

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 288

10 SEPTEMBER 2014

PAGES 37387 TO 37589



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<p style="text-align: right;">Page 37387</p> <p>1 [PROCEEDINGS ON 10 SEPTEMBER 2014] 2 [09:32] CHAIRPERSON: The Commission resumes. I 3 am sorry we started later than we thought we would but 4 there was a bit of housekeeping we had to attend to. 5 National Commissioner, I see you've come back in response 6 to our request. Thank you very much indeed. Would you 7 please stand? I think, it was a long time ago when I swore 8 you in so I think I'd better do it again if you don't mind. 9 It's not a reflection on you but just good order, you know. 10 Right, you swear that the further evidence that you'll give 11 before this Commission will be the truth, the whole truth 12 and nothing but the truth. Please raise your right hand 13 and say, I swear, so help me God. 14 GENERAL PHIYEGA: So help me God. 15 CHAIRPERSON: Thank you, please be 16 seated. The reason for, part of the reason for the delay 17 was we were going to, I was going to question you and I 18 think I still will but not to the extent I thought I was 19 going to, about some phone calls you made and received on 20 the 16th of August. The evidence leaders have produced a 21 document which reflects your telephone calls on your mobile 22 telephone from the 14th of August to the 16th of August. 23 What exhibit would that be? 24 MS PILLAY: Chair, it would be quad – 25 sorry, FFF44.</p>	<p style="text-align: right;">Page 37389</p> <p>1 CHAIRPERSON: Would you like me to put 2 the question to you again so you can concentrate? 3 GENERAL PHIYEGA: I would – 4 CHAIRPERSON: On the fifth page of this 5 document, the fifth call reflected there is a call from 6 Lieutenant-General Mbombo, the Provincial Commissioner, to 7 you at 16:02:19 which is about nine minutes after the 8 shooting at scene 1 and it's described as "MO SMS," so it's 9 an SMS. Was your phone on at the time? In other words, 10 did you receive that SMS at about that time? 11 GENERAL PHIYEGA: Chairperson, thank you 12 very much. I received this note this morning and I would 13 like to say, first and foremost, we're talking about 14 matters that took place two years ago and in my testimony, 15 Chair, I have indicated that I spoke to General Mpembe, I 16 spoke to the Minister, I spoke – I speak to many people. 17 The details of issues that are being raised here may not be 18 recalled by myself. 19 CHAIRPERSON: Yes, no, I understand that 20 and I don't want to be unreasonable but the important point 21 we have to bear in mind is that the shootings at scene 1 22 took place over, there's a dispute whether it was eight 23 seconds or 12 seconds but you and I don't have to debate 24 that, at about seven minutes to four in the afternoon. And 25 you were obviously informed at some stage thereafter about</p>
<p style="text-align: right;">Page 37388</p> <p>1 CHAIRPERSON: FFF44. I believe Mr 2 Semenya has given you a copy, is that correct? Yes, 3 alright. Now National Commissioner, since you were last 4 with us we've received information on a number of topics 5 which we didn't have previously and so I'd like to ask you 6 about some of these topics. The first one relates to the 7 phone calls that you got on the 16th. On I think it's the 8 fifth page of this exhibit, yes, the fifth page of this 9 exhibit we see that there are a number of calls or what 10 look like calls between you and General, Lieutenant-General 11 Mbombo, the Provincial Commissioner and also some calls 12 apparently emanating from the South African Police Services 13 spokesperson, Brigadier Mashego, and also phone calls from 14 the Minister – I think it's from, I can't see whether it's 15 from or to – the Minister of Police. So that's what I 16 essentially want to ask you about. 17 The reason this arose is it appeared, it came out 18 during the evidence of the Provincial Commissioner that she 19 sent you an SMS at 16:02:19. That's what one, that's the 20 fifth call on this page and we wanted to know what it was 21 about. Can you recall receiving such an SMS or was your 22 telephone off at the time? 23 GENERAL PHIYEGA: Pardon me, Chairperson, 24 I thought you were still summarising a number of issues. 25 Thank you very much for the –</p>	<p style="text-align: right;">Page 37390</p> <p>1 what had happened and I would have thought that if you'd 2 had a conversation shortly before you were informed of the 3 shooting, which actually turned out to have been made after 4 the shooting took place, that's something that you would 5 have thought about and wondered about and that's the sort 6 of thing that would have stuck in your mind. But the first 7 question really is whether your telephone was on at that 8 time because if it wasn't on, then the fact that a phone 9 call is recorded doesn't take it any further because you 10 wouldn't have got the call. Do you understand the point 11 I'm putting to you? So can you remember whether your phone 12 was on at round about 4 o'clock on the Thursday, round 13 about the time, just after in fact, the time when the 14 shooting took place? 15 GENERAL PHIYEGA: Chairperson, I 16 certainly do not remember whether it was on or off. 17 CHAIRPERSON: I see. Now Brigadier 18 Mashego is reflected in – well, the line that I referred 19 you to, the fifth line is this SMS which was sent or 20 perhaps an attempt was made to send to you by Lieutenant- 21 General Mbombo. Then the next entry I understand is the 22 reverse side of that same call, so it looks as if you tried 23 to phone her back but in the next entry, which is the 24 seventh on that page, is Brigadier Mashego, the South 25 African Police Services spokesperson. Now I understand CF</p>

<p style="text-align: right;">Page 37391</p> <p>1 stands for call for, so – call forward, sorry, call 2 forward. Now can you remember whether just round about, 3 just after the time that the shooting took place, you were 4 in communication with Brigadier Mashego? 5 GENERAL PHIYEGA: I would have been in 6 communication with Brigadier Mashego because being the 7 communications persons I would have probably wanted to know 8 what is happening and all that but I would not be able to 9 recall the detail. 10 CHAIRPERSON: I see. So what you can 11 tell us is as soon as you got an inkling of the fact that 12 something serious had happened, you would immediately have 13 contacted Brigadier Mashego. I know I'm putting words in 14 your mouth and if I'm doing it unfairly, please, please say 15 so but is it fair to say that if you'd got an inkling that 16 something awkward had happened, terrible had happened at 17 Marikana, you would immediately or as soon as you possibly 18 thereafter, as you could, have contacted Brigadier Mashego 19 in order to get full details and information. Is that 20 fair? 21 GENERAL PHIYEGA: Chairperson, the way to 22 put it would be this, that when such a thing happens I 23 would be informed. I would also enquire and I guess it is 24 in that spirit that I would have touched particular points 25 – the Provincial Commissioner, the communications person,</p>	<p style="text-align: right;">Page 37393</p> <p>1 Commissioner Mbombo told us that her address, as she called 2 it, couldn't have taken more than about 10 minutes, she 3 said 10 to 15 minutes. 4 GENERAL PHIYEGA: Hm-hm. 5 CHAIRPERSON: Now we know some of the 6 surrounding circumstances and so we should be able to 7 reconstruct some, at least, of what she and the others who 8 participated in what the minute called the deliberations, 9 said at the meeting. Now the first thing I want to ask you 10 is, can you – what did Provincial Commissioner Mbombo say 11 in her address? 12 GENERAL PHIYEGA: I have already given 13 testimony on that, Chairperson, and if I may – 14 CHAIRPERSON: I'm sorry, General, you 15 didn't – National Commissioner, you didn't. In your 16 evidence, that's why I asked you to come back, when you 17 testified before you didn't tell us about – you said you 18 had a discussion with her, I think after, at tea after the 19 main meeting ended. You didn't mention that everyone was 20 then called, everyone who was still there was called 21 together and what the minutes described as an extraordinary 22 session took place which lasted up to an hour, at which 23 various people spoke. That you didn't mention, so don't 24 tell me what you told us before because you didn't deal 25 with that before, that's why I've got you back to ask you</p>
<p style="text-align: right;">Page 37392</p> <p>1 that's what would have happened. The details, as I've 2 already said, I would not recall. 3 CHAIRPERSON: I see, thank you. So that 4 was the first topic I wanted to deal with to see if you 5 could help us. The next question, the next topic actually 6 relates to the ad hoc meeting which was held after the 7 National Management Forum meeting on Wednesday the 15th of 8 August. What is described in the draft minutes as the 9 extraordinary session of the National Management Forum. 10 According to Provincial Commissioner Mbombo who testified 11 after you did, the meeting lasted less than an hour. She 12 herself spoke, she said, as did you yourself, General 13 Mawela, General Masemola and some of the other Provincial 14 Commissioners. So it went on for just under an hour, I 15 think. Now what I'd like to know is what was said during 16 that meeting. It's obviously a very important meeting 17 because that was the meeting which, according to the 18 minutes, endorsed the proposal, that's the way it's put, by 19 the Provincial Commissioner. So I want to know what was 20 said during that meeting and on what grounds those present, 21 as it was put in the minutes and I'm quoting, "endorsed the 22 proposal to disarm the protesting masses and further 23 indicated that additional resources must be made available 24 on identification by the Provincial Commissioner, North- 25 West." That's the end of the quote. Now, Provincial</p>	<p style="text-align: right;">Page 37394</p> <p>1 these questions now. So I'll ask you the question again. 2 What did Provincial Commissioner Mbombo say in her address? 3 GENERAL PHIYEGA: Chairperson, I think 4 you actually did not give me time to finish the sentence I 5 had started. I had said – 6 CHAIRPERSON: I'm sorry, please finish it 7 now then. 8 GENERAL PHIYEGA: Yes, I will do so, 9 Chair. I had said in the meeting I spoke about the 10 extraordinary, in my testimony, the extraordinary meeting 11 we referred to. The question you are asking me, in the 12 meeting that we had General Mbombo briefed us about the 13 situation in Marikana, shared with us their plan to disarm 14 the protesters. We also in that meeting, because I had the 15 other Provincial Commissioners, spoke about them giving her 16 support. As I had indicated in some of my responses to 17 this Commission, the issue of deployment, sharing resources 18 for public order policing sit in my remit. Those are the 19 issues that we focused upon in that discussion and that is 20 why we had people such as General Mawela, General Masemola, 21 who are people who are in charge of operations in policing. 22 CHAIRPERSON: I see. Now what, the 23 minutes talk about a proposal which the Provincial 24 Commissioner, North-West, made. What was the proposal? 25 GENERAL PHIYEGA: Chair, the issue I</p>

<p style="text-align: right;">Page 37395</p> <p>1 raise is that she indicated to us that their plan is to 2 disarm the protesters. 3 CHAIRPERSON: Did she say when that was 4 to be executed? 5 GENERAL PHIYEGA: Yes, they were planning 6 to do that on the 16th. 7 CHAIRPERSON: And now, I said that we 8 have the surrounding, we know what the surrounding 9 circumstances were. What I'd like to ask you about that is 10 this, we know that for some days there'd been images on the 11 television screens of the strikers parading around on the 12 koppie, brandishing dangerous weapons, we know that people 13 had been killed over that period from the 10th, sorry, from 14 the 12th onwards. We know that some of the strikers were in 15 possession of firearms which had been taken from the police 16 on the Monday the 13th and we know that as far as the 17 outside world was concerned, the people who were watching 18 on the television, who were watching the television 19 screens, no action was apparently being taken to disarm or 20 arrest the strikers. Now did that give rise to any 21 dissatisfaction that was expressed at the meeting, either 22 by you or any of your colleagues who were present? 23 GENERAL PHIYEGA: I think, Chairperson, 24 to say nothing was being done to disarm – earlier on we had 25 heard in this Commission that General Mpembe himself was</p>	<p style="text-align: right;">Page 37397</p> <p>1 CHAIRPERSON: Was she, was any criticism 2 expressed at all to say, this is now Wednesday night, every 3 night we see these images on the television, they're still 4 walking around on the koppie brandishing the weapons, 5 they've got the firearms, nothing appears to be done to 6 disarm them? Did anybody say that? 7 GENERAL PHIYEGA: I do not recall any 8 type of criticism as such but what I recall is that we 9 supported the need to disarm the protesters. 10 CHAIRPERSON: Now, did the Provincial 11 Commissioner explain why there had been this failure or 12 omission to do anything tactical or positive to disarm the 13 strikers up to then? Did she tell you, for example, that 14 it had been decided to try to solve the problem by 15 negotiation first, that it wouldn't have been appropriate 16 to have done anything tactically on the Wednesday morning 17 because the negotiations were still ongoing, it would have 18 been a breach of faith in fact to, as it were, ambush the 19 strikers while negotiations were still going on. Did she 20 mention that? 21 GENERAL PHIYEGA: I do not recall that, 22 Chairperson, but what I know for a fact is that, you know, 23 the principles of negotiation are crucial in how we do 24 these processes and I think with hindsight, looking at what 25 has happened, I would want, I would like to believe that a</p>
<p style="text-align: right;">Page 37396</p> <p>1 asking for those weapons. It has always been a concern for 2 us as the police that the law was not being abided with 3 because we know that our country allows people to protest 4 and we know that the law requires them to do it peacefully 5 and this is why General Mpembe would have said, I'm not 6 interested in many things, I'm interested in you putting 7 down your weapons. So the 16th was not a new thing to talk 8 about disarming because we wanted to monitor the protest as 9 it is our responsibility but we were aware that the weapons 10 were an unlawful piece and that's why we listened to 11 General Mbombo telling us about their plan to disarm the 12 protesters. 13 CHAIRPERSON: I'm afraid you haven't 14 answered my question, so I shall have to repeat it. There 15 was an incident on the 13th, as you correctly say, where 16 General Mpembe asked them to lay down their arms and they 17 didn't do so and there were various things that happened 18 thereafter which you don't have to explore. But the 19 question I asked you was whether anybody at that meeting, 20 you or anybody else expressed any dissatisfaction that 21 nothing appeared to have been done to disarm the strikers 22 after that. 23 GENERAL PHIYEGA: Chairperson, I would 24 not recall in those terms but I know that we supported the 25 need to disarm the protesters.</p>	<p style="text-align: right;">Page 37398</p> <p>1 lot was done to give negotiations a chance. 2 CHAIRPERSON: Yes. You say you can't 3 remember that she said that? 4 GENERAL PHIYEGA: I don't, I don't recall 5 that type of conversation. 6 CHAIRPERSON: I see. Now did she tell 7 you anything about the plan that they had? They had a plan 8 and in fact according to the evidence of Lieutenant-Colonel 9 Scott who was the chief planner, the only plan which the 10 JOCCOM had approved involved circling the strikers who were 11 on the koppie at daybreak when only a few strikers would be 12 there and thereafter dealing with the others as they 13 arrived. This, it was thought, would be a way of dealing 14 with the matter in a relatively risk-free fashion and this 15 couldn't happen later in the morning because then there 16 would be many, many other strikers would have arrived and 17 the situation would have been such that the plan could not 18 be carried out successfully. Did she report that to you? 19 GENERAL PHIYEGA: At the meeting of the 20 15th we did not discuss the plan. 21 CHAIRPERSON: Were you told anything 22 about what they proposed doing before that? 23 GENERAL PHIYEGA: No, I have never asked 24 for those details, Chairperson. 25 CHAIRPERSON: I see. You did have a</p>

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1 conversation with her on Tuesday, the 14th, didn't you, a
2 telephone conversation?
3 GENERAL PHIYEGA: I can check here,
4 Chairperson. Yes, Chair.
5 CHAIRPERSON: At 14:32, it's on the first
6 page, at 14:32:06 you had a conversation with her lasting
7 64 seconds, is that correct?
8 GENERAL PHIYEGA: Yes.
9 CHAIRPERSON: Now we have a recording of
10 her side of the conversation. It's exhibit JJJ192(bis)
11 and on the first page this is what has been transcribed.
12 Now admittedly this is only her talking to you, we don't
13 know when, what your answers were.
14 GENERAL PHIYEGA: Must I read it on the
15 screen?
16 CHAIRPERSON: We have it on the screen.
17 It starts actually at three lines from the foot of the
18 page. Could we have – a little further down, a little
19 further down, further down. Just after the "Yes okay," the
20 bottom of the screen at the moment is "Yes okay." Just
21 below that, "Interruption by telephone call." This is now
22 General Mbombo or Provincial Commissioner Mbombo talking.
23 "Yes General, yes general I am still well General, I was
24 just going to call you and give you a rundown feedback.
25 [09:52] Can you give me an hour, General, because we are

