you made an alternative
 18 plan. You said to the management forum and to the media
 19 conference later, you said they said they're going to lay
 20 down their arms but if they don't, we will take further
 21 action. So what Mr Mpofu is saying is as far as that
 22 commitment was concerned the commitment, the so-called
 23 commitment, that the strikers would lay down their arms,
 24 you didn't believe in that 100%. You thought it might
 25 happen, you hoped it would happen, but you thought it also

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1 a possibility that it won't happen and you planned to deal
 2 with that possibility if it realised itself. That's
 3 correct isn't it?
 4 GENERAL MBOMBO: That is correct, Mr
 5 Chair.
 6 MR MPOFU: Now apart from Mr Mathunjwa's
 7 mission, you were aware that there was a separate peace
 8 mission launched by Bishop Seoka, correct?
 9 GENERAL MBOMBO: When I spoke to Mr
 10 Mathunjwa I was not aware of Bishop Seoka, I only saw him,
 11 that was the bishop, when he arrived at the JOC.
 12 MR MPOFU: Yes and – ja I'm just
 13 paraphrasing, I know that it was later in the day, but what
 14 I'm saying is that were you aware that there was a separate
 15 peace mission launched by the bishop?
 16 GENERAL MBOMBO: I'm not sure about that.
 17 MR MPOFU: Well did the bishop not come
 18 to you and say that he was from the koppie and he needed
 19 some co-operation at the point at which he says you were
 20 rude and you have apologised to him and I can tell you on
 21 his behalf that he accepts the apology. But the point I'm
 22 making now is he made you aware that he was trying to
 23 assist somehow.
 24 GENERAL MBOMBO: I do not believe that he
 25 was making me aware that he was trying to assist with the

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1 negotiations.

2 MR MPOFU: Well what were you and him

3 discussing at the occasion at which you may have been rude

4 to him or he may have gotten the impression that you were

5 being rude to him?

6 GENERAL MBOMBO: Except for him asking me

7 if I knew a certain reverend or Mr Mbombo and I told him

8 that I did not know such a person, I'm just married to that

9 family. And the other thing that he said was he came to

10 get some water because it's hot on the koppie, the people

11 there are thirsty. That is when I told him that my part

12 there was to maintain law and order.

13 MR MPOFU: Yes well the bishop's mission,

14 as it were, only had two elements and I'm putting it to you

15 that he mentioned those to you. He was asked by the

16 protestors once again to facilitate discussions with

17 management, one, and two, to please assist in bringing some

18 water. And those are the issues that he outlined to you.

19 GENERAL MBOMBO: Mr Chair, what I know is

20 what I've just said.

21 MR MPOFU: And in any event even that

22 issue of water, according to the bishop, was for any

23 sensible person who wanted to win the confidence of the

24 protestors those were the kinds of things that should have

25 been attended to. But once again you were not interested,

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1 correct?

2 GENERAL MBOMBO: Because I did not have

3 the means to provide water, I did not have water as I was

4 there.

5 MR MPOFU: All right, I don't have the

6 reference now of the bishop's evidence.

7 CHAIRPERSON: Sorry, may I interpose with

8 something? I'll tell you what my impression is and if I'm

9 wrong you must correct me. My impression is that by the

10 time the bishop came you'd made your decision and it was a

11 very critical moment for you, that you really wanted to get

12 on with the implementation of your decision because you

13 thought it was important for various reasons. When the

14 bishop came you found his visit, I suspect, something of a

15 distraction. You didn't really have time to talk to him

16 because as far as you were concerned there were more

17 important matters that had to be dealt with. That, I

18 suspect, is why he got the impression you were being rude,

19 but your reaction really was that there were more important

20 things to think about and you weren't really concentrating

21 on what he had to say because it wasn't important. Am I

22 correct in thinking that? I'm sure you didn't intend to be

23 discourteous, but that's the way it played out. Would you

24 agree with that impression or am I wrong?

25 GENERAL MBOMBO: Not fully, Mr Chair, it

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1 is correct that he arrived at a crucial time, but if he had

2 made it clear to me that he came to see me, to talk about

3 this matter and come with the alternative way of looking at

4 this issue I would have considered that. And this was a

5 crucial time to me because I was being briefed by General

6 Annandale.

7 CHAIRPERSON: That reinforces my

8 impression that he didn't make it clear to you. We're not

9 in the blame game at the moment, it's not considered there

10 was a plan. He didn't make it clear to you that he was

11 coming effectively as a second person trying to make peace,

12 trying to solve the problem peacefully. And I take it if

13 you assume that here was a bishop of the church – was he

14 wearing his purple front and a dog collar? Did you see he

15 was a bishop?

16 GENERAL MBOMBO: I saw that is how he was

17 dressed, Mr Chair.

18 CHAIRPERSON: So here comes the bishop of

19 the church, if you had realised that he was saying look

20 here this is a serious matter. I am prepared to try to

21 help to solve this problem peacefully, give me a chance,

22 would you have listened favourably to him and given him a

23 chance?

24 GENERAL MBOMBO: That is exactly what I'm

25 saying, Mr Chair.

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1 CHAIRPERSON: You were actually grumpy,

2 if I can use that expression, with Mr Mathunjwa because you

3 felt he was obliged to go and convince the strikers to lay

4 down their arms and you felt he'd let you down because he

5 hadn't done that. Is that right?

6 GENERAL MBOMBO: That is correct, Chair.

7 CHAIRPERSON: Now here was someone else

8 who had come along and if you had realised that he was

9 offering to do what you thought Mr Mathunjwa hadn't done

10 would you have availed yourself of the opportunity?

11 GENERAL MBOMBO: That is correct, Mr

12 Chair, I would have given him the opportunity if, but

13 instead he spoke about water, not even directing that to

14 me, but to the Lonmin people. That is when I said I do not

15 have the means to provide water.

16 CHAIRPERSON: As I said, I'm not

17 interested in the blame game and who's to blame, but the

18 impression I get is – I may be wrong and if I am, I hope

19 I'll be corrected. The impression I get though is that

20 there was actually a misunderstanding, a failure of

21 communication. You were concentrating on the briefing you

22 were getting. You were concentrating on the operation that

23 was going to be launched. He was busy with something else

24 and you didn't quite appreciate what he was offering. That

25 seems a fair summary of what happened.

<p style="text-align: right;">Page 22333</p> <p>1 GENERAL MBOMBO: That is so, Mr Chair, 2 but if he came directly to me with a direct proposal about 3 the matter that we're facing I would have considered it 4 otherwise. 5 CHAIRPERSON: To put the proposition 6 differently, if you hadn't been concentrating almost 7 exclusively on the briefing you were getting and you had 8 tried to find out exactly what he wanted to say the result 9 might have been different. But I'm not, as I say, I'm not 10 interested in blaming you or him, I'm just trying to find 11 out what happened. Would you agree with the proposition I 12 put to you that if you had in fact not been engrossed in 13 listening with your full attention to the briefing you were 14 getting and you'd taken the time to find out what exactly 15 it was that the bishop wanted things might have been 16 different? Is that so? 17 GENERAL MBOMBO: Maybe that would have 18 been the case, but even at that time if the bishop wanted 19 me to know that there still time - 20 MR MPOFU: Yes, well okay. Well unlike 21 the Chairperson, I'm interested in the blame game and I'm 22 going to blame you. The issue is that once again you say 23 that just like Mr Mathunjwa, whom I demonstrated to you, 24 that Mr Mathunjwa was as explicit as can be as to the 25 reasons why his mission was being frustrated. But you said</p>	<p style="text-align: right;">Page 22335</p> <p>1 examination. 2 MR MPOFU: Thank you, Chairperson. 3 [09:45] Let's get the facts even before we say nobody is 4 to blame, yes. Okay, now if you go to the Bishop's 5 statement, which is exhibit M - 6 GENERAL MBOMBO: I've got it. 7 MR MPOFU: Paragraph 11 on page 3, this 8 was the evidence of the Bishop which was not challenged. 9 He says, "Mr Mokwena then told us that the workers could 10 not see Mr Farmer as he was either sick" - okay, I'm 11 cutting, I'm sort of, you must assume before that he had 12 made the request to Lonmin that they wanted to meet with 13 management. Then he says, "Mr Mokwena then told us that 14 the workers could not see Mr Farmer as he was either sick 15 and/or out of the country. We asked whether somebody in 16 his stead could please address the workers, to which there 17 was no clear response. We were then asked" - probably by 18 Mr Mokwena - "to accompany them to the Provincial Police 19 Commissioner and put our proposals" - in plural, and we 20 know that he had only two proposals, one was for the 21 negotiations and the other one was for the water - "since 22 the company was not prepared to meet with the workers. 12, 23 The Commissioner was particularly unfriendly, anxious and 24 uncooperative. I still believe that the final instruction 25 to take strong action at the koppie was given at the point,</p>
<p style="text-align: right;">Page 22334</p> <p>1 he should have explained it further and we know that you 2 said that you were not interested. Now again it was 3 Mathunjwa's fault because he didn't make it clear, now 4 again it's the bishop's fault that - 5 CHAIRPERSON: No, no, no I don't 6 understand her - in the end I didn't understand her to say 7 it was the bishop's fault. I put it in a neutral fashion 8 to her and I got the impression, if I'm wrong I'd be 9 corrected again, I got the impression that she agreed with 10 me that - 11 MR MPOFU: Well maybe she did, but before 12 that she said if the bishop had been clear - 13 CHAIRPERSON: No but if she hadn't been 14 engrossed in what she was being told things would have been 15 different - 16 MR MPOFU: That's correct. 17 CHAIRPERSON: You know we're trying to 18 find out what happened without necessarily approaching it 19 looking for people to blame. It's important to get the 20 facts first and when you've got the facts you can then 21 decide whether anyone is to blame and who that person is. 22 MR MPOFU: Yes. 23 CHAIRPERSON: I'm simply trying to, as 24 I've tried often before, to cut a way through the forest 25 for you to enable you to get on with your cross-</p>	<p style="text-align: right;">Page 22336</p> <p>1 i.e. shortly after she left us and went back into the 2 command centre. After she left us there was frantic 3 movement in the command centre, followed by more 4 helicopters taking off in the air," and so on. 5 CHAIRPERSON: Sorry, Mr Mpofu, just 6 before you put the question finally, I can't remember what 7 time did the Bishop speak to firstly Mr Mokwena and then 8 the Provincial Commissioner? That will be in an earlier 9 paragraph of the statement. Can we perhaps see that, 10 please? 11 MR MPOFU: No, Chairperson, we don't have 12 the time, but I think that around the time actually we 13 grappled, if the Chairperson remembers, we had to use 14 inferential reasoning, but at some point it was established 15 that the Bishop had been at the koppie, I think we have a 16 photograph that places him at the koppie at 13:40 or 17 thereabouts. So it must have been shortly, or let's say 18 half an hour, because he didn't spend a lot of time in 19 the - 20 CHAIRPERSON: No, but don't answer the 21 question. Let's just go on. 22 MR MPOFU: Yes. 23 CHAIRPERSON: Can we see what we're 24 looking at the moment? Further on, next page. 25 MR MPOFU: Further on, okay.</p>