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1 moving in and maybe after an hour I can give you a feedback
2 in terms of what will have transpired. No, it's still
3 quiet, but we just got information just now they are once
4 again mobilising on other side whilst in that mountain. I
5 was there. There are about 800 to 1 000 that are there.
6 So we're thinking whilst they are at that number we can
7 maybe circle them around, but they're once again mobilising
8 on the other side, they say the western side. So we just
9 wanted to observe, but I'll come back to you in an hour's
10 time. Alright, thanks. Bye." Remember that conversation?
11 GENERAL PHIYEGA: It would have been one
12 of the feedback conversations, yes.
13 CHAIRPERSON: And did she come back to
14 you?
15 GENERAL PHIYEGA: I do not recall, Chair.
16 CHAIRPERSON: According to your telephone
17 list you had a conversation with her for 303 seconds at
18 18:20, near the top of the second page. Do you remember
19 that conversation?
20 GENERAL PHIYEGA: Chair, yes, the call
21 should have taken place, yes.
22 CHAIRPERSON: Can you remember what was
23 said?
24 GENERAL PHIYEGA: Chairperson, I've said
25 already earlier on that I've had a lot of conversations,

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1 but I wouldn't be able to recall that one specifically.
2 CHAIRPERSON: I see. Because I must say
3 I would have expected her to have told you what the plan
4 was. I've told you what the plan was according to the
5 evidence we received. I would have expected her following
6 up the conversation of which we've had her side on the
7 transcript, I would have expected her when she phoned you
8 later to have told you what I've just put to you, but you
9 can't remember that at all. Is that fair?
10 GENERAL PHIYEGA: The detail,
11 Chairperson. I acknowledge that she could have come back.
12 There's a lot that has been discussed about this process of
13 Marikana, but to say to you, Chair, that I recall the
14 details of that 303 in the midst of these many calls, I can
15 no longer package them in that fashion.
16 CHAIRPERSON: Alright. Of course you
17 wouldn't have had that difficulty in remembering the call
18 on the 15th because it had only taken place the day before.
19 GENERAL PHIYEGA: Chairperson, I'm
20 honest, I really do not want to lie to the Commission –
21 CHAIRPERSON: No, no, forgive me, I'm not
22 asking you now to say something you can't remember. That's
23 the last thing I want you to do, but what I'm putting to
24 you is that on the 15th at that meeting on the Wednesday
25 evening you would have been in a much better position to

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1 remember what General Mbombo had told you the night before
2 in that five-minute conversation that we've seen took place
3 after 6 o'clock. That's correct, isn't it? You may have
4 had lots of phone calls, but surely the Marikana situation
5 was a very serious one and a report you had received from
6 the Provincial Commissioner the day before is something you
7 still would have remembered then, surely?
8 GENERAL PHIYEGA: Chairperson, what I'm
9 saying is indeed what we would have, what she would have
10 given me feedback would have been what is happening in
11 Marikana.
12 CHAIRPERSON: And not the plan –
13 GENERAL PHIYEGA: And if we had a meeting
14 on the 16th those issues would still be the same and if she
15 comes on the 16th to say we are planning now to go and
16 disarm, because we haven't disarmed them, it would still be
17 a continuation of a discussion.
18 CHAIRPERSON: Yes, yes, alright, well
19 I've put the question to you. Now the difficulty that
20 arose on the Wednesday night was this; the information that
21 I think you had was there was an indication from Mr
22 Mathunjwa of AMCU that the strikers might be prepared – I
23 think he may have put it even more strongly than that,
24 probably would have been prepared to lay down their arms on
25 the Thursday morning, but it was indicated that that

<p style="text-align: right;">Page 37403</p> <p>1 wouldn't happen until after 9 o'clock because he was going 2 to go back to the koppie to speak to the strikers at 9 3 o'clock. Now were you told that by the Provincial 4 Commissioner? 5 GENERAL PHIYEGA: That conversation did 6 come at some point. 7 CHAIRPERSON: Alright. Now you see that 8 gives rise to a problem because if the plan was as I 9 summarised it to you, to have a tactical option at daybreak 10 when there are a few people on the koppie who can be dealt 11 with fairly easily, putting wire around them, and then to 12 deal with others as they approached, because the evidence 13 was that most of these strikers used to go home at night, 14 come back in the morning, go home for lunch and come back 15 in the afternoon, go home again at night. So if you go 16 early in the morning, put wire around the koppie, deal with 17 the few people who are there and then deal with the others 18 as they come, that as I've said was a relatively risk-free 19 way of proceeding. But you couldn't do that later in the 20 day when there were already well over a thousand, possibly 21 2 000 people on the koppie. So that plan wouldn't work. 22 That's what Lieutenant-Colonel Scott conceded in his 23 evidence. Now if you could only know on Thursday at some 24 stage after 9 o'clock whether they were going to lay down 25 their arms or whether you'd have to go to the tactical</p>	<p style="text-align: right;">Page 37405</p> <p>1 Commissioner Petros from Gauteng, who'd actually been with 2 you there on the Monday night, and if anyone of them had 3 said but this isn't a good idea to proceed tomorrow, you 4 must rather wait a bit, she would have listened to that and 5 not proceeded with the decision to proceed the next 6 morning. 7 Now you see what interests me is that this 8 meeting took up to an hour, so what was discussed? That's 9 what I'm trying to find out. It's very important for us to 10 know why the decision was taken to proceed on the Thursday 11 morning, why that bore the approval, as it apparently did 12 because it was endorsed, by those present at that meeting. 13 We've tried to ascertain whether a tape is available of 14 what was said, the proceedings are normally taped, but 15 we've run into a brick wall as far as that's concerned. I 16 won't debate that with you. But it's important for us to 17 find out what exactly was said. Now you say one thing you 18 can say is she didn't mention the problems that I've 19 summarised to you. That's correct, is it? 20 GENERAL PHIYEGA: Yes. 21 CHAIRPERSON: Alright, and I've already 22 told you I thought she would have been under a duty to have 23 done that, but she didn't do that. Did she at any stage 24 mention the possibility of postponing the operation till 25 the Friday morning when they could have possibly acted in</p>
<p style="text-align: right;">Page 37404</p> <p>1 option, that plan could not be implemented on the Thursday. 2 Did you know that? 3 GENERAL PHIYEGA: I don't know that, 4 Chairperson – 5 CHAIRPERSON: You did not know that? 6 GENERAL PHIYEGA: - believe me. 7 CHAIRPERSON: You did not know that? 8 GENERAL PHIYEGA: No. 9 CHAIRPERSON: Alright, so I must tell you 10 that I would have expected the Provincial Commissioner to 11 have conveyed that to you and your colleagues who were at 12 that meeting, but you say she failed to do so? 13 GENERAL PHIYEGA: It was not the plan to 14 discuss the plan, Chairperson. I have said that earlier 15 on. The meeting did not discuss the plan. It wasn't the 16 forum for it. 17 CHAIRPERSON: Ja, but what the meeting 18 did do according to the minutes was it endorsed her 19 proposal to move to the tactical option the next day. She 20 herself said, I must tell you, that they were, she conceded 21 very readily that tactical operations weren't her forte. 22 That wasn't her field of experience. Her field of 23 experience is more financial administration and she said 24 that there were a number of seasoned operational people 25 present there that night, including I think Provincial</p>	<p style="text-align: right;">Page 37406</p> <p>1 this relatively risk-free at daybreak? Was that mentioned 2 by her at all? 3 GENERAL PHIYEGA: I do not recall that, 4 Chair. I don't remember that. 5 CHAIRPERSON: So you can't remember 6 whether she mentioned the possibility of postponing the 7 operation until sunrise on the Friday, alright. Now what 8 I'd like to know is I'd like to know what everybody who was 9 there said, so far as you can remember it. It was a very 10 important meeting, the kind of meeting I would imagine you 11 would have thought about again after the catastrophe the 12 next day. What did you say during the discussions? 13 GENERAL PHIYEGA: Chairperson, as I've 14 said we had a briefing about the situation. Questions were 15 asked. We discussed the resourcing and that was the 16 purpose of the meeting and then we endorsed her plan to do 17 whatever, and in each of the circumstances really she has 18 people that are operationally seasoned as she said, who 19 would have done the plan in the province, in the JOC, and 20 all those things. So I think the best, the background of, 21 the backdrop of that meeting was that if there are any 22 specific plans to be done she would have done that with her 23 people. We did not discuss the plan. 24 CHAIRPERSON: Did any of the generals who 25 were there who were experienced in operations enquire how</p>

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1 the disarming was to be effected?
 2 GENERAL PHIYEGA: As I say, Chairperson,
 3 we had people from operations and the question of disarming
 4 and whatever, it's a known process and when somebody says
 5 we're going to encircle, disarm, it's a known process. Any
 6 policeperson would know what to do in terms of their own
 7 prescripts and protocols. I don't remember us, you know,
 8 really going into detail around those type of aspects.
 9 CHAIRPERSON: Details is one thing, but I
 10 must tell you that I would have expected experienced
 11 policemen to have enquired about this particular operation.
 12 This isn't just a simple disarming operation. Here were
 13 3 000 people. There's a debate as to how many of them had
 14 dangerous weapons, but at least 400 of them had dangerous
 15 weapons. As your meeting was taking place General Mpembe
 16 was saying to Mr Zokwana of NUM that it would be a very
 17 dangerous thing to try to disarm, as he put it, disarm a
 18 man with an axe if you're armed with a rifle. It will be a
 19 very dangerous thing to do without the serious risk of
 20 bloodshed. This is why he suggested another way forward,
 21 but let's not debate that. You know nothing about that,
 22 but he obviously was concerned that it wasn't just a simple
 23 disarming process that could be done without any trouble.
 24 So what I asked you that you haven't quite
 25 answered yet, let me repeat the question. Did any of the

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1 generals there who were experienced in operations enquire
 2 not necessary for details, but enquire how the disarming
 3 was to be effected in a way which was not likely to lead to
 4 bloodshed?
 5 GENERAL PHIYEGA: Chair, as I've already
 6 indicated the conversation about disarming and all those
 7 that took place, those type of details of whether there was
 8 enquiry, the plan we did not discuss. The modus operandi
 9 of disarming and whatever could have been a conversation,
 10 but I don't recall really specifically around that, because
 11 at that point in time I'm sure even your memory is not
 12 grasping that. It's a conversation trying to understand
 13 what is happening in an environment, what is going to be
 14 done, and what one can clearly said was that we supported
 15 and endorsed their plan to disarm the protesters.
 16 CHAIRPERSON: Are you telling this
 17 Commission that not one of those experiences general,
 18 Masemola and Mawela from head office, all the other
 19 provincial commissioners, not one of them enquired whether
 20 there were any risks, raised a note of caution about the
 21 possibility of bloodshed, mentioned the furor that had
 22 arisen as a result of the killing of Mr Tatane? Did nobody
 23 raise any cautionary note at all about the risk of
 24 bloodshed? Is that what you're telling this Commission?
 25 GENERAL PHIYEGA: That is not what I'm

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1 telling this Commission, Chair. I'm saying that –
 2 CHAIRPERSON: What are you telling us
 3 then –
 4 GENERAL PHIYEGA: I've said this,
 5 Chairperson, the issue of disarming the protesters was
 6 discussed. The detail of what was asked I don't have it,
 7 Chairperson. I don't have it in my head recorded in that
 8 narrative sense that you are asking from me. The issue of
 9 disarming the protesters was discussed and was endorsed,
 10 but what you are asking of me is to have a photographic
 11 memory of saying what happened. I don't have it.
 12 CHAIRPERSON: No, I'm afraid I'm not
 13 communicating to you properly what interests me. Perhaps I
 14 must ask again. I wouldn't have thought that the risk of
 15 bloodshed, the risk of death in the course of the operation
 16 would have been simply described as a detail which doesn't
 17 have to be considered further. That wouldn't have been a
 18 detail. That surely would have been a fundamental matter
 19 which should have been considered by people asked to
 20 endorse the proposal, asked to make resources available so
 21 that the proposal could be implemented. Now are you saying
 22 it wasn't discussed, it was simply a detail that could be
 23 disregarded? Surely that's not what you're telling us.
 24 GENERAL PHIYEGA: Chairperson, I think to
 25 say it's simply a detail is stating it lightly. I'm not

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1 taking anything light. We had a very serious discussion
 2 and we considered the proposal that had been put on the
 3 table. As to whether it was asked in the fashion that you
 4 are putting it, I am saying I cannot recall in that detail.
 5 That's what I'm saying, Chair.
 6 CHAIRPERSON: I see. Alright, now you
 7 see there's a further problem about that. It wasn't just a
 8 simple POPS disarm and disperse operation because we know
 9 and you knew at the time that a significant number of TRT
 10 people, NIU people and STF people were present and were
 11 taking part in the operation. Is that correct?
 12 GENERAL PHIYEGA: Yes, Chair.
 13 CHAIRPERSON: Alright, so I can
 14 understand routine disarmament and dispersal operations.
 15 Those you don't go into detail. That's follow the ordinary
 16 course. But this was, everyone concedes, a unique event in
 17 South African policing history. This was a problem, and to
 18 be fair one's got to be aware of that all the time, this
 19 was a, some people had said the police failed because it
 20 was something they'd never experienced before and in a
 21 sense one can understand that and sympathise with that.
 22 But this wasn't a routine thing. This was, since 1994 this
 23 was the most important disarmament operation of a kind that
 24 the police had ever taken part in. Isn't that correct?
 25 GENERAL PHIYEGA: It is very correct,

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1 Chair.

2 CHAIRPERSON: There had already been

3 problems, serious controversy arising because of the death

4 of one person, Mr Tatane. So if this operation had

5 involved the death of even a dozen strikers that would have

6 been regarded as a very serious matter, wouldn't it?

7 GENERAL PHIYEGA: I agree, Chair.

8 CHAIRPERSON: Now surely someone of these

9 experienced people who were there must have raised up his

10 hand and said let's be careful, let's just look at it

11 objectively and carefully to make sure that nothing doesn't

12 go badly wrong. Are you saying none of them did that?

13 GENERAL PHIYEGA: Chairperson, I have

14 tried to give my position on that one and I want to also

15 indicate that we should recall that as we were meeting

16 there was a whole setup that was managing the operation

17 there. As you've already indicated in your earlier

18 question to me, General Mbombo talks about very skilled

19 people in operations that are meeting to manage the

20 operation in Rustenburg as we are sitting here in Midrand.

21 You mentioned the issue of General Mpembe talking to other

22 people. As we talk around this briefing, around this

23 situation, around resourcing, there's a team that is

24 managing what is happening on the ground, Chairperson, and

25 that backdrop is very important because we are comfortable

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1 as leaders that there are people who are managing what is

2 taking place, who are taking feedback, who are listening,

3 who are endorsing, because the nitty-gritty of the plan is

4 sitting where the operation is taking place.

5 CHAIRPERSON: Yes, well we'll deal with

6 that matter in a moment, but I'm not interested in whether

7 you knew the nitty-gritty, as you put it. I'm interested

8 in, as I've told you I'm trying to find out what happened

9 in the course of discussion because it was a very, very

10 important discussion as it turned out. Now the fact that

11 the proposal was endorsed by this meeting, the fact that

12 the people there all agreed to make resources available as

13 required, surely means that they cannot evade

14 responsibility and say we knew about the plan, we said

15 sure, go ahead, we endorse it, we'll make resources

16 available, but if it goes wrong because it was managed

17 badly or it was defective in the planning, that's nothing

18 to do with us. Surely there comes a time when

19 responsibility must rest with those people at that meeting

20 as well? They can't just say well the people on the spot,

21 they must carry the can, they're responsible for what

22 happened. You people endorsed the proposal, agreed to make

23 resources available. You cannot surely evade

24 responsibility. To be fair to you, I don't suggest that

25 you are saying that, but if it's correct that they had the

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1 responsibility, would have had the responsibility, I must

2 tell you I would have expected at least one or two of them

3 to have said hang on a second, let's just interrogate this

4 proposal, let's just see it doesn't go badly wrong, leave

5 us with terrible problems and responsibility for something

6 that we don't want to happen. You're saying you can't

7 remember anybody doing that?

8 GENERAL PHIYEGA: Chairperson, I've –

9 CHAIRPERSON: Is that fair?

10 GENERAL PHIYEGA: I think I've indicated

11 that the details of the discussion, unfortunately my mind

12 doesn't take me that far. The discussions around the plan

13 to encircle and to disarm those people, there was a

14 discussion about disarming those people, but the details,

15 Chairperson, as you are asking me to respond to, I am not

16 able to give that detail.

17 CHAIRPERSON: Well you and I, I think

18 will have to agree to disagree on the question of whether

19 I'm asking you about detail or something else. But anyway,

20 I've asked you what you said. Can you remember what you

21 said? Not the whole thing obviously, but can you give us a

22 sort of one or two sentence summary of what you said?

23 GENERAL PHIYEGA: What I said was that we

24 are gathered to get feedback from General Mbombo, briefing

25 on what is happening in Marikana, because it was a

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1 situation that was concerning all of us. She gave us that

2 feedback. She shared with us what their plans are in terms

3 of disarming the protesters, it was furnished for us to say

4 how do you manage a public order situation where people are

5 armed the way they are armed.

6 [10:12] Because it makes it difficult for you to do your

7 normal work. And then because there were needs for more

8 people, the numbers that you are talking about, 3000 people

9 at the koppie and every day those processes we were talking

10 about, how we're going to give additional support in terms

11 of water canons, additional people, all those types of

12 issues. And when they can be released to go and give

13 support.

14 CHAIRPERSON: All right, there were some

15 further aspects about this situation which made it

16 unprecedented, in the run up to the events of the 16th we

17 know that 10 people had died, three strikers and some

18 others. Now that also indicated a number of things didn't

19 it? Amongst other things it indicated the kind of people

20 you were dealing with, people who didn't hesitate,

21 according to the information you had, to murder others

22 because they were participating in an unprotected strike.

23 You must have known that surely.

24 GENERAL PHIYEGA: Yes I did.

25 CHAIRPERSON: You were dealing with

<p style="text-align: right;">Page 37415</p> <p>1 people who were likely to put up a fight and were in 2 possession of dangerous weapons, in fact some firearms 3 also, so the chances of managing this operation without 4 bloodshed even on a relatively large scale were quite great 5 weren't they? 6 GENERAL PHIYEGA: True, Chairperson. 7 CHAIRPERSON: Did no one sound a – you 8 say you can't remember anyone sounding a cautionary note on 9 that with that many detail it wouldn't have stayed in your 10 mind, is that what you're telling us? 11 GENERAL PHIYEGA: Because I said it was 12 difficult situation, Chairperson, the armed protestors and 13 all that history would definitely have influenced our 14 discussions because we wanted to [inaudible] disarming and 15 we knew that they had to be disarmed because we can already 16 see that the other deaths, there is violence in this 17 protest. And this is why we wouldn't have mobilised 18 anybody if there wasn't a need to give support. We 19 mobilised because we could deal – we were noticing the 20 issues that you are mentioning as an organisation. 21 CHAIRPERSON: Who raised these points? 22 We know that the senior officer in charge of operation 23 responses was present at your meeting, is that right? 24 GENERAL PHIYEGA: Yes senior officers - 25 CHAIRPERSON: General Annandale, Major-</p>	<p style="text-align: right;">Page 37417</p> <p>1 I don't have to debate that with you. But you can't tell 2 me what General Mawela said, can you remember what General 3 Masemola said? 4 GENERAL PHIYEGA: I don't recall. 5 CHAIRPERSON: And I won't go for them 6 all, but there's one person I'm interested in particularly 7 and that's Major-General Petros, sorry Lieutenant-General 8 Petros. He was the Provincial Commissioner of Gauteng, 9 he'd actually been to Marikana with you on the Monday and 10 he'd spoken to the members of the SAPS who there and also 11 had been present, I think, when you spoke Lonmin. That's 12 correct isn't it? 13 GENERAL PHIYEGA: Yes, Chair. 14 CHAIRPERSON: Did he take part in the 15 discussion? 16 GENERAL PHIYEGA: He probably did because 17 he was part of that meeting, but I would not recall what he 18 said. 19 CHAIRPERSON: I see. Now I just want to 20 make one thing clear, I think it's implicit in what you're 21 saying, I just want to get one thing clear, I think it's 22 implicit in what you've said already, I just want to make I 23 don't misunderstand you. Are you seriously suggesting that 24 the meeting endorsed the proposal without knowing what the 25 details of the operation were.</p>
<p style="text-align: right;">Page 37416</p> <p>1 General Annandale was at Marikana, but his immediate 2 superior was at your meeting. 3 GENERAL PHIYEGA: Correct, Chair. 4 CHAIRPERSON: Was that General Masemola 5 or General Mawela? 6 GENERAL PHIYEGA: General Mawela, Chair. 7 CHAIRPERSON: We know he spoke at the 8 meeting because the Provincial Commissioner told us that, 9 what did he say? 10 GENERAL PHIYEGA: I don't recall, Chair, 11 we spoke as a team. You are asking me for the details, I 12 cannot be able to say to you Riah said this, this one said, 13 I'm not able to say. I know we had a discussion. 14 CHAIRPERSON: Yes all right. This was a 15 very important meeting, we know that. 16 GENERAL PHIYEGA: I do know, yes. 17 CHAIRPERSON: Very skeletal minutes were 18 kept. 19 GENERAL PHIYEGA: I beg your pardon. 20 CHAIRPERSON: Very skeletal minutes were 21 kept, there were note made of who said what during the 22 debate, that's not available to us. It's good practise 23 normally to record, tape record meetings, but we tried to 24 get hold of a tape and as I say we've run into a brick wall 25 about that. There's a debate whether there was a tape, but</p>	<p style="text-align: right;">Page 37418</p> <p>1 GENERAL PHIYEGA: That is not my response 2 to you, Chair. 3 CHAIRPERSON: What is your response? 4 GENERAL PHIYEGA: My response to you is 5 that we were briefed about the situation, we were advised 6 about the action that was going to take place. There were 7 engagements, but I cannot recall in detailed things what 8 the responses and the inputs were and we also discussed 9 resourcing, but right now, Chair, I won't be able to tell 10 you unless I go to the records to say who gave the water 11 canon and how many people came from where. It's what I'm 12 saying to you, Chair, that that detail is not quite what is 13 in my mind and because we didn't record I do not – I'm not 14 able to say Phiyega said this, Mawela said, I'm not able to 15 say that. 16 CHAIRPERSON: I must tell you my 17 understanding is that water canons had already been 18 arranged, but sorry – yes one extra water canon came on 19 Thursday, that's a detail they inferred me to ask you 20 about. But what I want to know from you, I'm not 21 interested in details, but did anybody ask for some kind of 22 assurance that the risk of bloodshed had been adequately 23 considered and that measures were in place to ensure that 24 if there was bloodshed it would be kept to the minimum? 25 GENERAL PHIYEGA: Chairperson, that</p>

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1 detail, as I say, I'm not able to say yes or no to because
2 I'll be doing some injustice because you'd want me to say
3 who was saying that, I don't know. That discussion must
4 have taken place because we were discussing this disarming
5 and whatever, I'm not able to give those pedantic details,
6 Chairperson.

7 CHAIRPERSON: Well I want to make two
8 points to you. One it's not a pedantic detail. The second
9 point is that you wouldn't be doing an injustice to the
10 person who raised the problem, you'd be doing the opposite,
11 but you can't help me on that. Now the next thing I want
12 to ask you about is, the next topic I want to ask you about
13 is something that occurred at Roots or more accurately it
14 didn't occur at Roots. Was the fact that this decision
15 that we're talking about, the endorsement or proposal, the
16 undertaking to make extra resources available was discussed
17 for up to an hour at your meeting on the Wednesday before
18 the shootings on the Thursday, was that fact mentioned at
19 all at the meetings at Roots?

20 GENERAL PHIYEGA: I don't understand your
21 question, Chair. Can you repeat your question?

22 CHAIRPERSON: Yes of course. We were
23 told in the course of the sittings of the Commission that
24 any previous evidence that we heard it was indicated that a
25 decision was taken to proceed with the operation option on

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1 the Thursday was no longer the SAPS case. And the SAPS
2 case now was that the decision was taken the Wednesday by
3 the Provincial Commissioner and was endorsed at this
4 meeting. And that's what we were told here. Now what I
5 want to know from you is the fact that there was this
6 discussion at the extraordinary session of the NMF or the
7 ad hoc meeting of those left behind, whatever phrase you
8 want to use. And this proposal was endorsed and
9 undertakings were given to make additional resources
10 available. Was that mentioned at all, was that disclosed
11 to the participants in the Roots conference?

12 GENERAL PHIYEGA: Chairperson, I think
13 maybe let me just step back. I have already indicated that
14 at the Resource in Rustenburg there are people who are
15 operating, who are planning. I take it that the commander
16 of the province would then have said that to those that she
17 is working with. At Roots the disclosure I don't
18 understand the question you are asking to say was it
19 disclosed at Roots because that support would have already
20 been part of the operations that are taking place in the
21 province the following day.

22 CHAIRPERSON: Well I don't know why you
23 can't understand the question, but I must accept the blame
24 for not asking it with sufficient clarity. We know that,
25 because the Provincial Commissioner told us this, that she

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1 did tell General Annandale and she did tell General Mpembe
2 and she did tell General Naidoo. That she told us. She
3 told them that very evening, she phoned them after the
4 meeting, but a number of the people who took in the
5 operation who were asked about it they said they didn't
6 know about the decision on the Wednesday night, including
7 Colonel Scott. He said he didn't know about it. He heard
8 about it much later. So the question I'm asking you is was
9 it disclosed at Roots, as far as you were aware, obviously
10 you weren't at all the sessions at Roots, you attended some
11 of them I understand, but as far as you're aware was that
12 decision, the endorsement to that proposal, whatever
13 expression you want to use, was that disclosed to the
14 people at Roots in your presence, to your knowledge.

15 GENERAL PHIYEGA: Chairperson, Roots you
16 mean an after the fact meeting, is that what you are
17 talking about?

18 CHAIRPERSON: No it's a meeting that you
19 had at Roots that took place over several days, I've got an
20 idea it was about three weeks, but I may wrong on that, at
21 which the SAPS presentation before the Commission was being
22 compiled, put together was exhibit L. And the evidence is
23 that in fact you saw exhibit L before it was finalised. Do
24 you agree with that?

25 GENERAL PHIYEGA: Yes, Chair.

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1 CHAIRPERSON: Right. Now was what was
2 going on at Roots when people were involved in the various
3 aspects of the operation, they went into separate sessions.
4 They came to plenary session and there were report backs
5 and Colonel Visser I think it was, was responsible for
6 recording what was said. It was a lengthy process designed
7 to prepare the SAPS case before this Commission. So now
8 you are reminded what Roots was and you there some of the
9 time and you saw the draft of L before it was finalised to
10 put it that way, SAPS presentation. Now what I want to
11 know is to your knowledge was the fact that this matter was
12 discussed at the meeting on this Wednesday night and this
13 decision was taken, this proposal was endorsed, agreement
14 was made to make resources available. Was that
15 communicated to anybody at Roots to your knowledge in your
16 presence or even in your absence if you were told about it
17 later. The answer to that is either yes or no.

18 GENERAL PHIYEGA: Chair, the import of
19 the question you are asking is that post the discussion
20 we'd have had with General Mbombo surely she would have
21 discussed with the Generals or the people that are in
22 charge of the operation in the province. And that would
23 have been around the 15th or the 16th. Roots is after the
24 fact, so I wouldn't see discussion of that as a disclosure,
25 it would be continuation of discussion, but I'm not even

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1 sure whether you know that matter – I wouldn't recall
 2 whether we were discussing it as a disclosure or as a
 3 matter for information. It would have been a matter of
 4 fact because those that operated would have known that we
 5 met on the 15th and on the 16th the operation continued. So
 6 it wouldn't be a new thing in Roots.
 7 CHAIRPERSON: So it sounds to me – I hope
 8 I won't be accused of unfairly summarising your answer.
 9 Firstly you don't like the word disclosure because you
 10 think it wasn't necessary to disclose because it had been
 11 disclosed certainly to General Annandale and General Mpembe
 12 and General Naidoo on either the evening of the 15th or on
 13 the 16th.
 14 GENERAL PHIYEGA: Because, Chair, it
 15 wasn't a secret.
 16 CHAIRPERSON: Yes, yes I know, but what
 17 you're also telling me is that you cannot say that it was
 18 even discussed in your presence at the Roots meeting, Roots
 19 conference. I think that's a fair summary of what you
 20 said. Do you agree with me?
 21 GENERAL PHIYEGA: I'm not sure, Chair,
 22 whether it was discussed on that day when I was at Roots.
 23 CHAIRPERSON: All right. Now you also
 24 said, however, that you saw exhibit L before it was
 25 finalised.

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1 GENERAL PHIYEGA: Yes, Chair.
 2 CHAIRPERSON: I take it you gave your
 3 approval to what was in it. If there had been something in
 4 it that you didn't like you'd have said so or something
 5 that was left out that you thought should have been put in
 6 you'd have said so too. Is that fair?
 7 GENERAL PHIYEGA: Yes if something that's
 8 not here I would have said so and if it had been a document
 9 that could be improved or be – done other things –
 10 CHAIRPERSON: Yes, yes I know that, but
 11 it was actually shown to you before it was finalised wasn't
 12 it? That wasn't just for interest sake I take it, so you
 13 could come with inputs, you could say that's wrong or that
 14 is something that is important that you haven't mentioned.
 15 You could have done that couldn't you?
 16 GENERAL PHIYEGA: It is true. If I'd
 17 seen something I'd sort of –
 18 CHAIRPERSON: All right, so clearly by
 19 implication you approved it.
 20 GENERAL PHIYEGA: Chairperson, to put it
 21 to say I approved it, approval and endorsing are two
 22 different things.
 23 CHAIRPERSON: All right well let me then
 24 put the question in the negative. You didn't disapprove
 25 it.