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1 CHAIRPERSON: Further on, I think it's
2 paragraph 12.
3 MR MPOFU: Yes.
4 CHAIRPERSON: Next paragraph, can we see
5 that? Yes, it's the next piece.
6 MR MPOFU: Yes, the pertinent –
7 CHAIRPERSON: "The Commissioner was
8 particularly unfriendly, anxious and uncooperative. I
9 still believe the final instruction to take strong action
10 was given at that point, i.e. shortly after she left us
11 and went back into the command centre." The reason I asked
12 the time was we in fact know that the instruction had been
13 given before that because if the Bishop saw her after half
14 past 1, the instruction had already been given at the very
15 beginning of the meeting which started at half past 1. So
16 she'd already given the instruction according to all the
17 evidence we have. The Bishop then on your reconstruction
18 of the time spoke to her after that and you could
19 understand how things were moving at that stage. But
20 anyway –
21 MR MPOFU: Yes, no I agree –
22 CHAIRPERSON: - is now clear to me
23 anyway.
24 MR MPOFU: Yes.
25 CHAIRPERSON: All he says about her is

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1 she was particularly unfriendly, anxious and uncooperative.
2 The anxiety I think she admits to. The lack of cooperation
3 she also admits to, although she'd given from her side her
4 explanation, and I'm sure she came across as unfriendly as
5 well, but –
6 MR MPOFU: And rude.
7 CHAIRPERSON: Well, you can say that.
8 MR MPOFU: No, he said it.
9 CHAIRPERSON: You and I understand –
10 MR MPOFU: The Bishop said it in his
11 evidence, Chairperson.
12 CHAIRPERSON: And she's apologised. I
13 think it's an implied admission that she didn't mean to be
14 rude and I'm sure she isn't normally rude, but on this
15 occasion that's the way it came across. But you can
16 understand –
17 MR MPOFU: Yes.
18 CHAIRPERSON: - in all the
19 circumstances –
20 MR MPOFU: And the Bishop has –
21 CHAIRPERSON: - why she came across the
22 way she did. Alright, so I think we sorted that out
23 between us –
24 MR MPOFU: Yes, that's correct,
25 Chairperson. I agree with you substantially. I think that

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1 either it – it is one of two possibilities; it's either the
2 one that the Chairperson is putting, or maybe she came out
3 of the meeting to talk to the Bishop and went back, or
4 whatever, but it was around that time. I think –
5 CHAIRPERSON: No, I know, but the point
6 is we know that right at the beginning of the meeting she
7 said "We're going to implement stage 3."
8 MR MPOFU: Yes.
9 CHAIRPERSON: And she'd already told the
10 National Commissioner that. So –
11 MR MPOFU: That's correct.
12 CHAIRPERSON: So if he came there after
13 20 to 2, then –
14 MR MPOFU: No, the decision was made.
15 CHAIRPERSON: - that particular bullet
16 was through the cathedral by that time.
17 MR MPOFU: Yes, and in any event – yes,
18 no, Chairperson, you're quite right, because in any event,
19 Chairperson, you are even more right because the –
20 CHAIRPERSON: [Microphone off, inaudible]
21 MR MPOFU: Well, more right than you
22 think, Chairperson, because the clear impression is that
23 the decision even in the meeting on EE was really being
24 announced. It was not being made there. So the
25 Chairperson is correct. The decision certainly had been

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1 made by the time she was talking to the Bishop. Thank you.
2 MR WESLEY: Sorry, Chair, if I could
3 perhaps assist, the photographs that Mr Mpofo is referring
4 to are GG1 and 2 and HH. They're Colonel Mere's
5 photographs. They're 14 hours and 40 minutes behind eTV
6 time, which takes the time of the photographs to
7 approximately 10 past 2.
8 MR MPOFU: Okay.
9 CHAIRPERSON: That makes the point even
10 stronger.
11 MR MPOFU: Yes.
12 CHAIRPERSON: That the Bishop came long
13 after –
14 MR MPOFU: The horse has bolted -
15 CHAIRPERSON: - the decision was taken –
16 well, I don't know about the horse had bolted, but the
17 point, because there were two decisions; the one was the
18 general decision to proceed to the tactical option, stage
19 3. The other decision was the timing of that. It was
20 always a decision that was there, that was going to be
21 implemented, but the actual decision that now the trigger
22 will be pulled, if one can put it – perhaps that's an
23 unfortunate image, I withdraw that – that now the horse
24 will be led out of the stable, to follow Mr Mpofo, that
25 decision was taken at 1:30 or shortly thereafter and the

<p style="text-align: right;">Page 22341</p> <p>1 Bishop arrived obviously after 10 past 2. So by that time 2 one can understand the anxiety and general attitude of the 3 Provincial Commissioner. Anyway, I think – 4 MR MPOFU: Yes, the point is made, 5 Chairperson. 6 CHAIRPERSON: Yes, the point is made. 7 MR MPOFU: Yes. 8 CHAIRPERSON: Sorry, I think we – as I 9 say together we solved the problem. 10 MR MPOFU: We have, thank you, 11 Chairperson. 12 CHAIRPERSON: So perhaps we can move on 13 to solve the next one. 14 MR MPOFU: Yes. The next problem – well, 15 it's not a problem as such, but while we are on the 16 statement, just for the sake of completion while we are on 17 the statement and to situate the issues, if we can just go 18 through paragraph 14 where the Bishop says, "As we're about 19 to leave to convey the message to the workers, an unknown 20 male person approached Mr Mokwena and whispered something 21 in his ear. Mr Mokwena immediately turned to us and said 22 to me, 'Bishop, you can no longer return to the koppie. 23 The place has been cordoned off and is now a security-risk 24 zone,' or words to that effect." So I think that completes 25 the picture that the Chairperson and I were grappling with</p>	<p style="text-align: right;">Page 22343</p> <p>1 it as they put it – 2 CHAIRPERSON: No, Mr Mpfu, by – 3 MR MPOFU: I'm not expecting her to 4 apologise – 5 CHAIRPERSON: By implication she admits 6 that she gave an impression of rudeness, that's why she's 7 apologised. So you don't have to – to change the metaphor, 8 you don't have to flog that horse anymore, it's dead. 9 Can't we move on to another one? 10 MR MPOFU: You failed to cooperate with 11 two missions, two independent missions at creating a 12 peaceful solution yourself. Do you accept that? 13 MR VAN AS: Sorry, Mr Chairperson, Mr 14 Mathunjwa's mission, with respect, must be place in 15 context. If we have regard to exhibit OO13, which is the 16 transcript of the conversation – 17 CHAIRPERSON: Yes, no, no, that's a 18 different question. There's nothing wrong with the 19 question being asked and if you wish to apply, you didn't 20 apply previously – you did, your counsel already cross- 21 examined the witness, but if you wish to ask further 22 questions flowing from the cross-examination that's now 23 happening or other cross-examination, you can make the 24 application at the appropriate time. But you can't just 25 butt in, in the middle of Mr Mpfu's cross-examination. I</p>
<p style="text-align: right;">Page 22342</p> <p>1 here, coupled with the movement of helicopters and so on. 2 But the real point is this; here were two missed 3 opportunities at a peaceful outcome and both of those 4 peaceful missions were effectively botched on your hands. 5 The first one, the Mathunjwa one we've discussed. The 6 second one which one can literally say was Godsend, was the 7 mission of the Bishop and you, both of those people at 8 least independently accused you of being rude and 9 uncooperative. Have you got anything to say about that? 10 CHAIRPERSON: [Microphone off, inaudible] 11 we've gone over this rudeness point – 12 MR MPOFU: No, okay, forget the rude – 13 CHAIRPERSON: I think she admits if she 14 was rude or gave that impression, she's apologised. I 15 don't think there's any extra juice to be extracted from 16 this – 17 MR MPOFU: No, Chairperson – 18 CHAIRPERSON: - from the rudeness lemon. 19 I think you should move on to the next one. 20 MR MPOFU: No, Chairperson, I'm not – the 21 reason why I told her that the Bishop accepts her apology 22 is because I'm not castigating her for the rudeness. I'm 23 merely making the point that two people independently who 24 don't even know each other that they are there, say the 25 same thing about her attitude. So I'm afraid I have to put</p>	<p style="text-align: right;">Page 22344</p> <p>1 won't allow that. Mr Mpfu, please proceed. 2 MR VAN AS: [Microphone off, inaudible] 3 CHAIRPERSON: The objection is not a good 4 objection. The objection really is things must be put in 5 context. You can, if they can be put in context and should 6 be put in context, you can do that later by further cross- 7 examination. I'm not going to allow you to stop Mr Mpfu's 8 point. 9 MR MPOFU: Yes. At least, General, it is 10 the version of the police that Mr Mathunjwa tried his level 11 best to achieve a peaceful solution, is it not? 12 GENERAL MBOMBO: I do not dispute that. 13 MR MPOFU: In fact in the police opening 14 statement there's even reference of how Mr Mathunjwa went 15 on his knees and so on. So the clear thrust of the police 16 opening statement is that Mr Mathunjwa was on a peace 17 mission. 18 GENERAL MBOMBO: I think that is so, yes. 19 MR MPOFU: Okay, Now the reason I'm 20 putting all these questions, General, is because at the end 21 of the case when you are not here I'm going to argue very, 22 very strenuously that your personal omission to cooperate – 23 to put it mildly – with both of those peace missions was 24 directly linked to the abandonment, for lack of a better 25 word, of interventions which could have prevented the</p>