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1 GENERAL PHIYEGA: I did not disapprove
 2 it.
 3 CHAIRPERSON: Okay that's enough for me.
 4 Now there's no mention in exhibit L of the meeting of the
 5 Wednesday night, of a decision taken, a proposal was
 6 endorsed, agreement to make resources available. Why was
 7 that?
 8 GENERAL PHIYEGA: But, Chair, I've
 9 already said earlier on when you asked me to say that type
 10 of feedback would have been given to the operating people
 11 and General Annandale and General Mpembe would have known
 12 about feedback from General Mbombo, so for me it wouldn't
 13 have been a new thing to be included or to be excluded. If
 14 it's an omission, it's an omission.
 15 CHAIRPERSON: Yes, yes I understand that.
 16 It's very nice that General Annandale and General Mpembe
 17 and General Naidoo knew about it, but it wasn't so nice
 18 that the Commission didn't know about it, the Commission
 19 wasn't told about it and it only came to light after a
 20 considerable time had lapsed in the course of the sessions
 21 of this Commission. So now I ask you again, you, the
 22 National Commissioner was shown this presentation before it
 23 was finalised did not consider it appropriate for something
 24 to be put in that presentation which alerted this
 25 Commission to the fact of the meeting on the Wednesday

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1 night and the decision that was taken, proposals endorsed
 2 and so forth. Can you explain that?
 3 GENERAL PHIYEGA: Chairperson, what I can
 4 say to you is that it was never a secret, never intended to
 5 be one. If it's an omission, it's an omission.
 6 CHAIRPERSON: Look I hope you won't take
 7 umbrage if say this, it certainly appeared to be a secret
 8 to us until it came out at a later stage. But I see it's
 9 now half past ten. I suggest we take the first comfort
 10 break at this stage and I have a few more questions for you
 11 when we resume.
 12 GENERAL PHIYEGA: Thank you.
 13 CHAIRPERSON: 15 minutes.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [10:53] CHAIRPERSON: The Commission resumes.
 16 National Commissioner, you're still under oath.
 17 RIAH PHIYEGA: (s.u.o.)
 18 CHAIRPERSON: We were busy with the
 19 exhibit L and the fact that it doesn't mention the meeting
 20 on the decision and so on, on the Wednesday night and you
 21 seem to think that the fact that General Mpembe knew about
 22 it and General Annandale knew about it was enough, it
 23 wouldn't be a secret, but I'll give you an opportunity
 24 again because I don't understand your answer. Can you
 25 suggest any reason why that meeting and the decision was

<p style="text-align: right;">Page 37427</p> <p>1 not communicated to this Commission?</p> <p>2 GENERAL PHIYEGA: Chairperson, I do not</p> <p>3 think that the non-communication could have been an</p> <p>4 omission but I don't think that it was any, anything</p> <p>5 untoward, avoiding any other thing and that would be my</p> <p>6 submission to this Commission.</p> <p>7 CHAIRPERSON: Thank you. Now, you see</p> <p>8 not only was it not mentioned in exhibit L, I understand it</p> <p>9 wasn't part of the police hard drive either. The police</p> <p>10 made a hard drive available of all the material that they</p> <p>11 considered relevant to our work. It didn't contain that</p> <p>12 either. I take it you don't know whether that was done or</p> <p>13 not.</p> <p>14 GENERAL PHIYEGA: Your question again,</p> <p>15 Chair?</p> <p>16 CHAIRPERSON: Well, you see in addition</p> <p>17 to exhibit L which is the police presentation which we</p> <p>18 discussed before the comfort break, the police also</p> <p>19 provided us with what we've called the police hard drive</p> <p>20 which contained all the documents which they thought would</p> <p>21 be relevant to us in our work and that didn't contain</p> <p>22 anything about that meeting, it didn't contain the minutes</p> <p>23 and so on. I take it you can't tell us why that was so.</p> <p>24 It wouldn't be fair of me to ask you that, am I correct?</p> <p>25 GENERAL PHIYEGA: Chairperson, I think in</p>	<p style="text-align: right;">Page 37429</p> <p>1 of full co-operation.</p> <p>2 GENERAL PHIYEGA: I do not agree with</p> <p>3 you, Chair, because as I I've already indicated it could</p> <p>4 have been an omission and when we were needed to submit, we</p> <p>5 did so, Chair. So I would not agree with you that we were</p> <p>6 not co-operating with the Commission.</p> <p>7 CHAIRPERSON: We had to know about it</p> <p>8 before we could ask for it and we only heard about it</p> <p>9 through an independent source but anyway, I won't debate</p> <p>10 that with you further. You are now seriously stating that</p> <p>11 we would be in error if we were to find that the failure to</p> <p>12 mention that meeting and the decision to us was not</p> <p>13 something which could be regarded as falling short of the</p> <p>14 obligation of full co-operation which rests on the police.</p> <p>15 We would be wrong if we were to find that, is that what you</p> <p>16 say?</p> <p>17 GENERAL PHIYEGA: Yes, Chair, you would</p> <p>18 be wrong because it remains our commitment to fully co-</p> <p>19 operate with this Commission.</p> <p>20 CHAIRPERSON: Let's move on to another</p> <p>21 matter. The police expert Mr De Rover gave evidence last</p> <p>22 week and I want to ask you this, a number of questions</p> <p>23 about what he said and his role. Was the fact that this</p> <p>24 meeting took place and this decision was made originally</p> <p>25 disclosed to Mr De Rover as part of his briefing?</p>
<p style="text-align: right;">Page 37428</p> <p>1 the spirit of sharing documentation between the</p> <p>2 organisation and the Commission, that has been ongoing.</p> <p>3 Any outstanding issue that was asked for, we could go and</p> <p>4 search for that and make it available. As I've said,</p> <p>5 Chairperson, I do not believe that there was anything</p> <p>6 untoward in terms of that matter and when we were requested</p> <p>7 to do so, we did submit.</p> <p>8 CHAIRPERSON: We had to know about it</p> <p>9 before we could ask about it and – anyway, but that's not a</p> <p>10 matter I need debate with you further, I've put the point</p> <p>11 to you. Now I want to ask you something else. You'll</p> <p>12 remember that when the Commission was appointed you gave an</p> <p>13 undertaking, I take it I can fairly call it a solemn</p> <p>14 undertaking on behalf of the SAPS to co-operate fully with</p> <p>15 the Commission, is my recollection correct?</p> <p>16 GENERAL PHIYEGA: You are very correct,</p> <p>17 Chair.</p> <p>18 CHAIRPERSON: Would you agree with me</p> <p>19 that the fact, whether it was an omission is something that</p> <p>20 can be considered later separately but would you agree with</p> <p>21 me that in fact the failure to tell us anything about that</p> <p>22 meeting on the Wednesday night, so we had to hear about it</p> <p>23 from an independent source before we knew to ask the</p> <p>24 question, questions we did, that the failure to do that</p> <p>25 fall, doesn't square with the implementation of the promise</p>	<p style="text-align: right;">Page 37430</p> <p>1 GENERAL PHIYEGA: I do not recall, Chair,</p> <p>2 but I don't believe that it was necessary even to go into</p> <p>3 those details because he was looking at everything and he</p> <p>4 would have found it because it was never a hidden thing, in</p> <p>5 our opinion.</p> <p>6 CHAIRPERSON: Where would he have found</p> <p>7 it?</p> <p>8 GENERAL PHIYEGA: In his engagement with</p> <p>9 the organisation.</p> <p>10 CHAIRPERSON: But where?</p> <p>11 GENERAL PHIYEGA: In his engagement with</p> <p>12 those that were participating. He would have engaged with</p> <p>13 General Mbombo, he would have engaged with General</p> <p>14 Annandale, he would have engaged with any other person and</p> <p>15 those issues would be part and parcel of the discussion.</p> <p>16 CHAIRPERSON: I see. Well, I must tell</p> <p>17 you that he told us that it was, to use his word,</p> <p>18 "divulged" to him by a third party over a cup of coffee, as</p> <p>19 he put it and he then subsequently raised it with you and</p> <p>20 Generals Annandale and Mpmembe. Does that surprise you that</p> <p>21 it was only divulged to him by a third party over a cup of</p> <p>22 coffee and he then raised it after it had been so divulged?</p> <p>23 Does that surprise you? Wouldn't you have expected that to</p> <p>24 have been part of the basic instructions, instructions that</p> <p>25 he received?</p>

<p style="text-align: right;">Page 37431</p> <p>1 GENERAL PHIYEGA: It would surprise me, 2 Chairperson, because the divulging suggests that there is 3 conspiracy, there is a secret and I'm on record and I'm 4 putting it again on record, there was never a secrecy 5 around that matter. 6 CHAIRPERSON: Alright. Now I want to ask 7 you about some further matters which flow from Mr De 8 Rover's evidence. Now, he gave us evidence on Friday that 9 he was of the view that a decision of this nature, that's 10 the decision taken on the Wednesday night, must have been 11 preceded by an instruction from the executive and he said 12 that he raised that with you, is that correct? To be fair, 13 he didn't say that he had definite information that there 14 was such an instruction. He said he would have expected it 15 and he said what would've happened in his own country and 16 so on. So he was firmly of the view that a decision of 17 this magnitude could never have been taken simply either by 18 the Provincial Commissioner on her own or even by the 19 Provincial Commissioner backed or endorsed by all the other 20 Provincial Commissioners and you yourself and General 21 Masemola and General Mawela, and he said he raised that 22 with you. Can you, is that correct, did he raise it with 23 you? 24 GENERAL PHIYEGA: I don't recall that. 25 CHAIRPERSON: Surely you would have</p>	<p style="text-align: right;">Page 37433</p> <p>1 engagement with Mr De Rover, what would assist me is to 2 know what did he ask, what did he says I responded to? Is 3 he able to give us those details so that I can understand 4 what this evasiveness and this diplomacy is because you 5 can't just say something is diplomatic if you don't have 6 the details thereof. I would be, I would appreciate to be 7 privy of that detail and the conversation so that I can 8 apply my mind to that. 9 CHAIRPERSON: Let me give you the detail 10 that I can recall of what he said. He said he didn't 11 believe that a decision of this magnitude could have been 12 made by the police themselves. He would have expected, and 13 he says this was based on his understanding of what happens 14 in other countries, that it could never have been done 15 unless there was an executive order to that effect and he 16 also said an order from the judiciary. Well, I think the 17 position of the judiciary in Holland is different from 18 ours, so we can disregard that. Anyway, that's what he 19 said. Then he said he raised it with you and he raised it 20 with some of the other, some of the generals as well and I 21 asked him – I can't remember if I asked him, he certainly 22 gave the answer that he raised it with you and the answer 23 he got from you, he said was a diplomatic one. So I 24 endeavoured to investigate, interrogate that answer further 25 and I then said to him, was it an evasive answer and he</p>
<p style="text-align: right;">Page 37432</p> <p>1 remembered if he'd raised something like that? 2 GENERAL PHIYEGA: No, I don't recall 3 that, Chair – 4 CHAIRPERSON: But that would have been a 5 startling proposition, would it not? 6 GENERAL PHIYEGA: I am surprised that 7 this issue is being raised in this, I don't recall him 8 talking to me about political decisions, executive 9 decisions raised at a particular – I don't recall that 10 conversation. 11 CHAIRPERSON: I see, because he says that 12 he did raise it with you, he clearly remembers it or says 13 he does and when I asked him, well, what reply did you 14 give, he said well, it was a diplomatic reply. 15 GENERAL PHIYEGA: Hm. 16 CHAIRPERSON: That was his phrase. So I 17 then said what does it mean? Then I said, was it, would it 18 be fair to describe it as, could it be described as an 19 evasive reply and he said yes. So what I want, obviously 20 it doesn't seem as if you can help us. If you can't 21 remember that he raised it with you, you won't remember 22 what reply you gave and whether it was diplomatic or 23 evasive or whatever it was. Is that fair? 24 GENERAL PHIYEGA: Chair, I think the 25 important thing for me, because I was not privy to that</p>	<p style="text-align: right;">Page 37434</p> <p>1 said yes. Now, that's why I ask you the question. 2 Firstly, did he raise it with you because if he didn't 3 raise it with you, the point falls away. I understand you 4 say you can't remember whether he did or he didn't. So if 5 you can't remember if he did it, I take it, it follows you 6 can't remember what answer you gave if he did ask you, is 7 that fair? 8 GENERAL PHIYEGA: Chairperson, let me 9 deal with the issues that you've raised with me one by one. 10 One, you indicate in the statement that you are putting to 11 me to consider as I answer that Mr De Rover talks about 12 instruction from the judiciary. You overrule, you say the 13 judiciary, because of how we are structured, couldn't be 14 from the judiciary. He puts in the executive, in a similar 15 vein he – these are presuppositions, judiciary, executive, 16 evasive, diplomatic. I don't even have the sentence or the 17 response that I have given so that I can assess it for its 18 evasiveness and diplomacy. I don't recall. If at least he 19 had said so, I would be very interested, Chair, in looking 20 at what response – what did he say I said that is 21 diplomatic and evasive? 22 CHAIRPERSON: Before we get there, he 23 says he raised it with you and I must confess I was 24 startled when he gave the evidence and I also must put to 25 you I would have expected you to have been startled,</p>

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1 surprised, whatever word would be appropriate, if such a
 2 question were put to you. I'm surprised – obviously this
 3 is a prima facie view, I may be wrong but I must tell you I
 4 find it strange that you can't remember such a question
 5 being put to you, if it was put, but I understand your
 6 evidence to be you can't remember whether he asked you that
 7 question, so he may have done. Is that fair?
 8 GENERAL PHIYEGA: Chairperson, I'm
 9 startled by this. I don't remember.
 10 CHAIRPERSON: Alright. You don't
 11 remember his raising it, so therefore you obviously can't
 12 help us to know what answer you gave if he did raise it.
 13 That's also fair, there's no point in investigating it
 14 further, is that right?
 15 GENERAL PHIYEGA: Chair, Mr De Rover was
 16 here. I'm sure he should have said what I said and then I
 17 would respond to that.
 18 CHAIRPERSON: Alright, anyway it's
 19 difficult for you to respond to if you can't remember the
 20 discussion - anyway, that's just a comment which is
 21 shouldn't have made. Now the next point I want to raise
 22 with you is this, Mr De Rover told us that he advised you
 23 in February or March 2013 when he came here and had
 24 discussions with various members of the SAPS, he advised
 25 you that the use of R5 rifles in public order policing

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1 operations, whether by POP units or by other units, was
 2 totally unacceptable for reasons which he explained and
 3 which he said were internationally recognised. And he said
 4 he advised you that the use of R5 rifles in those,
 5 operations of a POP, of a public order policing nature,
 6 whether by POP members or other units, should be
 7 discontinued immediately. Now the first question is, did
 8 he give you that advice?
 9 GENERAL PHIYEGA: Chair, Mr De Rover has
 10 given us many advices and he has also advised us on issues
 11 of R5s.
 12 CHAIRPERSON: What advice did he give you
 13 on R5s?
 14 GENERAL PHIYEGA: As you summarise it,
 15 that's what he said to us, Chair.
 16 CHAIRPERSON: Yes. What he told us was
 17 something that he may not have told you. He said one of
 18 the reasons, the main reason – there are a couple of others
 19 as well, but the main reason as I understood him, why an R5
 20 is totally inappropriate for an operation of this kind is
 21 because it contains, if you fire it, the bullet fired will
 22 continue the horizontal path for, I think he said was it
 23 600 metres? So he said the problem is, in fact we had a
 24 problem in this case, I'll tell you about it in a moment,
 25 that if you fire an R5 at someone who is five metres away

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1 and you miss him, unless you know what's behind him for 595
 2 metres, there's a danger that some innocent person will be
 3 killed or seriously injured.
 4 In fact the evidence seems to indicate that
 5 happened here. There was one person who wasn't a striker,
 6 according to what we've been told he was a nephew of a
 7 striker, he went to take his uncle his lunch on the koppie,
 8 he was coming back afterwards when other people were going
 9 to the – this was part of the explanation given, I think,
 10 it's not actual evidence – but his body was found over 200
 11 metres behind, to the right of the koppie at scene 1 and it
 12 seems clear that he was killed by a bullet that was
 13 presumably fired at one of the people at scene 1 near the
 14 kraal, missed the person at whom it was fired, went on for
 15 another 200 metres and killed him. So that's the kind of
 16 problem you have if you use R5s in public order policing
 17 operations. Did he mention that to you or did he simply
 18 tell you what I put which you've already agreed with, that
 19 it's not appropriate for that kind of operation and that's
 20 the international situation? Did he tell you, did he give
 21 you the specific point I put to you now?
 22 GENERAL PHIYEGA: No, Chair, I –
 23 CHAIRPERSON: May I ask you this? As we
 24 sit here today, are R5 rifles still used in public order
 25 operations?

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1 GENERAL PHIYEGA: Yes, Chair.
 2 CHAIRPERSON: Is it correct that even POP
 3 members who are normally armed with non-lethal things like
 4 rubber, shotguns that fire rubber balls and teargas and
 5 stun grenades and so on, is it correct though that in every
 6 unit of the POP there's one person who has an R5?
 7 GENERAL PHIYEGA: It is true, Chair.
 8 CHAIRPERSON: In the light of the advice
 9 you got in February or March 2013, do you accept that it is
 10 irresponsible to proceed with the use of weapons of that
 11 kind in operations of the sort we've discussed?
 12 GENERAL PHIYEGA: I don't accept that it
 13 is irresponsible, Chair, because -
 14 CHAIRPERSON: Why not?
 15 GENERAL PHIYEGA: I'm going to explain.
 16 Because, Chair, the use of weapons, instruments by police
 17 takes into account the level of threat, the risk at any
 18 given time and it is important for us as police to ensure
 19 that the police are equipped to be able to manage the
 20 threats that would have been assessed by the police
 21 adequately. And it is also true, Chair, that as you look
 22 at our 262, it shows that graduation of use of different
 23 equipment at any given time. For now, Chairperson, the R5
 24 remains. We are looking at additional research to look at
 25 what other less lethal weapons we can use and as and when

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1 we get there, we have an MOU with CSIR that is assisting us
2 to do so, so when we get to a point where we are able to
3 get a less lethal weapon that we can use in terms of the
4 continuum of responding to threats that we have evaluated,
5 we shall do so. What De Rover did is to give us an advice
6 and we have a big basket that is taking all these advices,
7 including what is going to come out of this Commission and
8 on the basis of that, Chairperson, we will be able to
9 respond as the police.

10 CHAIRPERSON: Do you know whether R5
11 rifles have been used in POP operations or public order
12 policing operations, never mind by the POP units, since
13 August 2012, between then and now?

14 GENERAL PHIYEGA: Can I ask, can you ask
15 the question again, Chair?

16 CHAIRPERSON: Yes, certainly. Do you
17 know whether R5 rifles have been used in any public order
18 policing operations, whether by POP units or by other
19 units, since the killings on the 16th of August 2012, in
20 other words, from then until now?

21 GENERAL PHIYEGA: I have already
22 responded, Chair, to say R5 rifles for now remain used by
23 the police.

24 CHAIRPERSON: POP units, even POP unit
25 people have hand arms, they have 9 millimetre pistols,

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1 very strong chance of losing the arm. Anyway, you're
2 prepared to run the risks of increased chances of injury by
3 the use of R5, and you've been prepared to do that since
4 you got that advice. Is that your evidence?

5 GENERAL PHIYEGA: Chairperson, my
6 response to you that I said earlier on, which I shall
7 repeat, is that R5s have been part and parcel of deployment
8 based on the levels of threat. I'm also on record, and I'm
9 putting it again on record that we are in the process of
10 evaluating our armaments and to ensure that we can get less
11 lethal weapons that we can use and part of that evaluation
12 that we are having with CSIR would include R5s and the
13 recommendations that are going to come from this
14 Commission, the advices that we've received will all be
15 taken into account and on the basis of that, Chairperson,
16 certainly we shall consider how we deal with the issues
17 going forward.

18 CHAIRPERSON: Ja, thank you for that
19 assurance. But I'm still puzzled why R5s are necessary.
20 What's wrong with R1s?

21 MR SEMENYA SC: Chair, I'm very reticent
22 to state for the record the legal framework which I take
23 it, Chair, you clearly understand. The legal framework for
24 Public Order Policing in terms of 262 puts at the highest
25 level of force that can be used, being a rubber ball. It

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1 haven't they? Those are lethal, aren't they?

2 GENERAL PHIYEGA: That is true, Chair.

3 CHAIRPERSON: Now there are other
4 problems related to R5s, not only the one I mentioned. Did
5 you know that the bullets disintegrate, if they hit someone
6 and they enter the body they normally disintegrate, causing
7 particularly inappropriate damage, a very high prospect of
8 a fatal injury, even if it hits someone in the leg. Did
9 you know that? That's the evidence we've had. Did you
10 know that?

11 GENERAL PHIYEGA: I have been informed,
12 Chair.

13 CHAIRPERSON: You're prepared to run that
14 risk, are you?

15 GENERAL PHIYEGA: Chair?

16 CHAIRPERSON: You've been prepared, since
17 you got that advice, to run the risk that that would
18 happen, that even if someone was shot in the leg which is
19 possible an appropriate place to shoot in a POP operation
20 you don't want to kill.

21 [11:13] Because an R5 is being used the chances of that
22 person sustaining fatal injuries even in that kind of
23 situation are significantly greater than they are if a
24 weapon such as a 9 millimetre pistol is used. Yes, he also
25 said if you're hit in the arm with an R5 bullet you have a

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1 does not entail that the presence of the R5 follows that it
2 would be used in public order management. It clearly says
3 that, 262. You would go that way if in law you're entitled
4 to use that weapon in self and private defence.

5 CHAIRPERSON: Yes, no I know that. I'm
6 concerned with R5s. That's why the question I asked was
7 what's wrong with an R1. An R1 hasn't got the extra
8 characteristics of R5s which I've summarised to you. I can
9 understand there will be situations where members of the
10 service would be placed in a position where they have to
11 defend themselves or their colleagues. I understand that
12 and I understand that lethal force sometimes has to be
13 used. I'm not even questioning that.

14 I'm concerned about why R5s. You see I was going
15 to tell you something else about an R5 you may not know.
16 Not only is there a greater chance according to the
17 evidence of a person receiving a serious injury or an even
18 fatal one, but the bullet as I've said disintegrates and
19 one of the problems we have in this Commission is the
20 ballistic evidence doesn't tell us who killed, which
21 particular shottist killed which particular deceased. It's
22 not possible at all to say on the basis of the ballistic
23 evidence who fired the bullet at the particular deceased
24 who died, which is another unhappy circumstance. But the
25 question I asked you is why R5s as opposed to R1s. That's

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1 the question. What's the answer to that?

2 GENERAL PHIYEGA: Chairperson, my

3 response once more is that indeed this Commission is going

4 to be making recommendations to us, we will take those

5 recommendations into account with all the other advices and

6 the research inputs that we are going to receive. At this

7 point in time it would be remiss of me to make a statement

8 such as this one without considering every other thing that

9 we're being advised on.

10 CHAIRPERSON: Yes well, the record will

11 show that I asked you specifically why R5s rather than R1s

12 and you haven't given me the answer, but I won't press the

13 point any further. Now the next thing I want to ask you is

14 this; Mr De Rover told us that you told him that you were

15 critical of the operation. Is that so?

16 GENERAL PHIYEGA: I'm not sure what he

17 said I said, but I have said in this Commission that the

18 outcome of this whole exercise remained a serious concerned

19 for me as the National Commissioner, as it is to everybody

20 in this country.

21 CHAIRPERSON: You didn't go beyond that

22 in criticising the operation? So he's wrong when he tells

23 us that you were critical of the operation. Am I correct?

24 GENERAL PHIYEGA: I'm not in a position

25 to say he's wrong, he's right. Chairperson, I don't know

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1 what he said to you.

2 CHAIRPERSON: No, but I'll tell you what

3 he said. He said you were critical of the operation.

4 That's why I want to know is that correct, and then the

5 next, the follow-up question, which I may as well give you

6 now, is if you were critical of the operation, in what

7 respects were you critical? What did you criticise about

8 the operation?

9 GENERAL PHIYEGA: Chairperson, I did

10 already say now that the outcome of that operation remains

11 a sore thumb in my heart and I believe in hearts of many

12 and this is why we are gathered here, and part of the

13 issues will be coming up in some of the things that we

14 picked up as lessons to be learned, things that we are

15 starting to deal with and correct. I've already mentioned

16 one now to say we're looking at research, non-lethal

17 weapons, it's a number of things. So it's those type of

18 things, and I think in our lessons learned they would be

19 adequately covered.

20 CHAIRPERSON: Alright, now I want to go

21 back for a moment to the management forum, the meeting on

22 the Wednesday night. There are two things I want to ask

23 you about that. The first is I've told you we had a

24 problem in getting access to any tapes which records this

25 discussion of about an hour, which would be very helpful to

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1 us to see what exactly were the bases of the decisions that

2 were made, but do you have assistants who attend meetings

3 with you and make notes –

4 GENERAL PHIYEGA: Yes, I do.

5 CHAIRPERSON: - of discussions?

6 GENERAL PHIYEGA: Yes, I do, Chair.

7 CHAIRPERSON: Were any notes made by any

8 of your assistants during the discussion that we're talking

9 about?

10 GENERAL PHIYEGA: We didn't take minutes

11 of that. We just did an excerpt of what came out –

12 CHAIRPERSON: No, no, no, I know that,

13 but that's not the question I'm asking you. There was a

14 brigadier who was responsible for taking the minutes.

15 GENERAL PHIYEGA: Correct.

16 CHAIRPERSON: And there's a problem about

17 the actual memory stick that was used which recorded the

18 earlier parts of the meeting when everybody was there and

19 the evidence leaders want to know whether on that original

20 memory stick there's signs of anything having been recorded

21 thereafter. But that's not, that's apparently been lost

22 while in her custody and we've hit a brick wall as far as

23 that's concerned. I'm not busy with that. It's very

24 unfortunate that we haven't got a tape recording, but if

25 there isn't one we'll have to do the best we can.

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1 I asked you a different question. I said do your

2 assistants take notes – never mind official minutes – take

3 notes of things that are discussed, not necessary full

4 enough for the purposes of compiling minutes, but do they

5 take notes of things that are being discussed? I

6 understood you to say they do, or did I perhaps

7 misunderstand you?

8 GENERAL PHIYEGA: They do take notes in

9 formal meetings. Because this was an extraordinary meeting

10 we didn't take notes for it.

11 CHAIRPERSON: No notes were taken at all?

12 GENERAL PHIYEGA: Ja.

13 CHAIRPERSON: Even though there was a

14 discussion for up to an hour involving various people, no

15 notes were taken. That's your evidence?

16 GENERAL PHIYEGA: We didn't take notes

17 for this meeting.

18 CHAIRPERSON: I see, alright. Now the

19 next thing I want to ask you is, the last point about this,

20 I think I touched to some extent but I just want to make

21 sure I dealt with it fully. Did General Mbombo, Provincial

22 Commissioner Mbombo at any stage explain to those of you at

23 the meeting the answer to the question that's been worrying

24 us since the Commission began, namely why Thursday the 16th?

25 The evidence indicates, and she in fact said in discussion

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1 that she had with people at Lonmin at the time when you
 2 spoke to her on the telephone on the Tuesday, that she'd
 3 arranged for people, told them that they had, I think she
 4 said until the weekend. So as far as what she told her
 5 people, and we also know that she budgeted for the full
 6 week, so was there any pressing reason why this operation
 7 had to be mounted on the Thursday that she communicated to
 8 you or any of you?
 9 GENERAL PHIYEGA: Not that I know of,
 10 Chair.
 11 CHAIRPERSON: Alright, thank you. I now
 12 want to move to another topic and that is we know that a
 13 review panel was appointed. A member of it was Brigadier
 14 Mkhwanazi, Colonel Hunter, and I think there were three
 15 others. Mr Ally was the secretary I think of the panel.
 16 We only heard about this panel during the cross-examination
 17 of Colonel Scott by Mr Chaskalson. I can give you the
 18 reference, but it won't mean anything to you, but that only
 19 appeared on day 136. This Commission had been sitting for
 20 136 days before we learned that this review panel existed.
 21 Now we've been given a copy of what's described somewhat
 22 contradictorily as the final interim report of the panel,
 23 and it says – it's exhibit LLL11 – and it says its purpose
 24 is to provide you with an overview on policies, the unique
 25 challenges as far as Public Order Policing is concerned,

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1 weaknesses, lessons learned during the implementation of
 2 the SAPS operational strategy in the policing situation in
 3 Marikana. In other words this was appointed specifically
 4 to go into what happened at Marikana and to advise, and
 5 we've had evidence about it and there were various people
 6 who took part in the operation, gave evidence and were
 7 questioned by members of the panel.
 8 Now you were asked specifically in cross-
 9 examination by Mr Ntsebeza about the panel. I take it you
 10 knew about the panel because it was to advise you. Is that
 11 right?
 12 GENERAL PHIYEGA: Yes.
 13 CHAIRPERSON: And the report was given to
 14 you because it was, one of its purposes was, or its main
 15 purpose was to provide you with an overview on policies and
 16 recommendations and so forth. That's correct?
 17 GENERAL PHIYEGA: Correct.
 18 CHAIRPERSON: Yes. Mr Ntsebeza
 19 questioned you on the 76th day of this Commission about the
 20 panel, whether there was such a panel, and you said that
 21 such a panel did not exist. You were asked whether there
 22 was a review and you said there wasn't. Now I don't
 23 understand that. That seems to be in contradiction to the
 24 evidence we subsequently heard 60 days later that this
 25 panel did exist and did hold sittings and they made

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1 recommendations. Now can you explain that, why you gave
 2 the answer that I mentioned, that I stated to you which you
 3 gave to Mr Ntsebeza when he cross-examined you?
 4 GENERAL PHIYEGA: Chairperson, I think
 5 what is important is that preparation for this Commission
 6 took a lot of forms and it was necessary for anyone who was
 7 going to come to this Commission to prepare themselves, and
 8 I wouldn't have found it odd for me to ask anybody to
 9 assist me to do that, to prepare, to review, to assess and
 10 give me input to be able to give on behalf of the service a
 11 response to questions that would have been asked. If that
 12 question was asked and I answered that way it wouldn't have
 13 been for misrepresentation, it could have been maybe just a
 14 memory issue for myself at the time.
 15 CHAIRPERSON: You see I've got a couple
 16 of problems with that answer, and again in fairness to you
 17 I must put them to you. Did you appoint the panel?
 18 GENERAL PHIYEGA: I would have asked my
 19 team to assist me to collect information. I don't recall
 20 whether it's one of the panels that I directly appointed or
 21 whether my commanders asked them to assist me.
 22 CHAIRPERSON: You got their report?
 23 GENERAL PHIYEGA: I don't have the report
 24 with me right now.
 25 CHAIRPERSON: No, no, you received their

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1 report in due course because it was, as I read, to provide
 2 you with their overview on these various matters.
 3 GENERAL PHIYEGA: I wouldn't recall,
 4 Chair. I'll check my records.
 5 CHAIRPERSON: So you say you can't
 6 remember getting the report?
 7 GENERAL PHIYEGA: I would check my
 8 records whether it's one of the reports. Remember Chair,
 9 I'm saying to you I received many inputs in preparation for
 10 this Commission.
 11 CHAIRPERSON: Ja.
 12 GENERAL PHIYEGA: And we would, if that
 13 report would have formed part of my inputs or could have
 14 been part of – I have files and files, reams and reams of
 15 papers in preparation for this.
 16 CHAIRPERSON: You see, you were asked in
 17 terms if there was a review, if such a panel existed, and
 18 you said no. Now I mean there are three possible answers
 19 you can give; yes, no, I'm not sure, I can't remember, I
 20 don't know, but you said, you gave a categorical negative
 21 answer, which was incorrect. Can you explain that?
 22 GENERAL PHIYEGA: I've just explained it,
 23 Chair.
 24 CHAIRPERSON: I see. Well, we have your
 25 explanation on record. Alright, let me ask you another