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1 bloodshed, and the corollary of that is that had you acted
 2 differently, the bloodshed would have been prevented and
 3 that you are answerable for that, to that extent, that you
 4 spurned those missions. Any comment?

5 GENERAL MBOMBO: I do not agree with you.

6 MR MPOFU: Okay, you yourself for
 7 whatever reason never requested or demanded that Lonmin
 8 should go and address the strikers, or that they should
 9 negotiate with them, correct?

10 GENERAL MBOMBO: Yes, I personally no,
 11 but I spoke to them and said they should do everything in
 12 their power to try and find a solution.

13 MR MPOFU: And more specifically in the
 14 recorded discussion between you and Mr Mokwena in JJJ192,
 15 at no point do you say that they must go to the koppie or
 16 make arrangements to have a direct interaction with the
 17 protesters, correct?

18 GENERAL MBOMBO: That is so, but as I've
 19 already said, I wanted them to find a way in order to find
 20 a solution according to their principles, how they solve
 21 their labour issues.

22 MR MPOFU: On the contrary, you at the
 23 very least acquiesced, or did not object when Mr Mokwena
 24 indicated that they would not negotiate with the strikers.

25 MR SEMENYA SC: Can the question be

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1 repeated? I couldn't follow.

2 CHAIRPERSON: Repeat the question again.

3 MR MPOFU: Okay, I'll –

4 CHAIRPERSON: I think he's referring to a
 5 passage appearing on page 4 of exhibit JJJ192, but because
 6 I have that page in front of me I followed the question.
 7 Perhaps if you'd repeat the question so that Mr Semenya and
 8 the witness can understand it.

9 MR MPOFU: Okay, no I'm sure the witness
 10 understands –

11 CHAIRPERSON: Well, Mr Semenya doesn't
 12 understand it.

13 MR MPOFU: Yes, I'll help him.

14 CHAIRPERSON: Be courteous to him.

15 MR MPOFU: Yes. On the contrary, which
 16 means the opposite of asking them to negotiate, you voiced
 17 no objection when Mr Mokwena indicated that they would not
 18 negotiate or talk to the workers, correct?

19 GENERAL MBOMBO: I do not remember, Mr
 20 Chair, I just want to see the exhibit.

21 CHAIRPERSON: Look at page 4 of exhibit
 22 JJJ192, starting at line 2.

23 GENERAL MBOMBO: I see it, Mr Chair.

24 MR MPOFU: And what is your answer now
 25 that you've seen it?

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1 GENERAL MBOMBO: Mr Chair, it was not
 2 really my purpose to tell them what they should do. They
 3 know what their workers wanted. I just wanted them to do
 4 whatever it took, whatever they had to do, whether they had
 5 to go to talk to the strikers, whether they had to get
 6 someone else to do that, but I just wanted them to do
 7 whatever would help.

8 MR MPOFU: Yes. Yes, General, I heard
 9 you the first time. I'm saying something different now.
 10 I'm saying – in fact I'll put it even stronger. It's one
 11 thing to accuse you, as I have, of not having put any
 12 pressure on management to talk to the workers, which we
 13 have gone through. I'm now accusing you of something worse
 14 than that. I'm saying you actually went along with their
 15 decision not to talk to the workers.

16 GENERAL MBOMBO: I do not remember
 17 agreeing with that, but –

18 CHAIRPERSON: No, no, he doesn't say that
 19 you necessarily agreed. He says you went along with it,
 20 which is –

21 MR MPOFU: Well, I agree, I'll say agree
 22 now.

23 CHAIRPERSON: Alright, but –

24 MR MPOFU: I accept I didn't say it
 25 before, but I'm putting that strongly, ja.

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1 CHAIRPERSON: So before you get there,
 2 before Mr Mpofu gets to the extra point can I just put
 3 something to you? Page 4, exhibit JJJ192, this discussion
 4 on the Tuesday afternoon between you and Mr Mokwena and
 5 other senior people in from Lonmin. Mr Mokwena says, line
 6 2, "We say we're not going to talk wages because there's no
 7 reason for us to open wages." You see that?

8 [10:05] GENERAL MBOMBO: I see it, Chair.

9 CHAIRPERSON: Right, now you remember the
 10 previous night, the Monday night, the Lonmin people had
 11 told you they had a two-year agreement which would only
 12 expire in 2013, I think October 2013. Remember they told
 13 you that?

14 GENERAL MBOMBO: Yes, Chairperson.

15 CHAIRPERSON: They said they couldn't
 16 understand how there could be a wage dispute because
 17 there's a two-year agreement which was going to run until
 18 October the following year. You remember that?

19 GENERAL MBOMBO: I remember that.

20 CHAIRPERSON: So when Mr Mokwena said to
 21 you, "We say we're not going to talk wages because there's
 22 no reason for us to open wages," you understood exactly
 23 what he meant. He was referring to the two-year wage
 24 agreement.

25 GENERAL MBOMBO: I think that is how I

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1 understood him, yes.

2 CHAIRPERSON: Right, so what they were

3 saying is we're not going to talk wages, we're not obliged

4 to, we're not going to. That was his first point, right?

5 And then someone else who's described simply as "Lonmin"

6 but another senior person from Lonmin says, "And by the

7 way, with AMCU we do not have any collective bargaining

8 arrangements." Mr Mokwena says, "We do not have anything,

9 so we avoid legitimising illegal behaviour. That is our

10 position." I take it that means we're under pressure to,

11 or may be under pressure to negotiate with AMCU, that in

12 fact he said on the previous page but we don't have to go

13 there now. We're not going to do that; it's not something

14 that we have to do because AMCU haven't got any rights to

15 participate in collective bargaining negotiations. Is that

16 the way you understood it too?

17 GENERAL MBOMBO: That's how I understand

18 it, yes.

19 CHAIRPERSON: So when Mr Mokwena says in

20 line 8, "That is our position," then it's quite clear what

21 he's saying; we're not going to negotiate about wages or

22 talk about wages because we don't have to because there's a

23 two-year agreement, and we're certainly not going to talk

24 to AMCU because they haven't got the right to a seat at the

25 bargaining table to discuss wages. Is that right?

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1 GENERAL MBOMBO: That's how I understand

2 it, yes.

3 CHAIRPERSON: And the perception at the

4 time - which may have been wrong, but we won't go there at

5 the moment - the perception at the time was the strikers

6 were all really AMCU people and this was really an AMCU

7 engineered and provoked strike. Is that correct? That's

8 the way it was seen?

9 GENERAL MBOMBO: I think there was such a

10 perception, Mr Chair.

11 CHAIRPERSON: Ja, alright. So the

12 position of Lonmin was quite clear and you understood it.

13 But then he goes on to say, "We will not make any decision,

14 Commissioner, without asking your counsel and advice, so

15 that we do not compromise the integrity of police work

16 here." I must tell you, again this is a prima facie view,

17 I'm putting it to you so you can deal with it, that seemed

18 to me to open the door to you a little bit to give you the

19 opportunity to say to them look here, I understand your

20 attitude in relation to wages and in relation to AMCU, but

21 we've got a serious law and order problem here, we've got

22 3 000 people, many of them armed with dangerous weapons,

23 we've got 10 - or you only knew about nine at that stage -

24 you've got nine dead people and we've got to stop this, and

25 it's quite clear to me, you could have said, that unless

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1 you people are prepared to make some concession, to move

2 forward in some way, we aren't going to be able to solve

3 this problem peacefully, and if you'd done that and said to

4 them, now look here, I know what you say, but for heaven's

5 sake and the sake of peace, can't you just agree to talk to

6 the strikers themselves, you don't even have to talk to

7 AMCU, just talk to the strikers themselves, their

8 representatives, that may give us a chance to move the

9 thing forward peacefully. That I think is the criticism

10 that is going to be made against you. Whether it's right

11 or wrong I don't know yet because we've got to hear all the

12 evidence, but how would you respond to that criticism?

13 GENERAL MBOMBO: Mr Chair, I was of the

14 views that when they said this they were prepared to accept

15 protection from us if they wanted to go and talk to them.

16 It was not for us to tell the Lonmin people to go and talk

17 to their workers. That was their responsibility, but we

18 were there to protect them if they needed such protection.

19 MR MPOFU: General, the criticism

20 actually that the Chairperson is talking about is exactly

21 what I was coming to, and I will start with that and come

22 back to another point, and -

23 CHAIRPERSON: Sorry, before you do that -

24 MR MPOFU: Yes, Chairperson.

25 CHAIRPERSON: - it's been suggested to me

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1 that it might be appropriate for us to take a comfort break

2 and you know, the witness particularly, she hasn't asked

3 for it but if you've ever given evidence as the witness is

4 doing you will understand the need for a comfort break

5 sometimes does arise, not only for the witness, but for

6 other people too. So let's take a comfort break now.

7 Let's try to be back within 10 minutes.

8 MR MPOFU: Thank you, Chairperson.

9 [COMMISSION ADJOURNS COMMISSION RESUMES]

10 [10:31] CHAIRPERSON: The commission resumes. I

11 did say earlier, I did say yesterday in fact that we'd

12 adjourn today at 12:30. I'm informed that won't help the

13 person who asked me to adjourn at 12:30 because the plane

14 will still leave, be leaving earlier than I had thought.

15 So we're going to adjourn at 12:15 and so we'll take tea at

16 about quarter passed 11 and then run through until 12:15.

17 Sorry, they want tea at 11 o'clock, I see, alright. There

18 are apparently things planned for 11 o'clock as I don't

19 know about. So we'll take tea at 11 o'clock and we'll then

20 run through after tea till quarter past 12. By which time

21 presumably Mr Mpofu would have come to the end of his

22 cross-examination. You're still under oath Provincial

23 Commissioner. Mr Mpofu?

24 MR MPOFU: We live in hope, Chairperson.

25 CHAIRPERSON: I hope that my hopes will

<p style="text-align: right;">Page 22353</p> <p>1 not be disappointed.</p> <p>2 MR MPOFU: Won't be dashed, yes, that's</p> <p>3 correct, Chairperson. Yes, Commissioner remember, we were</p> <p>4 at the place where I was saying that or rather I was</p> <p>5 following up on the Chairperson's question, which is this.</p> <p>6 That what Mr Mokwena was basically saying to you is, the</p> <p>7 whole thing that he was saying, he was saying look we must</p> <p>8 align our plans and so on and we must, we don't want to do</p> <p>9 anything without talking to you, effectively he was saying</p> <p>10 the two plans of Lonmin and the police must be aligned,</p> <p>11 correct?</p> <p>12 GENERAL MBOMBO: I remember him saying so</p> <p>13 at a stage, yes.</p> <p>14 MR MPOFU: And part of, two crucial</p> <p>15 aspects of that alignment which I'm going to canvas with</p> <p>16 you, the first one is the one that the Chairperson raised</p> <p>17 with you, part of that alignment was him giving you an</p> <p>18 almost open, a blank cheque to say you must guide us on</p> <p>19 what to do, you must advise us what to do because you don't</p> <p>20 want the misalignment of the plans and the, on that the</p> <p>21 emphasis is that that is an opportunity that you should</p> <p>22 have used to say listen here, now that you are giving me an</p> <p>23 invitation for us to align our plans here we go, you guys</p> <p>24 make interaction with the strikers because that's what</p> <p>25 they've been asking for and that will go a long way in</p>	<p style="text-align: right;">Page 22355</p> <p>1 was not just a mere fact of acquiescing or keeping quiet.</p> <p>2 You actually, when he was emphasising the reasons why they</p> <p>3 will not talk to the people you said that was okay.</p> <p>4 GENERAL MBOMBO: I said so as it is</p> <p>5 written on the statement.</p> <p>6 MR MPOFU: Yes, and this was not okay</p> <p>7 because according to the police as we know they would have</p> <p>8 preferred a peaceful solution which would have started at</p> <p>9 the root causes, in other words if there was interaction</p> <p>10 between the two that may have dissolved the whole</p> <p>11 situation, isn't that correct?</p> <p>12 GENERAL MBOMBO: That is so.</p> <p>13 MR MPOFU: The second aspect of your, you</p> <p>14 and I have established in the morning that the logical</p> <p>15 thing would have been to solve the, let's call it the</p> <p>16 labour issues or the HR issues and they talk and I accept</p> <p>17 that you didn't have to be involved in that so that the</p> <p>18 security situation could be improved, correct?</p> <p>19 GENERAL MBOMBO: That is so, yes.</p> <p>20 MR MPOFU: But Lonmin, Lonmin had a</p> <p>21 different view, Lonmin's view was that you must solve the</p> <p>22 security situation first and the HR issues to follow. So</p> <p>23 once again you had an opportunity to align the plan to say</p> <p>24 no, no, no, no you must sort the HR issues and it will</p> <p>25 improve the security situation and you failed to do so. Is</p>
<p style="text-align: right;">Page 22354</p> <p>1 creating the conditions of peace as you and I established</p> <p>2 this morning and you omitted to take that opportunity.</p> <p>3 That's the nature of the criticism, do you have any</p> <p>4 comment?</p> <p>5 GENERAL MBOMBO: Maybe we should get</p> <p>6 clarity how it came about that he said we should align the</p> <p>7 plans. From what I remember that came about when they were</p> <p>8 talking about distributing pamphlets. So the alignment of</p> <p>9 plans was not about aligning everything that they thought</p> <p>10 of doing or that they were supposed to do.</p> <p>11 MR MPOFU: Alright now the path that I,</p> <p>12 remember I said I'm going to go as far as to say you agreed</p> <p>13 with their decision not to talk? Now I'm going to</p> <p>14 demonstrate that part. Mr Mokwena, the Chairperson stopped</p> <p>15 reading at line 9, around line 10 of page 4 JJJ192. Ja,</p> <p>16 Chairperson stopped reading somewhere in the middle, I'll</p> <p>17 read from we are not in that situation. It says, ja, "we</p> <p>18 are not in that situation, nine people have died, we are</p> <p>19 not going to start talking to parties suddenly. We say yes</p> <p>20 but you know these workers say they want money and that is</p> <p>21 what AMCU is saying. So now it means they are taking over,</p> <p>22 they are the leaders of that group and then you say, okay."</p> <p>23 Do you see that?</p> <p>24 GENERAL MBOMBO: I see it.</p> <p>25 MR MPOFU: So that's what I'm saying, it</p>	<p style="text-align: right;">Page 22356</p> <p>1 that a fair criticism?</p> <p>2 GENERAL MBOMBO: Mr Chair, I said before</p> <p>3 that I'm not sure if I was the one to tell Lonmin people</p> <p>4 what to do. Because even in the previous meetings we've</p> <p>5 had, even the one on the 13th we indicated to them that we</p> <p>6 all wish to find solutions to, to solve this problem, all</p> <p>7 of us as we were there. At the time when I was talking to</p> <p>8 them I was reminding them of the decisions taken in the</p> <p>9 previous meetings, the meetings on Monday. Yes, maybe I</p> <p>10 could have said do this, do that but the fact remains the</p> <p>11 person who had a problem here is Lonmin. He had a problem</p> <p>12 with their workers. We were there to try and maintain</p> <p>13 peace and order.</p> <p>14 MR MPOFU: Yes. I understand that,</p> <p>15 General. I'm saying to you we've agreed about the first</p> <p>16 criticism where you agreed that they mustn't talk. I'm</p> <p>17 saying the second criticism is that you even agree to a</p> <p>18 sequencing that was contrary to the police sequencing and</p> <p>19 I'll take you through what they were saying. While your</p> <p>20 view was that the HR situation must be sorted and then the</p> <p>21 securities situation will be improved, this is what Mr</p> <p>22 Mokwena said which is the exact opposite. Go to page 3 of</p> <p>23 that document. He says, we can only start doing HR issues</p> <p>24 when the security issue is sorted out, oh sorry, I'm</p> <p>25 reading against –</p>