<p style="text-align: right;">Page 37451</p> <p>1 question. Now was this review panel an extraordinary 2 procedure as opposed to one of the review procedures set 3 out in the Standing Order? You know Standing Order 262 4 provides for reviews in certain circumstances of 5 operations. So the question is, let me repeat the 6 question; was this review panel, the one Brigadier 7 Mkhwanazi served on and Colonel Hunter which gave you that 8 final interim report, was that an extraordinary procedure 9 or was it an ordinary review procedure dealt with in the 10 Standing Order? 11 GENERAL PHIYEGA: It could have been any 12 of those, but what is important for me was what I said to 13 you earlier on, coming to this Commission we got, you know, 14 I asked a lot of input from various people. I'm not sure 15 whether that review was around training issues by Mkhwanazi 16 and the other people, so I may have to look at that report 17 again so that I can be able to apply my mind to that. 18 CHAIRPERSON: It wasn't just about 19 training. It was dealt with, it was an overview on 20 policies, unique challenges, weaknesses and lessons learned 21 during the implementation of the SAPS operational strategy 22 in the policing situation in Marikana. 23 GENERAL PHIYEGA: And that could have 24 been – 25 CHAIRPERSON: That's pretty specific,</p>	<p style="text-align: right;">Page 37453</p> <p>1 reviews were held pending the sittings of the Commission. 2 That answer turned out to be incorrect, so we've been given 3 incorrect information on that. Now can you explain that? 4 GENERAL PHIYEGA: I think, Chair, it is 5 important for me to say preparation for coming here was 6 important for us and we did everything that was possible 7 for us to be able to present our message here. If that 8 review was assisting us to collect further information, 9 yes, it would have been part of our processes of ensuring 10 that we are able to come to the Commission. It would not 11 have been done for any other thing other than assisting us 12 to respond to this Commission. Nothing we did was meant to 13 be any secret. 14 CHAIRPERSON: Well, of course it would 15 have been – 16 GENERAL PHIYEGA: And if it is called 17 for, Chairperson, we would submit that. 18 CHAIRPERSON: Well, it certainly makes 19 recommendations, things that went wrong, deals with matters 20 that are relevant for us to consider and would certainly 21 have assisted us, possibly even shortened the length of an 22 overlong Commission, if that information had been given to 23 us earlier. But I'm reminded that exhibit JJJ203 is the 24 call-up instruction for the panel issued on the 27th of 25 August –</p>
<p style="text-align: right;">Page 37452</p> <p>1 isn't it? 2 GENERAL PHIYEGA: Yes. 3 CHAIRPERSON: Specifically dealing with 4 the matter which concerns this Commission. 5 GENERAL PHIYEGA: And that review could 6 have been a post analysis of what has happened – 7 CHAIRPERSON: No well obviously it was 8 after what happened. They couldn't have reviewed what 9 happened at Marikana before it happened. It was definitely 10 after Marikana, after the shootings. It came out in 11 Colonel Scott's evidence when he divulged – to use Mr De 12 Rover's word – that on one occasion during Roots he left 13 and went by helicopter to Pretoria to attend a session of 14 this panel and that then alerted us to its existence. It 15 was actually sitting in parallel with Roots. Now again the 16 question arises, not only do we not know about it, it 17 wasn't part of the hard drive, it wasn't part of exhibit L, 18 it wasn't anything that was communicated to us. As far as 19 we were concerned it was like the meeting on the Wednesday 20 night, it was secret. If Colonel Scott hadn't said what he 21 said we would to this day possibly have been ignorant that 22 it happened. Now you think that was fair to keep that from 23 us? 24 GENERAL PHIYEGA: Chairperson, I – 25 CHAIRPERSON: We were told that no</p>	<p style="text-align: right;">Page 37454</p> <p>1 GENERAL PHIYEGA: Yes? 2 CHAIRPERSON: - 2012. Do you know who 3 signed it? 4 GENERAL PHIYEGA: I would have signed it. 5 CHAIRPERSON: Yes, you did. But anyway, 6 I've given you an opportunity to explain why we weren't 7 told about it, why we only found out about it by a side 8 wind during Mr Chaskalson's cross-examination of Colonel 9 Scott. If there's nothing further you wish to add to your 10 answer we can leave it there. 11 GENERAL PHIYEGA: Chairperson, I want to 12 again categorically and clearly state it that our 13 preparation to this Commission was a long, long journey. 14 We did a lot of things, because it was in our interest to 15 make sure that we are able to respond appositely to the 16 Commission. Once the Commission was announced we did a lot 17 of work to prepare for this Commission. 18 CHAIRPERSON: There's the call-up 19 notification on the screen which is for us to see. Anyway, 20 thank you for your answer. Mr Mpofu and Mr Gumbi have 21 asked leave to cross-examine on limited topics. Mr Mpofu 22 has been given half an hour, which I hope he won't use in 23 full, and Mr Gumbi was given, I think it was 20 minutes. 24 He's dealing with one topic dealing with your interaction 25 with Colonel Vermaak, as I recall, and Mr Mpofu is going to</p>

<p style="text-align: right;">Page 37455</p> <p>1 deal with another topic. He'll tell you about it himself 2 when he starts. Mr Gumbi? 3 CROSS-EXAMINATION BY MR GUMBI: Thank you 4 very much, Chairperson. Good morning, National 5 Commissioner. 6 [11:33] GENERAL PHIYEGA: [Vernacular]. 7 MR GUMBI: I think as a point of entry, 8 let me introduce, let me reintroduce myself to you. My 9 name is Louis Gumbi, I represent the family of the late 10 Warrant Officer Lepaaku who was killed on the 13th of August 11 2012 near the railway line. I hope you still remember me. 12 So National Commissioner, my line of cross-examination will 13 focus on the evidence that was presented before this 14 Commission after you testified before this Commission and 15 in doing so, what I'm going to do, I'm going to briefly, 16 briefly summarise the evidence that was presented before 17 this Commission and I will give you an opportunity to 18 comment on that evidence or on those allegations that were 19 presented before this Commission. Do you understand me? 20 GENERAL PHIYEGA: I do, sir. 21 MR GUMBI: Yes. After you took a stand, 22 National Commissioner, General Mpembe who was in charge of 23 the operation of the 13th of August 2012 near the railway 24 line, testified before this Commission and in summary his 25 testimony in this Commission is that on the 13th of August</p>	<p style="text-align: right;">Page 37457</p> <p>1 stun grenades and teargas. That was a summary of his 2 evidence. Furthermore, when the evidence, Colonel Scott 3 again also took a stand before this Commission and he was 4 cross-examined by the evidence leaders and during his 5 cross-examination there were certain reports that were 6 retrieved from his hard drive, that they were produced 7 before the production of exhibit L that was presented 8 before this Commission and in summary, the information that 9 was contained from that report indicated that on the 13th 10 of August – 11 CHAIRPERSON: Excuse me, Mr Gumbi, sorry. 12 There is a clear instruction that photographs are not to be 13 taken during the sitting of these proceedings, of this 14 Commission. Would you kindly leave the room? Leave the 15 room. You can come back when we stop sitting and you can 16 take as many photographs as you like but I made it quite 17 clear, taking of photographs disturbs the proceedings. I 18 don't know why you won't comply with that but leave, get 19 out, leave the chambers. You can come back when we 20 adjourn. 21 MR GUMBI: Thank you, Chairperson. 22 National Commissioner, I was still busy dealing with the 23 summary of the report that was retrieved by the evidence 24 leaders from the hard drive of the laptop of Colonel Scott, 25 to say that information that was retrieved from those</p>
<p style="text-align: right;">Page 37456</p> <p>1 2012 near the railway line, certain members fired without 2 his instruction. That was his testimony. 3 CHAIRPERSON: I'm sorry to interrupt you, 4 Mr Gumbi. That point you dealt with when you cross- 5 examined the National Commissioner previously. The 6 permission I gave you relates to the interaction that she 7 had later with Lieutenant-Colonel Vermaak when he had an 8 interview with her, you remember, and told her certain 9 things. That's what you're entitled to cross-examine 10 about. The point you're dealing with now, you've asked her 11 about already and there's no point in reploughing that 12 ground, it's been adequately ploughed already. 13 MR GUMBI: Yes, Chairperson, I was just 14 summarising it because it is another witness who will 15 testify to that effect. I will deal with the evidence of 16 Colonel Vermaak immediately I was just summarising so that 17 I will give the National Commissioner an opportunity to 18 understand the rationale behind my question. Yes, National 19 Commissioner, General Mpembe testified before this 20 Commission that on the 13th of August 2012 near the railway 21 line certain members fired without his instruction and when 22 we cross-examined General Mpembe on that aspect we also 23 presented evidence before this Commission in the form of 24 statement, pocketbook, showing that on the 13th of August 25 near the railway line he gave the command for the usage of</p>	<p style="text-align: right;">Page 37458</p> <p>1 reports indicates that on the 13th of August 2012 near the 2 railway line General Mpembe issued instruction for the 3 usage of stun grenades and teargas. That was the evidence 4 presented before this Commission. And we had another 5 witness who testified before this Commission, that is 6 Colonel Vermaak. He testified that on the 21st of January 7 2013 he had a meeting with you, General Mbombo and other 8 senior police officials and in that meeting he presented a 9 report dealing with some shortcomings, specifically about 10 the operation of the 13th of August 2012. In that report, 11 if I can refer you National Commissioner, that is exhibit 12 tripe zero 10 – Chairperson, if we can put that report on 13 the screen? 14 CHAIRPERSON: I think it's OOO10. 15 MR GUMBI: Yes, OOO10, I do apologise for 16 that. OOO10 page 16, if you can put that on the screen. 17 It's page 16. 18 CHAIRPERSON: Perhaps if you gave us the 19 paragraph number it would be easier for us to find the 20 passage. 21 MR GUMBI: Yes. 22 CHAIRPERSON: You see what we've got 23 doesn't give the page numbers but it gives paragraph 24 numbers. So what's the paragraph number you're referring 25 to?</p>

<p style="text-align: right;">Page 37459</p> <p>1 MR GUMBI: It's not mentioned, 2 Chairperson – 3 CHAIRPERSON: If you look at your page 16 4 you'll see, won't you? 5 MR GUMBI: Yes, the heading is "Questions 6 that might be asked." 7 CHAIRPERSON: Is it after what's on the 8 screen at the moment? 9 MR GUMBI: Yes, I think – 10 CHAIRPERSON: Alright, let's move on and 11 get to the questions that may be asked. I think it goes 12 beyond this too, doesn't it? 13 MR GUMBI: It's not that one. 14 CHAIRPERSON: Which section do you want? 15 MR GUMBI: The text dealing with about 16 the incident of the 13th of August 2012. It has a heading 17 "Questions that might be asked." 18 CHAIRPERSON: Yes, alright, well – 19 MR GUMBI: Maybe to save time, 20 Chairperson, if I can read – 21 CHAIRPERSON: I think to be fair, no, no 22 - 23 MR GUMBI: - that paragraph. 24 CHAIRPERSON: I think to be fair to the 25 witness she should have an opportunity to see the passage</p>	<p style="text-align: right;">Page 37461</p> <p>1 instruction from Major-General Mpembe that teargas and stun 2 grenades must be thrown, triggered the assault in the SAPS. 3 Major-General Mpembe denied at Roots that he was not aware 4 who gave the instruction but after Captain Thupe from TRT, 5 Rustenburg, said that he was next to the General when the 6 question was, the instruction was given, only after that 7 Major-General Mpembe acknowledged that it was him. Major- 8 General Mpembe was also confronted by POP members why he 9 took charge at an unrest scene while the senior POP 10 commander (Lieutenant-Colonel Vermaak) was on the scene and 11 it is against SO262." Do you see that, National 12 Commissioner? 13 GENERAL PHIYEGA: I have heard and seen 14 it. 15 MR GUMBI: Okay. So my question is, we 16 have exhibit L that was presented before this Commission 17 and it was presented on the 6th of November 2012. If I can 18 refer you to exhibit, to slide 47, slide 47 of exhibit L, 19 if you can put that on the screen. Slide 47. 20 CHAIRPERSON: That's the slide you want. 21 Which bullet points on that do you want to refer the 22 National Commissioner to in particular? 23 MR GUMBI: Yes, bullet point number 2 and 24 number 3 read together. In dealing with this topic, 25 National Commissioner, will you agree with me that when you</p>
<p style="text-align: right;">Page 37460</p> <p>1 you're referring to. 2 MR GUMBI: Yes, okay. 3 CHAIRPERSON: I think it might be seen as 4 some kind of ambush if you do it otherwise and – 5 MR GUMBI: Yes. 6 CHAIRPERSON: Oh, here we are. Now we've 7 got "Questions that might be asked." 8 MR GUMBI: If you can go there, I think 9 the third bullet point. Scroll it down, yes. Can I read 10 the content of this paragraph on record, National 11 Commissioner? 12 GENERAL PHIYEGA: Mm. 13 MR GUMBI: It reads as follows, that's 14 the information, that's the report that was presented by 15 Colonel Vermaak before you on the 21st of January 2013. It 16 reads as follows, "On the incident of the 13th of August 17 2012, Monday, the allegation by members that Major-General 18 Mpembe gave instruction that members must leave their 19 firearms in the Nyalas, on the videos it will show clearly 20 the members that were standing on the railway line, on the 21 railway track, did not have proper riot gear with him. To 22 go to the incident prior to this day, it was reckless not 23 to take it, take it consideration. The members were not 24 properly in line, follow the group and why not with the 25 armoured vehicles." Then he further says that, "The</p>	<p style="text-align: right;">Page 37462</p> <p>1 look at these two slides there are no allegations which 2 state that on the 13th of August 2012 near the railway line 3 certain members fired without the instruction of General 4 Mpembe? Do you see that? 5 GENERAL PHIYEGA: I see the slide. 6 MR GUMBI: Yes, do you see that? Even 7 the opening statement that was presented before this 8 Commission by the SAPS, there are no, there is nothing 9 which says that on the 13th of August 2012 near the railway 10 line certain members fired without instruction. You will 11 agree with me on that? 12 GENERAL PHIYEGA: I would take it that 13 you didn't read the opening statement, I take it that, with 14 recollection, probably saying that. 15 MR GUMBI: It doesn't say it. And when 16 the Chairperson asked you whether you had an opportunity to 17 have a look at exhibit L that was presented before this 18 Commission, were you aware about those allegations that 19 certain members near the railway line fired without the 20 instruction of General Mpembe? 21 GENERAL PHIYEGA: That is what General 22 Vermaak is, Vermaak is saying and Vermaak is part and 23 parcel of that operation scene. He had the opportunity to 24 participate in this process, had the opportunity to 25 participate in the JOC, I would have expected that member</p>

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1 of mine to raise those issues there so that they can be
2 given treatment.

3 MR GUMBI: And you don't have a knowledge
4 why this information is not included in this exhibit?

5 GENERAL PHIYEGA: I actually would ask
6 him why that information did not reach this platform of
7 planning.

8 MR GUMBI: The meeting, it's alleging
9 that he had a meeting with you on the 21st of January 2013.
10 Can you tell us about that meeting?

11 GENERAL PHIYEGA: Yes, we did have a
12 meeting and at that meeting I did say to him we have made
13 it explicitly, abundantly clear that all members had the
14 responsibility to share the information they have. He had
15 that space at the beginning, through that meeting,
16 inputting – he had the responsibility to place that
17 information on record. He has made statements under oath,
18 he has made additional statements. He needed to make that
19 information available, he knows it.

20 MR GUMBI: Ja, but when we cross-examined
21 Colonel Vermaak we also confronted him with your evidence
22 to say that when you took a stand before this Commission
23 you never raised this aspect in your statement, even in
24 your testimony, that on the 21st of January 2013 you had a
25 meeting with him wherein he raised these issues that on the

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1 13th of August 2012 near the railway line certain members
2 fired without the instruction of General Mpembe.

3 GENERAL PHIYEGA: What is important is to
4 even make mention of the fact that I did not call him to
5 that meeting, he asked for a meeting with me through our
6 lawyer. And what I made very clear to him is that he has a
7 responsibility to ensure that his information, like all
8 other members, is given in the most truthful sense, in the
9 fullest sense. So for him to – for you to actually want to
10 put it as if it is something that is excluded, I find it as
11 a misnomer. He knows what I said to him.