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1 CHAIRPERSON: If it will help –
 2 MR MPOFU: About 25, about line 25,
 3 Chairperson. "We can only start doing HR issues when the
 4 security is sorted out so that we do not confuse security
 5 issues with HR issues. We have rejected quite a number of
 6 positions and people indirectly trying to start
 7 negotiating. AMCU you will notice their press statement,
 8 so they have thrown stuff into the media to say oh we have
 9 asked management to give everybody 12 000 now the media are
 10 going to say but management then you must talk to AMCU and
 11 SAPs Commissioner yes." So once again you are agreeing
 12 with something that is against your own professed belief as
 13 to how things should be done. When you had a chance to say
 14 no, no Mr Mokwena our approach as the police is this, you
 15 sort out the HR issue by going to talk to those people and
 16 by so doing that might defuse the security situation.
 17 Which you and I have agreed, I'm going to criticise you
 18 again for, once again spending yet another opportunity to
 19 ensure that peace prevails. Do you have any comment?
 20 GENERAL MBOMBO: I do not agree with
 21 that.
 22 MR MPOFU: And yet the police version is
 23 premised on the notion that the police were busy putting
 24 pressure on Lonmin to engage with the strikers when that is
 25 not the case, well at least as far you are concerned, we've

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1 established that's not the case. Are you aware of any one
 2 else who exhorted Lonmin to accede to the demand of the
 3 workers to engage?
 4 GENERAL MBOMBO: I once answered that
 5 question before.
 6 MR MPOFU: I'm sorry if I'm asking you
 7 the same thing, but can you assist me what was your answer?
 8 GENERAL MBOMBO: I said those were not my
 9 personal words. But our discussion with Lonmin was based
 10 on the fact that they had a responsibility of finding a
 11 solution to the problem. I also know that all the people
 12 were in meetings with General Mpembe, they also had the
 13 same view and objective of finding a solution to this
 14 problem.
 15 MR MPOFU: Yes, but, General, surely you
 16 will accept that it's not use making general statements to
 17 the attended, we must all find solutions, I'm prepared to
 18 accept that you must have said words to that effect. But
 19 the criticism I'm directing to you is that it's no use
 20 making those general statements, we must all find
 21 solutions, here is a specific solution that presents
 22 itself, there's only one demand made by the workers, we
 23 want to engage, one. So you should have said well here is
 24 an opportunity, golden opportunity for these people simply
 25 to engage, not even to resolve according to Mr Magidiwana,

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1 the whole issue of the 12 500 but simply he said, I can't
 2 remember the words he used, just for recognition or their
 3 dignity because he said this is our employer, we work for
 4 them, why can't they just talk to us. Why can't they even
 5 say we do not have the R12 500, this is how much we have
 6 and so on and so on and you had a responsibility when that
 7 opportunity presented itself to ensure that it happened.
 8 MR SEMENYA SC: Chair, the record is
 9 really replete with evidence of Lonmin saying they don't
 10 intend to go and address the workers.
 11 MR MPOFU: Ja, well we'll deal with that
 12 when we cross-examine Lonmin, right now I'm busy with the
 13 police's responsibility to facilitate, isn't it correct,
 14 General, that one of your obligations as the police is to
 15 facilitate communication?
 16 GENERAL MBOMBO: Which I did, Mr Chair.
 17 MR MPOFU: No. Well the, I'm saying to
 18 you, you have a duty as a police person to facilitate
 19 communication. There are two conflicting sides and one of
 20 those sides says for us the only thing that will get us out
 21 of this quagmire is just to engage with the other side.
 22 Isn't it your obvious duty to then say to the other side go
 23 and engage with those people, then it's problem solved.
 24 Otherwise what is facilitation of communication.
 25 GENERAL MBOMBO: I think the endeavours

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1 of the police in trying to talk to the Lonmin people was to
 2 get Lonmin to do what was expected of them as the employer
 3 or what the employees expected of them.
 4 MR MPOFU: Yes and Lonmin made it clear
 5 as Mr Semenya correctly points out at the beginning that
 6 they did not want to do that and that's why I use the word
 7 exhorting because it was upon you to then say that stance
 8 is unreasonable, it is likely to lead to bloodshed,
 9 especially when they were inviting you and say please do go
 10 and engage to them and you failed to do that. Can we just
 11 accept that?
 12 GENERAL MBOMBO: Who were engaging me?
 13 MR MPOFU: No, sorry maybe the question
 14 wasn't clear. I'm saying Lonmin having taken the initial
 15 stance that because they had the wage agreement or whatever
 16 reasons they gave they were not going to speak to the
 17 workers. That you knew. Now on the 14th they say to you
 18 please guide us, give us advise on what to do and you do
 19 not say to them ah here's now a golden opportunity, the one
 20 side has said they want to engage and the other side is
 21 saying please guide us. So it's simple the guidance should
 22 be engage the other side and then the problem is solved.
 23 Isn't that a logical thing?
 24 MR VAN AS: Mr Commissioner, Mr Chairman,
 25 the witness has already indicated that Lonmin was trying to

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1 coincide it's strategy in relation to the delivery of
 2 ultimatums with the strategy of the police. It wasn't
 3 Lonmin's - it shouldn't be drawn from this transcript that
 4 what Lonmin asked the police to do was advise them how they
 5 should go about dealing with their workers and with the
 6 strike.

7 MR MPOFU: Can I respond, Chairperson?
 8 No that's, I think Mr Van As is making a mistake. The
 9 discussion about the dropping of the pamphlets did indeed
 10 take place at a later stage. But he invitation for
 11 guidance comes much earlier, on page 3 even where we are,
 12 he says –

13 CHAIRPERSON: I think the answer is he's
 14 entitled to ask the question. Entitled to ask the witness
 15 how she understood what was said by Mr Mokwena.

16 MR MPOFU: Yes.

17 CHAIRPERSON: When Mr Mokwena comes he
 18 can ask Mr Mokwena what he thinks. But I don't think
 19 there's a basis for stopping him asking the questions. So
 20 I think we should let him carry on.

21 COMMISSIONER HEMRAJ: General can I just
 22 ask you, does SAPS have an official position as regards
 23 matters between employers and employees involving
 24 industrial action?
 25 GENERAL MBOMBO: No, Mr Chair, I don't

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1 remember us having such a thing.

2 MR MPOFU: I'm sorry, Commissioner, I
 3 heard the answer, I didn't hear the question.

4 [10:50] COMMISSIONER HEMRAJ: The question was
 5 whether SAPS has an official policy as regards matters
 6 between employers and employees involving industrial
 7 action.

8 MR MPOFU: Oh, okay. Alright, let's just
 9 deal with that issue very quickly before I go to the
 10 transcript, the one the Commissioner has raised. Can you
 11 go to page 6 of the SAPS opening statement? Are you there?
 12 Paragraph 15. Can you go to – oh, it's exhibit FFF9, page
 13 6, paragraph 15. There SAPS is paraphrasing, as it were,
 14 the prescripts, the standard operation procedures and
 15 national guidelines and so on. You understand that,
 16 General?

17 GENERAL MBOMBO: I see it.

18 MR MPOFU: Can you go – and they say one
 19 of the functions that emanate from those prescripts viewed
 20 as a whole is – can you go to 15.5? – is to facilitate
 21 communication where there is task saturation and
 22 complexities. You understand that to be a SAPS task,
 23 correct?

24 GENERAL MBOMBO: That is so.

25 MR MPOFU: Thank you. Alright, now let's

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1 go back to where we were. I want to take you to the very
 2 opening paragraph of JJJ192. This is now in reference to
 3 Mr Van As' issue. Mr Mokwena says that we, "Okay, you
 4 wanted to see us; I wanted to see you. You also wanted to
 5 see us," and so on, and then the Commissioner says, "Maybe
 6 let me be first" –

7 COMMISSIONER HEMRAJ: Which line are we
 8 at, Mr Mpofu?

9 MR MPOFU: Right at the beginning, from
 10 line 1. Page 1, sorry. The meeting supposedly starts like
 11 that. "You wanted to see us; I wanted to see you." "We
 12 also wanted to see you, but you know, maybe let me be
 13 first," this is the Commissioner. "One is about whilst we
 14 are busy that side trying to plan in terms of what we need
 15 to do, I need to check from your side what is the actions
 16 that are in progress in terms of your thinking, your, in
 17 terms of your policy arrangements and all that and that you
 18 are busy doing. I was saying to Graham," presumably
 19 Sinclair, "it is important that I get to understand because
 20 whatever decisions you are making from that side, they
 21 obviously have got an impact on what we are doing and that
 22 is one of the main reasons why I needed to come to be
 23 talking to you, but also tracking from the discussions that
 24 we had last night," and so on. So it's not just about
 25 pamphlets. The very reason for having this meeting was

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1 this alignment of we need to know what you are doing so
 2 that we can condition what we are doing. Isn't that
 3 correct?

4 GENERAL MBOMBO: You must remember, Mr
 5 Chair, that those decisions of them that I'm talking about,
 6 if they for instance want to go and talk or find someone to
 7 go and talk, what part do they want us to play in that.
 8 And secondly, as far as facilitative communication, it does
 9 not mean that we get deep into the issues of the company.
 10 The company does that as it is supposed to do, the way it
 11 knows how to communicate with its people, and we do not
 12 dictate to companies what they're supposed to say to their
 13 employees.

14 MR MPOFU: Okay, look, alright, I'm just
 15 going to put it to you that you as a person, as evidenced
 16 by this discussion not only failed to do exactly what you
 17 say you should have done, which is to ask the management to
 18 engage with the workers, but you went further and agreed
 19 with them when they expressly said that they're not going
 20 to do anything of that sort.

21 GENERAL MBOMBO: I do not agree with you.

22 MR MPOFU: And I also –

23 CHAIRPERSON: It's now 11 o'clock, but
 24 unless you –

25 MR MPOFU: No –

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1 CHAIRPERSON: Or just before 11.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: I was proposing, as I told
 4 you, to take tea –
 5 MR MPOFU: That's the right place. I was
 6 moving to another –
 7 CHAIRPERSON: But maybe you want to round
 8 this point off finally before we take the adjournment?
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: I don't want to interrupt
 11 you in the middle of a point.
 12 MR MPOFU: No, Chairperson, by putting
 13 that proposition I was round it off. Thank you,
 14 Chairperson.
 15 CHAIRPERSON: We'll take the tea
 16 adjournment at this stage. I understand it may take a
 17 little bit longer than – is that right? – so I'm not quite
 18 sure when we're going to come back, but I think let's be
 19 realistic, let's try to be back by 11:30. There's some –
 20 it's a saint's day today, which apparently is being
 21 celebrated.
 22 MR MPOFU: Thank you, Chairperson.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [11:39] CHAIRPERSON: The Commission resumes.
 25 Provincial Commissioner, you're still under oath.

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1 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
 2 CHAIRPERSON: Mr Mpofu, do you have any
 3 more questions for the witness?
 4 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 5 Yes, Chairperson. General, I'm sorry, I told the
 6 Chairperson that I had rounded off the point, but I'm just
 7 going to put one, two propositions to you in respect of
 8 that point, and to make it quick I'll just read out what is
 9 contained in FFF9, I think. Yes, sorry about that. The
 10 first one is paragraph 22 of FFF9. It says that, "You will
 11 hear," meaning the Commission will hear, "evidence that at
 12 various stages the police service tried to encourage mine
 13 management and labour representatives to engage in peaceful
 14 negotiations, without involving itself in labour disputes."
 15 You see that part?
 16 GENERAL MBOMBO: I see it, Mr Chair.
 17 MR MPOFU: And then at 44.3 in the middle
 18 of that paragraph – oh well, let's read the whole thing.
 19 "On Tuesday the 14th and Wednesday the 15th the police
 20 continued trying to negotiate with the protesters to disarm
 21 peacefully. They demanded to speak with Lonmin
 22 management." And the important part, "Attempts were made
 23 by senior police officers to persuade Lonmin management to
 24 address the protesters. Lonmin management refused, saying
 25 it was not prepared to engage protesters outside collective

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1 bargaining structures," and so on. "They also labelled the
 2 protesters as faceless." Okay, that had already happened.
 3 I think the sequence of events is not entirely correct
 4 there, but the point I want to put to you is that neither
 5 yourself nor anyone else to your knowledge had actually
 6 done what is alleged in this opening statement, which is to
 7 persuade –
 8 MR SEMENYA SC: Not correct, Chair. That
 9 was exactly the evidence of General Mpembe.
 10 CHAIRPERSON: You see, apart from that,
 11 Mr Mpofu, in exhibit OO4 at pages 27 and 28 there's a
 12 passage which is relevant here. In the middle of, at line
 13 9, at lines 9 and 10 of page 27 of that exhibit it says,
 14 "Parties speaking simultaneously proves difficult to
 15 transcribe," but it's clear that General Mpembe had spoken
 16 because at line 17, well the facilitator – let me read
 17 that, the facilitator says at line 12, "Joseph, I'm asking
 18 you," that's reference to Mathunjwa, "you had a chance to
 19 speak. Let Barnard speak," that's Mr Mokwena. "NUM has
 20 had the chance. General has had the chance. Barnard, you
 21 have the floor, please speak," and then Mr Mokwena then
 22 says, "Our position, General," so he's replying to General
 23 Mpembe, "is as Lonmin management our position is as
 24 follows. We're willing to engage our employees within the
 25 structures that are known" –

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1 MR MPOFU: I'm sorry, Chairperson, what
 2 page?
 3 CHAIRPERSON: Page 27.
 4 MR MPOFU: 37?
 5 CHAIRPERSON: 27 of OO4.
 6 MR MPOFU: No, then I've got the wrong –
 7 CHAIRPERSON: So he's talking to the
 8 General, so we don't know what is the – the bit that was
 9 difficult to transcribe was inaudible, but clearly must
 10 have included what the General said because he's addressing
 11 the General. "Our position, General, is as Lonmin
 12 management our position is as follows. We're willing to
 13 engage our employees within the structures that are known,
 14 in a very safe environment where there are no weapons, not
 15 on the mountain. So we're willing to meet our employees
 16 through their structures, through their leaders to discuss
 17 any issues, not when they are armed, not when they are
 18 actually outside the Lonmin property. So when the workers
 19 are back, disarmed, tomorrow, tonight, through their
 20 leaders we will meet them. That is our position. So we
 21 are not against meeting, discussing issues with the
 22 employees through their right structures. We are prepared
 23 to do that." So that's – now there's a question I'd like
 24 to ask before you carry on, if you'll permit me.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: The question I'd like to
2 ask the Provincial Commissioner about, did General Mpenbe
3 tell you either on the Wednesday night when he was speaking
4 to you on the telephone and you were at the management
5 forum, or the next morning on the Thursday, did he tell you
6 that that is what Mr Mokwena of Lonmin had said the
7 previous evening, the passage I've read?
8 GENERAL MBOMBO: He did not tell me
9 everything, Mr Chair.
10 CHAIRPERSON: Did he tell you some of
11 that?
12 GENERAL MBOMBO: But he did say they were
13 discussing with Lonmin management and the two presidents of
14 the unions and what they were promoting was to find a way
15 to solve this impasse.
16 MR MPOFU: Yes, well that's exactly the
17 point of my questioning –
18 CHAIRPERSON: I'm sorry, can I just ask –
19 MR MPOFU: Sorry, Chairperson.
20 CHAIRPERSON: When Mr Mathunjwa told you
21 what he did on the Thursday, which you've told us about
22 that Lonmin are not committed to negotiating and so on, was
23 General Mpenbe with you?
24 GENERAL MBOMBO: He was not far from
25 where we were standing, Mr Chair.

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1 CHAIRPERSON: I see. Did Mr Mathunjwa in
2 effect refer to an undertaking or an alleged undertaking
3 which Lonmin had given the previous night on the Wednesday?
4 When he spoke to you on the Thursday did he – you know,
5 we've gone through the passage of what he told you. Now
6 did he in fact in effect say Lonmin have gone back on an
7 undertaking they gave us previously, yesterday, or words to
8 that effect?
9 GENERAL MBOMBO: I do not remember that,
10 Mr Chair. All I remember is when he said they delayed him,
11 they do not want to talk to him.
12 CHAIRPERSON: So you didn't consider it –
13 well, it didn't arise on the basis of what you understood,
14 according to what you've told us, didn't arise that you
15 could have gone back to Lonmin and said look here, Mr
16 Mathunjwa says you people aren't prepared to negotiate,
17 you've gone back on what you've committed to do, whereas I
18 understand you said something last night in the presence of
19 General Mpenbe. The occasion for you to do that didn't
20 arise because you didn't know what had been said the
21 previous night. Do I understand correctly?
22 GENERAL MBOMBO: Mr Chair, I did not know
23 Lonmin's decisions of the previous night. What I knew
24 about was the decisions of Mr Mathunjwa, which I learned
25 from General Mpenbe.