12 MR GUMBI: You informed him that –

13 GENERAL PHIYEGA: Yes, I did –

14 MR GUMBI: - this information must be
15 presented before this Commission –

16 GENERAL PHIYEGA: - to say it must be in
17 his statement, he must disclose whatever he knows, he must
18 discuss it with his team, he cannot come and cry foul.
19 Nobody and nobody was allowed to withhold anything. We
20 said, tell it like you know it, any member.

21 MR GUMBI: Thanks Commissioner.
22 Furthermore, when we cross-examined the National, I mean
23 General Mpembe on the facts surrounding the death of the
24 late Warrant Officer Lepaaku and he promised this
25 Commission that he will initiate, internally, inquiry, when

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1 we confronted him with all these statements and the
2 pocketbook of the police officers that were present in that
3 operation, he promised this Commission that he would
4 initiate inquiry to investigate those allegations levelled
5 against him by those members who alleged that he gave a
6 command for the usage of stun grenades and teargas, are you
7 aware of that internal inquiry?

8 GENERAL PHIYEGA: Currently there are no
9 inquiries that are taking place. This Commission must
10 finish, give us their recommendations, we will look at all
11 those issues.

12 MR GUMBI: Yes, but you are aware,
13 National Commissioner, that in terms of the Police Service
14 Amendment Act you have the power to initiate internal
15 inquiry if a member is killed or injured in the line of
16 duty.

17 GENERAL PHIYEGA: Yes, I am aware.

18 MR GUMBI: And with regard to the death
19 of the late Warrant Officer Lepaaku and injury of
20 Lieutenant Baloyi, you can't tell this Commission whether
21 there is an ongoing inquiry?

22 GENERAL PHIYEGA: I have said already in
23 my response to you, as soon as this Commission finishes we
24 definitely will make sure that, in line with those powers
25 and the responsibilities and duties that we have, we shall

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1 do so.

2 MR GUMBI: In conclusion, National
3 Commissioner, will I be correct that whatever evidence that
4 was presented before this Commission, you never instructed
5 any of your senior officials to alter or to amend any
6 evidence or to manipulate any evidence to be presented
7 before this Commission?

8 GENERAL PHIYEGA: I have no powers to do
9 so and I have not done so.

10 MR GUMBI: With regard to the report that
11 was presented before you by Lieutenant-Colonel Vermaak on
12 that meeting of the 21st January 2013, are you aware whether
13 that report was shared among the senior POP members or POP
14 commanders, wherein he identifies some of the shortcomings
15 in the POP operation of the 13th of August 2012?

16 GENERAL PHIYEGA: I am not aware.

17 MR GUMBI: You didn't share it with other
18 senior SAPS officials?

19 GENERAL PHIYEGA: Am I aware that it was
20 shared by other people?

21 MR GUMBI: I'm saying the information he
22 presented before you in the form of a report identifying
23 some of the shortcomings with regard to the operation of
24 the 13th of August 2012, was it shared with other POP
25 commanders or other SAP senior officials?

<p style="text-align: right;">Page 37467</p> <p>1 GENERAL PHIYEGA: General Mbombo was 2 there. 3 MR GUMBI: It was shared with her? 4 GENERAL PHIYEGA: She would have heard 5 Vermaak talking to us about it. 6 MR GUMBI: And this information, do you 7 have a knowledge whether it was disseminated to other SAPS 8 senior officials – 9 GENERAL PHIYEGA: I said – 10 MR GUMBI: - besides General Mbombo? 11 GENERAL PHIYEGA: I said General Vermaak, 12 first and foremost he himself needed to put all those 13 things in his statements and other things. He had that 14 responsibility and I just hope that he did. 15 MR GUMBI: Thanks very much, Chairperson, 16 I don't have any further questions. 17 CHAIRPERSON: Thank you, Mr Gumbi. Mr 18 Semenya, your light is on? 19 MR SEMENYA SC: May I place on record, 20 Chair, according to my information an R1 is a heavier 21 calibre than an R5. It is a 7.62 millimetre round and will 22 do more damage than a 5.56 which is an R5 cartridge. 23 CHAIRPERSON: Thank you, Mr Semenya, for 24 that information. It's obviously very, very important and 25 we'll bear that in mind, thank you. At least one of the</p>	<p style="text-align: right;">Page 37469</p> <p>1 that. 2 MR NTSEBEZA SC: - that might well be of 3 assistance. 4 CHAIRPERSON: Yes, thank you. We'll now 5 take the adjournment, the tea adjournment and after that Mr 6 Mpofo will be cross-examining for up to half an hour on one 7 topic that I allowed him to ask. 8 MR MPOFU: Thank you, Chairperson. 9 CHAIRPERSON: We will now adjourn for 10 quarter of an hour. 11 [COMMISSION ADJOURNS COMMISSION RESUMES] 12 [11:52] half an hour on one topic that I – 13 MR MPOFU: Thank you, Chairperson. 14 CHAIRPERSON: - allowed him to ask on. 15 We'll now adjourn, quarter of an hour. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [12:12] CHAIRPERSON: The Commission resumes. 18 You're still under oath, National Commissioner. 19 MANGWASHI VICTORIA PHIYEGA: [s.u.o.] 20 CHAIRPERSON: Mr Mpofo. 21 CROSS-EXAMINATION BY MR MPOFU: Thank you 22 very much, Chairperson. Good afternoon, General. Because 23 we don't have a lot of time I'm just going to give you 24 broadly the one topic that I'm going to ask you about and 25 why. Effectively the questions that I'm going to raise</p>
<p style="text-align: right;">Page 37468</p> <p>1 bases on which – I'm not sure of course whether the bullets 2 disintegrate and whether it goes on horizontally, keeps the 3 horizontal path for 600 yards but those are matters that we 4 can get information on, I would trust, by – 5 MR CHASKALSON SC: Chair, our 6 understanding is not the same as Mr Semenya's. I think 7 that the evidence leaders and the SAPS need to get together 8 on this and put forward an agreed statement from a 9 ballistics expert. 10 CHAIRPERSON: I must confess I asked the 11 questions I did because I assumed, possibly erroneously 12 that the 600 metre horizontal travel or path that Mr De 13 Rover talked about weapons something which went beyond the 14 capacities of an R1 but I may well be wrong on that, but 15 anyway obviously we must get definite expert evidence on 16 the matter and, as you say, it may well be that the 17 evidence leaders and the SAPS can come to a common mind on 18 that point. But it's relevant for Mr Semenya to raise the 19 point at this stage to indicate that the question – 20 MR NTSEBEZA SC: Mr Chairman, I think 21 there was evidence that was – I'm sorry, Mr Chair, I was 22 saying I recall that there was expert evidence that was led 23 on all of these firearms. I think Warrant Officer Wessels 24 or something like that – 25 CHAIRPERSON: Well, we'll look at all</p>	<p style="text-align: right;">Page 37470</p> <p>1 relate to the one big question which we raised in our 2 opening statement about who gave the order and why it was 3 given, and also whether, more specifically whether it was 4 made for, or rather whether the order was given for an 5 improper or unlawful purpose – 6 CHAIRPERSON: No, no, Mr Mpofo, let's get 7 it clear. The permission I gave you related to topic 1.4 8 which relates – 9 MR MPOFU: That's where I'm going to. 10 CHAIRPERSON: You haven't said what 1.4 11 is about yet, which is about the question, the perception 12 of collusion I think it was – 13 MR MPOFU: Ja. 14 CHAIRPERSON: - between the police and – 15 MR MPOFU: And AMCU, yes. 16 CHAIRPERSON: And AMCU, that's right. 17 MR MPOFU: Yes. 18 CHAIRPERSON: That's the topic. 19 MR MPOFU: That's the topic, Chairperson. 20 CHAIRPERSON: Alright. 21 MR MPOFU: But it doesn't come in the 22 air. I'm just giving the General a – 23 CHAIRPERSON: Well, it may not come in 24 the air, but I hope you will stick within the boundaries. 25 MR MPOFU: Yes. Thank you, ja, and the</p>

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1 topic that the Chairperson has correctly summarised goes to
 2 the question I was busy with, which is whether the making
 3 of the decision was for an improper or unlawful purpose,
 4 including the one that the Chairperson has summarised,
 5 which I'm not going to repeat. Now what we do know,
 6 General, just by way of background, is that the – let's say
 7 you were part of the decision that was taken on the 15th,
 8 call it a decision or an order or endorsement, whatever it
 9 is, but the decision that stage 3 of the plan would be
 10 proceeded with the following day. You accept that?
 11 GENERAL PHIYEGA: You mentioned the
 12 correct word, endorsement.
 13 MR MPOFU: Yes. No, but more
 14 specifically that what was said was that, was specifically
 15 relating to the plan. You know that stage 3 of the plan
 16 was going to be implemented.
 17 GENERAL PHIYEGA: I have responded to an
 18 earlier question where I said we did not discuss the plan
 19 on the 15th. We had a briefing, we were apprised of the
 20 situation. We discussed resourcing.
 21 MR MPOFU: Yes, but you're aware that
 22 General Mbombo had said in the meeting of the 16th that she
 23 had relayed to you that they were now going to move ahead
 24 with phase 3 of the plan and that you would relate it to
 25 the Minister. There was controversy about the last part,

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1 but the fact that she had said to you we'll go to phase 3
 2 of the plan was not controversial.
 3 GENERAL PHIYEGA: We did discuss the
 4 process of disarming the protesters –
 5 MR MPOFU: Okay, fine. Well then in
 6 paragraph 23 of your statement, which is FFF2, what did you
 7 mean when you said – FFF2 if you can – "On the afternoon of
 8 16th August 2012 I received a call from Lieutenant-General
 9 Mbombo who informed me of the decision to implement stage 3
 10 of the plan."
 11 GENERAL PHIYEGA: It was the plan to
 12 disarm the protesters.
 13 MR MPOFU: No, Ma'am, I understand this
 14 question. All I'm saying is if you did not know whether
 15 there are three stages or four stages or whatever, what did
 16 you mean in your own statement under oath when you said
 17 General Mbombo informed you of the decision to implement
 18 stage 3 of the plan? Paragraph 23.
 19 GENERAL PHIYEGA: I have answered to say
 20 it relates to the disarming of the protesters.
 21 MR MPOFU: Okay, and you knew that that
 22 disarming of the protesters was contained in stage 3 of the
 23 plan? Because that's what you wrote.
 24 GENERAL PHIYEGA: Indeed I knew that it
 25 was contained in that plan.

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1 MR MPOFU: Anyway, well I'm going to move
 2 on because of time, but I just want to say to you that we
 3 will argue that the paragraph that I'm talking about is one
 4 which you had specifically applied your mind to because
 5 it's the one where there was a lot of cross-examination by
 6 my learned friend Mr Burger and myself, where you had taken
 7 out the words "which information I relayed to the
 8 Minister." So this part which you did not take out must
 9 have been left out deliberately because it was correct, you
 10 must have known that Lieutenant-General Mbombo had informed
 11 you of the decision to implement stage 3 of a particular
 12 plan. Would that be fair?
 13 GENERAL PHIYEGA: It would not be fair.
 14 I've made my submission to this Commission.
 15 MR MPOFU: Right, the next issue is you
 16 said to the Chairperson now this morning that no notes were
 17 taken of the meeting of the National Management Forum
 18 meeting.
 19 CHAIRPERSON: What she was talking about
 20 was the, what's called the extraordinary session –
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: - or the ad hoc meeting –
 23 MR MPOFU: That's correct.
 24 CHAIRPERSON: - when some of the people
 25 had gone.

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1 MR MPOFU: I'm sorry, yes.
 2 CHAIRPERSON: That's what she was
 3 referring to. There were notes, in fact there was a
 4 recording made of the earlier part. One of the
 5 controversial questions may be whether there was a
 6 recording made later, but she says there wasn't and we're
 7 not busy with that with her.
 8 MR MPOFU: Yes, thank you, Chairperson,
 9 yes. Okay, let me put it this way so that we go directly
 10 to the issue. Are you aware that there were draft minutes
 11 of the extraordinary session?
 12 GENERAL PHIYEGA: I'm aware because I
 13 needed to add just a paragraph on what we had done in the
 14 extraordinary session and I know that it was taken out of
 15 the main minutes by the, the secretariat had added that and
 16 it was taken out of the main minutes because the member
 17 said it wasn't part of the main minutes, so it can't be
 18 part of the minutes.
 19 MR MPOFU: Yes. No, I'm going to argue
 20 that your evidence that no notes were taken cannot be
 21 correct or true because the evidence that we have is that
 22 that meeting, the extraordinary meeting had self-standing
 23 minutes. There were apologies, I think there were three
 24 people who did not - Lieutenant-General Moonoo, Mazibuko
 25 and Mothiba had given apologies for that part and then it

<p style="text-align: right;">Page 37475</p> <p>1 was minuted. So that was not just a meeting of people who 2 remained behind, as you try to suggest.</p> <p>3 GENERAL PHIYEGA: I will tell you that it 4 is not true because an extraordinary meeting doesn't have 5 apologies.</p> <p>6 MR MPOFU: Well, the draft minutes – or 7 the evidence, I'm not going to argue with you now, but 8 HHHH11.1, Chairperson, which are the minutes, the draft 9 minutes of that meeting, will show you that there's a list 10 of who attended and there's a list of people who apologised 11 and there are minutes of what was discussed, culminating in 12 the decision that the Chairperson read out to you.</p> <p>13 GENERAL PHIYEGA: Because I'm chair of 14 that meeting I'll put it to this Commission that an 15 extraordinary meeting shall never have apologies.</p> <p>16 MR MPOFU: Okay, well can you put up HHHH 17 – once you put it that strongly, never, never, then can you 18 put up HHHH11.1? Ja, there you are. There, you can it 19 reads there, "Special National Management Forum, 20 extraordinary session, Protea, Midrand," so it doesn't look 21 like it never, never happened, and those are the draft 22 minutes. Just carry on. Go further up. Those are the 23 list of attendees, General, yourself, General this one and 24 the other, and then go on, and there you are.</p> <p>25 GENERAL PHIYEGA: There will never be</p>	<p style="text-align: right;">Page 37477</p> <p>1 think you'll see that the list of attendees and the list of 2 apologies is identical to the list of attendees and 3 apologies in the minutes of the main meeting. I don't know 4 if we have the minutes of the main meeting in full, and 5 it's clearly not a correct reflection of the list of 6 attendees of the extraordinary session because it includes 7 General Labiya who made a specific point at the next 8 meeting that he was not party to this decision and it 9 shouldn't be reflected as a decision of the National 10 Management Forum.</p> <p>11 CHAIRPERSON: So are you saying, Mr 12 Chaskalson, the list of what Mr Mpofo calls attendees, I 13 prefer to call them attenders because attendees indicates a 14 passive sort of capacity which doesn't apply, that list of 15 attenders, is that inaccurate because does it include the 16 names of some of the people who'd already left?</p> <p>17 MR CHASKALSON SC: Yes, because it was 18 only the operational members and the provincial 19 commissioners who stayed behind and there are a great deal 20 of non-operational members on that list, one of whom 21 specifically made the point that he wasn't there –</p> <p>22 MR MPOFU: Ja.</p> <p>23 MR CHASKALSON SC: - and should not have 24 been reflected.</p> <p>25 MR MPOFU: Yes. Thank you, Chairperson.</p>
<p style="text-align: right;">Page 37476</p> <p>1 apologies –</p> <p>2 MR MPOFU: What you say it never 3 happened, there, apologies.</p> <p>4 GENERAL PHIYEGA: This, there were no 5 minutes for this whole thing and these apologies, how would 6 people apologise for a session that is extraordinary?</p> <p>7 MR MPOFU: No, you tell me. It was 8 drafted by your people in SAPS.</p> <p>9 GENERAL PHIYEGA: I'm sure you can ask 10 them what is that, because there's no extraordinary meeting 11 that would have an apology. It's a session of calling 12 people to say let's talk about something else. There will 13 be no apology.</p> <p>14 CHAIRPERSON: I take it what happened was 15 these were the people who'd gone and so it isn't correct to 16 talk about apologies because obviously they wouldn't have 17 apologised because they didn't even know the meeting was 18 going to happen before they left, but apologies is probably 19 the wrong word, but absence, you know, for the reason being 20 they'd left already would be more accurate because I take 21 it those are the three members of the forum who had left 22 already and they were absent. Is that correct?</p> <p>23 MR CHASKALSON SC: Sorry, Chairperson, in 24 fairness to the witness, there is some evidence on this 25 document from Major Lethoko and it was her draft and I</p>	<p style="text-align: right;">Page 37478</p> <p>1 Well, two quick points, Chairperson, about that. One is 2 that that's the purpose of draft minutes is so that people 3 can say if they are reflected, I was not there. So that 4 doesn't take the matter any further. That's the very 5 essence of having draft minutes, but the second point is 6 that my point really is that there were minutes taken for 7 the meeting, which is self-evident. So I'll move on, but 8 the question about incorrect reflection, that's exactly 9 what draft minutes are about.</p> <p>10 CHAIRPERSON: That sounds like a bit of a 11 "dwaalspoor," isn't it? It's not going to take us 12 anywhere.</p> <p>13 MR MPOFU: Yes, yes.</p> <p>14 CHAIRPERSON: You are going to come 15 sooner rather than later to the point you're dealing with, 16 which is the alleged collusion point.</p> <p>17 MR MPOFU: That's correct. That's 18 correct, Chairperson. Now the other point, coming to the 19 issue of when and why maybe the order or decision was taken 20 is that I want to put it to you, I want to give you an 21 opportunity to refute the fact that in your statements you 22 deliberately sought to mislead or to omit any reference to 23 the decision having been taken in a National Management 24 Forum meeting, or that kind of thing. In fact – and I'm 25 sorry, I'm putting too many propositions – in your</p>