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1 CHAIRPERSON: Thank you.
2 MR MPOFU: Yes, thank you, Chairperson.
3 You see, that's exactly the problem that I have, General.
4 That's why I'm saying the impression given in the opening
5 statement is incorrect and I'll try and explain. The only
6 suggestion that this might have been said is the inaudible
7 part that the Chairperson refers to, where he infers from
8 an answer, and quite frankly anything could have been said
9 and it might be what you have been saying to us, namely
10 that we must all find solutions, and that might have been a
11 response to that. All I'm saying is that apart from that
12 inferential logic there is no direct evidence of anyone
13 persuading, as it is put here, of senior police officers
14 persuading Lonmin to go and engage with the strikers. We
15 know that you didn't do it; you've explained why. I'm now
16 talking about other people that they also did not do it.
17 What's your comment?
18 MR SEMENYA SC: Chair, I still raise the
19 same objection. The evidence, direct, given by General
20 Mpenbe before this Commission is that he did.
21 MR MPOFU: Okay, well even if, well –
22 CHAIRPERSON: That seems to be borne out
23 by what appears at page 1 of exhibit OO4 where General
24 Mpenbe says at line 18, "The request that we made to the
25 management is one, is that the way in which the operation

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1 is moving now, is moving in a direction where we need an
2 intervention." So he refers to the fact that he had
3 already made a request to the management for –
4 MR MPOFU: Solution.
5 CHAIRPERSON: - an intervention.
6 MR MPOFU: Ja.
7 CHAIRPERSON: Because of the way things
8 were moving. So that supports the evidence he gave, or
9 tends to support the evidence he gave before this
10 Commission. But anyway, the point is very simply, you
11 can't put to the witness that General Mpenbe did nothing if
12 the evidence is he did. Obviously from what she now tells
13 us she didn't know much about what General Mpenbe had said.
14 That's a different matter. But you can't put it as a fact
15 that General Mpenbe didn't do anything when the evidence is
16 that he did. You may argue later that that evidence is not
17 to be accepted - that's a different question - but you
18 can't put to the witness as a fact something which is
19 disputed and in respect of which there is contrary
20 evidence. So I suggest you – to use one of your phrases –
21 you take a step back, you reformulate the question, put a
22 question to the witness which Mr Semanya won't object to.
23 MR MPOFU: Okay, that's exactly what I'm
24 going to do. Let's assume – we'll have that debate on
25 another day, so let's assume for argument sake now that

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1 General Mpmembe in that inaudible part said what is being
2 said by the Chairperson and Mr Semenya. Apart from him, do
3 you know of any other person who persuaded Lonmin to engage
4 with the workers?
5 GENERAL MBOMBO: Mr Chair, as far as I
6 know from the meeting we had with the National Commissioner
7 and the Lonmin people, we emphasise the importance of
8 Lonmin trying to find ways of dealing with this issue,
9 talking to their people in the way that they are supposed
10 to. I did not think that it was important for us to give
11 them details as to how they were supposed to do that. That
12 was not our job. Our job was to maintain peace and order.
13 MR MPOFU: No, General, there's on point
14 by point by point by point; there's one point. The people
15 wanted to engage with management, one point, and I'm saying
16 that the police, do you know of any other policeman,
17 putting aside the question of General Mpmembe, who persuaded
18 the people to engage with their workers, to go and talk to
19 the workers as the workers were demanding, one point?
20 MR SEMENYA SC: Chair, there's nobody who
21 persuaded anybody. The issue is whether there was attempt.
22 There's no question that anybody persuaded Lonmin to go to
23 the koppie. We know they didn't go –
24 MR MPOFU: Yes, who exhorted –
25 MR SEMENYA SC: There were attempts –

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1 MR MPOFU: Who exhorted, or made –
2 CHAIRPERSON: Tried to persuade -
3 MR MPOFU: Tried to persuade them to go
4 to – attempted, let's use the right word, according to Mr –
5 who attempted to persuade the people to go and talk to
6 their workers as they were demanding.
7 GENERAL MBOMBO: According to me, Mr
8 Chair, I've answered that question and said I personally
9 did not say so, but I mentioned that they have a right to
10 do whatever was in their power, and I think that General
11 Mpmembe also tried in the meetings that he had with them.
12 MR MPOFU: Okay, maybe it's my fault; I
13 don't think you've heard my question. I'm saying let's
14 take you out of the picture, because you've said you didn't
15 do it. Do you understand that?
16 GENERAL MBOMBO: I hear you.
17 MR MPOFU: I'm saying let's take Mpmembe
18 out of the picture because we've had the debate, which
19 we'll have on another day. Do you understand that?
20 GENERAL MBOMBO: I understand that.
21 MR MPOFU: Do you know of any other
22 policeman who made attempts to persuade Lonmin to negotiate
23 or to address the protesters, apart from you and Mpmembe?
24 GENERAL MBOMBO: I don't.
25 MR MPOFU: Ja, and therefore, and there's

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1 no other evidence in front of this Commission, that's what
2 I was getting at. The statement that I read out to you
3 says "Attempts were made by senior police officers," in
4 plural, okay, "to persuade Lonmin management to address the
5 protesters," a specific thing, not to find solutions or
6 make interventions and so on, "senior officers to persuade
7 the Lonmin management to address the protesters." You have
8 no knowledge of that, correct?
9 GENERAL MBOMBO: As I'm saying, Mr Chair.
10 MR MPOFU: Thank you. Okay, no I'll
11 leave that for argument. Now let's just go back to
12 something very quickly which we dealt with yesterday. I'm
13 just going to ask one or two questions. Remember the
14 debate you and I had about the removal of the people who
15 had experienced the trauma of the 13th?
16 GENERAL MBOMBO: Removal of the people
17 with experience?
18 MR MPOFU: Yes –
19 CHAIRPERSON: No, no, who had the
20 experience, the people who had been involved on the 13th had
21 been traumatised, or possibly traumatised because of what
22 had happened on the 13th, removal of those people from
23 further participation. That's the point that Mr Mpofo is
24 now going to revert to.
25 GENERAL MBOMBO: Okay.

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1 MR MPOFU: You remember that discussion?
2 GENERAL MBOMBO: I remember that.
3 MR MPOFU: Now would you agree that if
4 the initial suggestion of removing all the people who had
5 been involved in that operation had been carried out to its
6 logical conclusion, then General Mpmembe himself would have
7 been a candidate for removal?
8 GENERAL MBOMBO: As I have said, I also
9 spoke to him as well, so as I said yesterday - that would
10 have applied to him as well, and as I said yesterday, these
11 people were given that chance and it is not our normal
12 practice to remove people from operations if they do not
13 show signs of not being able to continue with the
14 operation.
15 MR MPOFU: Right, okay. Now if, so
16 General Mpmembe would have been a candidate for removal
17 simply on the basis that everyone who was involved on the
18 13th is being removed. Do you agree that you also got
19 reports from other people that he was emotionally affected?
20 [11:59] GENERAL MBOMBO: Yes, as I said I
21 received such a report from Colonel Vermaak. But when I
22 arrived at Lonmin he did not appear to be emotional, that
23 is when he was giving the report although he did not appear
24 to be emotional we had to ensure that he was alright.
25 MR MPOFU: And thirdly you were also

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1 given a report that death threats had been made against
2 him, correct?
3 GENERAL MBOMBO: As you say, yes.
4 MR MPOFU: And fourthly, I don't know if
5 you were aware of this, if you're not let me know he
6 himself had made threats to arrest Lieutenant Colonel
7 Vermaak for intimidation?
8 GENERAL MBOMBO: I do not remember having
9 knowledge of that at that time.
10 MR MPOFU: Anyway, how many people were
11 taken for emotional assessment to see HW?
12 GENERAL MBOMBO: I would not be sure of
13 the figures but it was open to all the people who were in
14 the operation of the 13th. We did it likewise on the 16th.
15 MR MPOFU: No, General, please, if you
16 don't know the answer just tell me. The first that it
17 well, it may be open to them might well be so, how many
18 people actually went for emotional assessment?
19 GENERAL MBOMBO: I'm not sure of the
20 figures.
21 MR MPOFU: So it could be anything, it
22 could be two, it could be 10, you don't know?
23 GENERAL MBOMBO: We can get that
24 information, Mr Chair.
25 MR MPOFU: Yes, can you please supply the

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1 Commission with that information as well as the outcomes of
2 those assessments.
3 GENERAL MBOMBO: I will do that.
4 MR MPOFU: Did Colonel Merafi for example
5 go for that assessment?
6 GENERAL MBOMBO: I do not know, Mr Chair.
7 MR MPOFU: So, okay you do know that he
8 was there, emotionally affected?
9 GENERAL MBOMBO: I know that he was
10 present in the operation of the 13th.
11 MR MPOFU: That's not what I asked you.
12 Do you know that he was emotionally affected?
13 GENERAL MBOMBO: I'm not sure about that.
14 MR MPOFU: Well that's what he says in
15 his statement, but we'll get to that later. Alright.
16 CHAIRPERSON: Mr Mpofo, I just want to
17 go back to a point you made earlier. You said that the,
18 general, I think it was your fourth reason in the number of
19 reasons you gave why he should have been removed from the
20 further participation in the operation. You said that he
21 had, wanted to know who made the threats and he, when
22 Colonel Vermaak wouldn't tell him, he threatened to open an
23 intimidation case against him. Now that's based on paragraph
24 12 of Colonel Vermaak's second statement which is exhibit
25 LLL8 and it's quite clear from 12, that paragraph, para 12

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1 that that threat, the threat that he was going to open an
2 intimidation case if it was made was made at Roots in the
3 subgroup that were discussing the events of the 13th –
4 MR MPOFU: Thank you, thank you,
5 Chairperson. Yes, do you, yes, thank you very much,
6 Chairperson. My apologies, General. Did you become aware
7 that weeks I suppose after the event there was this kind of
8 altercation where General Mpembe threatened to, no not to
9 arrest, to lay a complaint of intimidation against Colonel
10 Vermaak?
11 GENERAL MBOMBO: I becomes aware of that
12 late after Vermaak had made a statement.
13 CHAIRPERSON: I don't quite understand
14 the relevance of that question because the point that you
15 were busy with was whether it wouldn't have been sensible
16 to have removed General Mpembe from further participation
17 in the operation would include participation in the
18 operation on the 16th.
19 MR MPOFU: Yes, Chairperson.
20 CHAIRPERSON: Because of the traumatic
21 experiences that he had had on the 13th. So the fact that
22 several weeks later at Roots he allegedly threatened
23 Colonel Vermaak with an intimidation case wouldn't be
24 relevant in that regard, would it?
25 MR MPOFU: No, well, Chairperson, I mean

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1 honestly I even apologised to the witness for making that
2 point as the fourth point. But I'm entitled to ask now
3 that we know that it happened, whether it happened ten
4 years later, whether she knows about another altercation
5 between members of her staff.
6 CHAIRPERSON: I understand her to say
7 she didn't know.
8 MR MPOFU: Yes.
9 CHAIRPERSON: So we can move on.
10 MR MPOFU: Ja, we are, Chair. Now where
11 I'm going with this, General, is that from three, now that
12 the other one is eliminated, reason, there was reason
13 enough for the removal of Mpembe not only from the scene
14 but also from his position as overall commander. Or let me
15 put it this way, let me put it this way. Had the original
16 plan of removing everybody who had been involved on the 13th
17 then you would have had to find another overall commander,
18 correct?
19 GENERAL MBOMBO: If he was unable to
20 continue.
21 MR MPOFU: Who called up General
22 Annandale to occupy the, whatever the position is, he seems
23 to have many positions?
24 CHAIRPERSON: Chief of staff –
25 MR MPOFU: And then he was Chairman –

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1 CHAIRPERSON: Chairman of the JOCCOM.
 2 MR MPOFU: Then he was second in command
 3 then he was the deputy, then he was this and that.
 4 CHAIRPERSON: Chief of staff means that
 5 he was the deputy –
 6 MR MPOFU: Why, Chairperson, where do we
 7 get that?
 8 CHAIRPERSON: Well that's the evidence I
 9 think, the, from exhibit L we see that he, what his
 10 functions were. That he was chief of staff, normally chief
 11 of staff as I understand it is the deputy to the person
 12 whose chief of staff he is, and he was the chairman of the
 13 JOCCOM. That's what we know he was.
 14 MR MPOFU: Okay. Do you understand that
 15 in terms of the structures and the prescripts there's no
 16 such thing as deputy overall commander?
 17 GENERAL MBOMBO: But it does not prevent
 18 us from having such a person assisting the overall
 19 commander.
 20 MR MPOFU: Do you accept that in the
 21 prescripts there's no such position as deputy overall
 22 commander, yes or no?
 23 GENERAL MBOMBO: I agree.
 24 MR MPOFU: Do you also accept that in the
 25 prescripts there's no such thing as Chairman of the JOC?

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1 GENERAL MBOMBO: There is a chairman of
 2 the JOCCOM.
 3 MR MPOFU: And who is normally –
 4 GENERAL MBOMBO: It was supposed to be
 5 General Mpembe.
 6 MR MPOFU: Yes.
 7 GENERAL MBOMBO: But General Mpembe has
 8 got a right to ask anyone available that is working with
 9 him.
 10 MR MPOFU: Yes. So normally the person
 11 who chairs the JOC is the person who is the overall
 12 commander, correct?
 13 GENERAL MBOMBO: That is normally the
 14 case, yes. But anyone present can chair.
 15 MR MPOFU: Do you also accept that
 16 normally you as Provincial Commander if you were to give an
 17 important instruction in the whole JOCCOM set up that
 18 instruction would be given to the person who's the actual
 19 overall commander, normally?
 20 GENERAL MBOMBO: I agree with you there.
 21 MR MPOFU: And do you also accept that
 22 normally the person, if you can go to exhibit EE please.
 23 Would you agree that, oh sorry, alright, would you agree
 24 that normally under paragraph 2 in that list of names which
 25 is obviously put in some kind of hierarchy that after you

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1 the name that one would expect is of the person who is the
 2 actual overall commander, normally?
 3 GENERAL MBOMBO: Mr Chair, I don't know
 4 even here in the minutes we're supposed to use the
 5 hierarchy levels.
 6 MR MPOFU: Well can you see that in that
 7 minute, in those minutes you are on top and right at the
 8 bottom is, it's you and then it's the Major General then
 9 it's the Brigadier, then it's the Colonel and then it's
 10 legal services. So there is some kind of hierarchal
 11 pecking order, would you agree?
 12 GENERAL MBOMBO: I see it as it appears
 13 in the minutes.
 14 MR MPOFU: No, answer my question. Would
 15 you agree that in the context of a JOCCOM when you are
 16 present obviously your name would come on top. But that
 17 normally the next in line would be the overall commander?
 18 GENERAL MBOMBO: It was supposed to be
 19 like that, yes.
 20 MR MPOFU: Thank you.
 21 CHAIRPERSON: It's nearly quarter past
 22 12 when I said we have to adjourn. Would it be appropriate
 23 for us to take the adjournment now till Monday morning 9
 24 o'clock?
 25 MR MPOFU: Chairperson, if I can just

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1 round off this point?
 2 CHAIRPERSON: Alright.
 3 MR MPOFU: Just so that we finish with
 4 this exhibit.
 5 CHAIRPERSON: Yes, alright.
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: As long as you do it
 8 fairly quickly.
 9 MR MPOFU: I will, Chairperson, and to
 10 make it quick. I'll just read out certain portions from
 11 that exhibit and then I'll ask you the question. We've
 12 already dealt with what is on paragraph 3 where the
 13 provincial commissioner instructed Major General Annandale
 14 to proceed with the implementation. The next one is
 15 paragraph 4, "Major General Annandale informed the meeting
 16 that the approach will be as follows," and then it goes on
 17 and then you can go to the middle of the next page. Page
 18 2, "Major General Annandale went through the following
 19 checklists to ensure everything was in place and show
 20 adequate batteries," and so on and so on. Then the next
 21 page, "Major General Annandale instructed Lieutenant
 22 Colonel Scott to ensure that all commanders are briefed
 23 accordingly," and so on and then the big one at the bottom,
 24 "Major General Annandale instructed Brigadier Pretorius to,
 25 and Lieutenant Colonel Scott to report back to the JOC at

<p style="text-align: right;">Page 22385</p> <p>1 15:15 as he wanted, he wants the operation to commence at 2 15:30." Now there's no mention whatsoever of Major General 3 Mpmembe, would you agree that somebody reading this document 4 would gain or rather let me put it this way, would you 5 agree that normally the person who should be dishing out 6 instructions and receiving them from a person like you and 7 ensuring that this is done is the overall commander of a 8 particular operation normally? 9 GENERAL MBOMBO: That is so, Mr Chair. 10 CHAIRPERSON: Had been instructed in 11 paragraph 3, Major General Annandale had been instructed by 12 the Provincial Commissioner to proceed with the 13 implementation. So he was the appropriate person in the 14 light of her instructions to do what is recorded at the end 15 of the minutes. Is that not so? 16 MR MPOFU: Ja, well that a circular way 17 of – 18 CHAIRPERSON: That paragraph doesn't 19 take it any further, the fact that Brigadier, Major General 20 Annandale gave the instruction to Brigadier Pretorius and 21 Lieutenant Colonel Scott doesn't take it any further then 22 the passage in paragraph 3 where this witness instructed 23 Major General Annandale to proceed with the implementation. 24 So that's the point you have – 25 MR MPOFU: Yes, the cumulative –</p>	<p style="text-align: right;">Page 22387</p> <p>1 So I'm afraid you'll have to come back to it on Monday. 2 Because we're now adjourning till Monday morning 9 o'clock. 3 [COMMISSION ADJOURNED] 4 . 5 . 6 . 7 . 8 . 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 22386</p> <p>1 CHAIRPERSON: It's not made stronger by 2 the fact that Major General Annandale then did, then acted 3 in accordance with what the witness had told him. 4 MR MPOFU: Ja, well, Chairperson – 5 CHAIRPERSON: You can concentrate, just 6 before we take the adjournment on what is said in the end 7 of the third paragraph, that's where, that's your stronger 8 point, isn't it where Major General, sorry where the 9 Provincial Commissioner instructed Major General Annandale 10 to proceed with the implementation. 11 MR MPOFU: Ja, Chairperson, well I don't 12 completely agree with that, entirely agree with that. The 13 point – 14 CHAIRPERSON: Disagree with me or not is 15 of no concern to me, just carry on with your questions. 16 MR MPOFU: Well let me explain why. Let 17 me, I have to explain why so that we are on the same page. 18 CHAIRPERSON: I told you we've got a 19 time problem. 20 MR MPOFU: Yes. 21 CHAIRPERSON: May I suggest you make a 22 note, remember what you want to explain because we have to 23 adjourn now. 24 MR MPOFU: I don't want to come back – 25 CHAIRPERSON: We have to adjourn now.</p>	

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