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1 statement you suggest that the discussion about the
2 decision was made in a kind of one-on-one discussion
3 between you and the Provincial Commissioner. Would that be
4 a fair statement?
5 GENERAL PHIYEGA: Can you repeat your
6 proposition?
7 MR MPOFU: You misled the Commission
8 deliberately by omitting reference to the National
9 Management Forum, which was the most important part of the
10 decision, and you suggested in your statement that that
11 discussion took place in a one-on-one kind of discussion
12 between you and General Mbombo.
13 GENERAL PHIYEGA: Your proposition is
14 incorrect.
15 MR MPOFU: Okay, then I'll refer you to
16 paragraph – FFF2 again, your paragraph 21 and 22. This is
17 where you would have, if you wanted you would have made
18 reference to the decision having been taken at the NMF.
19 You say, "I continued receiving regular situational reports
20 about the events that were unfolding in Marikana. On 15th
21 August 2012 while attending the SAPS National Management
22 Forum in Midrand," you say, "I was informed," I, that's
23 what you say, "I was informed by Lieutenant-General Mbombo
24 of a possibility of a peaceful resolution being reached.
25 She informed me that she had been told that Mr Mathunjwa of

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1 AMCU had promised that the protesters would lay down their
2 weapons at the koppie at 9," and so on, "and thereafter
3 leave the koppie." Then the next paragraph, "Lieutenant-
4 General Mbombo further informed me that if the above
5 undertaking failed to materialise the police would have to
6 disperse the crowd." Do you still stick with your answer
7 that there was a deliberate omission of the fact that this
8 was said –
9 CHAIRPERSON: No, no, her answer is the
10 opposite. Her answer is there was not an omission –
11 MR MPOFU: Yes. No, what I'm saying is
12 in the light of this –
13 CHAIRPERSON: You put it wrongly.
14 MR MPOFU: Yes. In the light of this
15 what I've just read to you would you like to amend your
16 answer or not?
17 GENERAL PHIYEGA: No, I'm not amending my
18 answer.
19 MR MPOFU: You don't, okay. Fair enough.
20 And is there any reason that you can give to the Commission
21 why you did not of your own accord make reference to the
22 extraordinary session of the NMF which is the most
23 important decision that was taken in relation to the
24 operation that killed so many people?
25 GENERAL PHIYEGA: I'm on record, I've

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1 answered the Chair on that. I've already answered that
2 earlier on, ja.
3 MR MPOFU: Ja, well can you do it again?
4 CHAIRPERSON: [Microphone off, inaudible]
5 she can be expected to repeat her answers. She's given her
6 answer –
7 MR MPOFU: Well, okay then maybe the
8 Chair will –
9 CHAIRPERSON: She's given an answer, she
10 said it was omission. Whether that's a good answer in the
11 circumstances is something I'm sure will be debated in
12 argument, but I don't know that she's going to add to it at
13 all, so –
14 MR MPOFU: It was an omission. No, I
15 just didn't know what the answer was.
16 CHAIRPERSON: Am I right, that was your -
17 National Commissioner, that was your answer, wasn't it?
18 GENERAL PHIYEGA: That was my answer,
19 Chair.
20 CHAIRPERSON: Ja, ja.
21 MR MPOFU: Thank you, Chairperson. Thank
22 you, General. Now I'm now getting to the issue of what I
23 call improper motivation for the order, and just as
24 background I'll tell you that - the Chairperson has already
25 told you this, but just as building up, that there is, at

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1 least the police expert Mr De Rover indirectly agrees with
2 the proposition we put in the opening statement that a
3 decision of this magnitude must have come much higher than
4 yourself.
5 MR SEMENYA SC: Chair, Mr De Rover did
6 not agree with any proposition. He said he would be
7 surprised if such a decision was not taken –
8 MR MPOFU: Yes. Well, that's fine. I'm
9 happy with that. So would I. The point there is that if
10 Mr De Rover would be surprised if the decision didn't come
11 higher than yourself, and in the light of the discussions
12 that you had, particularly with my learned colleague Mr
13 Burger, where you omitted only the references to the
14 Minister in your statement, that's the context in which I'm
15 now going to ask you the following question.
16 You do remember that in paragraph 23 and 24 of
17 your statement the only parts that you corrected, or
18 deleted, were the references to the Minister of Police,
19 correct?
20 GENERAL PHIYEGA: Yes, I recall that
21 engagement.
22 MR MPOFU: Ja, we won't go into that
23 whole discussion again. Right, now this is, we now go to
24 JJJ192. Before we do that, would you agree – please listen
25 to me carefully because again it's something that we did

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1 cover, so I don't want to go into it in detail. You would
 2 agree surely that what one might call the governance
 3 mechanisms of your job and the police come directly from
 4 the Constitution, which among other things says you must
 5 act impartially, without bias, and so on and so on. You
 6 agree with that?

7 GENERAL PHIYEGA: Yes, I know my
 8 constitutional responsibilities and duties.

9 MR MPOFU: Yes, thank you very much, and
 10 you would also agree with Minister Mthethwa, who puts it
 11 even more beautifully than I can, that the constitutional
 12 framework of South Africa is such that there must be a
 13 clear separation between the operational side of things and
 14 the political and he says at paragraph 16 of his CCCC1, he
 15 uses a nice word, to shield. He says, "The above," after
 16 he discusses the constitutional framework, "The above makes
 17 it clear that the constitutional scheme establishing SAPS
 18 at its core imbues SAPS with sufficient structural and
 19 operation autonomy so as to shield it from undue political
 20 influence through institutional and legal mechanisms."
 21 Surely you agree with the Minister there?

22 GENERAL PHIYEGA: I note his statement
 23 and I'm listening.

24 MR MPOFU: No, do you agree that that is
 25 the institutional framework under which you as National

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1 Commissioner operate?

2 GENERAL PHIYEGA: It is correct, Sir.

3 MR MPOFU: Thank you.

4 [12:32] Given that you'd agree that anybody who would
 5 break the law or breach the law in that constitutional and
 6 legal framework does not belong in SAPS.

7 GENERAL PHIYEGA: Maybe if you can ask
 8 that question in a better level, does not belong in SAPS,
 9 what does that mean?

10 MR MPOFU: No it's very simple. I'm
 11 saying if anybody would act in such a way as to break all
 12 the institutional framework that I've spoken to you about,
 13 about impartiality, lack of bias, being shielded from
 14 political and so on, anybody who does that firstly would be
 15 breaking the law, the highest law in the land, the
 16 constitution. But the most important question I'm asking
 17 you is whether a person who does that would not belong in
 18 SAPS.

19 GENERAL PHIYEGA: I will agree with the
 20 breaking the law, belonging in SAPS is another thing. I
 21 want to understand what you mean by that, breaking the law,
 22 of course. You're not allowed to break the law.

23 MR MPOFU: Yes but once you do there's no
 24 place for you in SAPS.

25 GENERAL PHIYEGA: Depending on what you

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1 mean.

2 CHAIRPERSON: I think what he means is if
 3 you're not impartial, if you're actuated by bias, if you
 4 allow political factors to operate, which you shouldn't
 5 then you shouldn't really be in that job, he should go
 6 somewhere else. I think that's really his point, isn't
 7 that right, Mr Mpofo?

8 MR MPOFU: That's correct, Chairperson.

9 CHAIRPERSON: Does that make it clearer
 10 to you?

11 GENERAL PHIYEGA: Chairperson, all I can
 12 say, my response to that is that indeed nobody is allowed
 13 to break the law and if the law is meaning being impartial
 14 and all those type of things of course it would require
 15 that organisation to take the necessary steps to deal with
 16 that.

17 MR MPOFU: Okay maybe I can jog your
 18 memory. You are aware that your predecessor, General Cele
 19 was fired for breach of governance principles rather than
 20 him doing kind of maybe stealing money or whatever. But it
 21 was more the fact that a breakdown in the governance
 22 principles had happened under his watch and he was
 23 therefore removed.

24 GENERAL PHIYEGA: The details I don't
 25 know, I just know –

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1 MR MPOFU: Generally.

2 GENERAL PHIYEGA: - there are some
 3 general issues around breach.

4 MR MPOFU: Yes correct. So then that
 5 would indicate, I mean if you can do that for leases and
 6 things like that imagine if one were to breach those
 7 governance frameworks with the result of 34 people dying.
 8 Surely the second one is more serious than any lease that
 9 you can think of, correct?

10 GENERAL PHIYEGA: That would be your
 11 assessment, Sir, I'm not giving that assessment, I'm
 12 listening to your assessment.

13 MR MPOFU: Okay. Now the issue is that –
 14 if you go to page 9 of JJJ192. I want to read it as fast
 15 as I can because it's quite long and –

16 CHAIRPERSON: What line –

17 MR MPOFU: Yes thank you, Chairperson,
 18 I'm going to start at line 6, Chairperson.

19 CHAIRPERSON: So I think yesterday Abie
 20 will recall –

21 MR MPOFU: Yes. I want to read it fast,
 22 please try and listen carefully, General, because the last
 23 few questions will be based on this and it's very
 24 important. This is General Mbombo speaking to Mr Mokwena.
 25 "So I think yesterday" and they didn't know that they were

<p style="text-align: right;">Page 37487</p> <p>1 being record or at least General Mbombo didn't. "So I 2 think yesterday Abie" I think we'll recall Abie is the 3 [inaudible] yes. "You will recall when this discussion 4 with the National Commissioner" that would be yourself "she 5 also from the discussion that she raised with you, you know 6 and some of these questions that she raised, you remember I 7 raised them in the morning in our meeting. And she also 8 felt that you know, it was difficult to separate management 9 from giving these people a leeway and if management gave 10 these people this type of leeway how do we separate them 11 now from an allegation that can come and say but they are 12 supporting them. So, underline so, I want us to, when you 13 said people must be arrested I want us to be very clear 14 that any information that we get should get to that we 15 arrest people. That is our interest because yourselves 16 here as management you will clear yourselves from this 17 perception" says Mr Mokwena. General Mbombo says 18 "Perception you know Mr Kwadi yes." General Mbombo says 19 "You will clear yourself by ensuring that you diffuse, that 20 you give out information that is related to this thing and 21 are able to actually act on that information because, 22 underline because, I think even when we were trying to talk 23 about it last night she" that is you again "asked me a 24 question that says you know, well this one I'm not sure 25 because the Lonmin shareholders I do not know much about</p>	<p style="text-align: right;">Page 37489</p> <p>1 you, General. 2 GENERAL PHIYEGA: I hear and I've been 3 reading with you. 4 MR MPOFU: You've been reading with me. 5 Now because we don't have time I'm going to cut this very 6 short. Firstly you'd agree that this discussion shows at 7 face value at least, that the National Commissioner of 8 Police and the Provincial Commissioner were discussing 9 political considerations to do with the policing operation, 10 at face value. There might be a long explanation, but from 11 anybody reading this you'd agree that what's it indicates. 12 GENERAL PHIYEGA: The first thing is that 13 this conversation takes place in my absence. I know it was 14 just being conversed on. 15 MR MPOFU: Well yes let me put it this 16 way just to allay any fear. General Mbombo has been asked 17 about this conversation, she has confirmed that the past, 18 where for example she says she says this and she refers to 19 you come from discussions that things you either said to 20 her or in her presence. So let's put that aside. I accept 21 that this particular conversation took place in your 22 absence, but I'm saying would you agree that anybody, any 23 human being reading this part that I've just read would be 24 left with the impression that the National Commissioner and 25 the Provincial Commissioner were discussing political</p>
<p style="text-align: right;">Page 37488</p> <p>1 them." Mr Mokwena says "Yes" and then General Mbombo says 2 "But when I was speaking to Minister Mthethwa he mentioned 3 a name to me that is also calling him, that is pressuring 4 him unfortunately it is a politically high individual." It 5 was agreed that we can put a word like that. Mr Mokwena 6 says "It is Cyril, SAPS Commissioner, Cyril Ramaphosa, yes. 7 Now remember now when I was talking to the National 8 Commissioner" yourself "last night she says to me, look 9 General who are the shareholders here. So I said I do not 10 know the shareholders, but I know that when I spoke to the 11 Minister he mentioned Cyril. And then she " that's you, 12 says "Now I got it. You know why she says she got it, 13 remember Cyril was in the appeal committee of Malema, 14 remember." Mr Mokwena "Yes and he was very strong in terms 15 of the decision that was made yes and remember that Impala 16 Malema came with our premier and spoke to those people 17 about that they should make their demands, but in that way 18 and after that we ourselves as the police managed, you know 19 managed to diffuse the situation after Malema came." Then 20 the last part which is very important. "Now our discussion 21 with the National Commissioner was around this thing that 22 say is this thing now happening such that again Malema come 23 and diffuse this thing so that it becomes as if Malema has 24 taken charge of the mining." Or the mining industry I 25 suppose, ja. You understand what I've just read out to</p>	<p style="text-align: right;">Page 37490</p> <p>1 considerations to be taken into account in effecting a 2 policing operation at face value? 3 GENERAL PHIYEGA: I do not agree. 4 MR MPOFU: You do not agree. Okay now 5 assuming just be some chance that the Commission comes to 6 the impression that that is what was being discussed here 7 you'd agree that it's against the governance framework and 8 the law as I've explained it to you. 9 GENERAL PHIYEGA: All I'm saying is that 10 I do not agree, so those presuppositions makes it difficult 11 for me to actually give – 12 MR MPOFU: No, no, General, please, 13 please. 14 GENERAL PHIYEGA: I do not agree. 15 MR MPOFU: Okay, okay forget about what I 16 read to you. If the National Commissioner of this country 17 and the Provincial Commissioner were to take into account 18 political considerations, take into account political 19 considerations to the extent of saying we must not do this 20 even if it's going to solve the policing situation. Even 21 if it's going to solve the unrest, even if it's going to 22 solve the conflict because of political considerations, 23 would that be unlawful? 24 GENERAL PHIYEGA: I think, Advocate 25 Mpofo, you are not asking me why I do not agree.</p>

<p style="text-align: right;">Page 37491</p> <p>1 MR MPOFU: No. I'm accepting that you 2 disagree.</p> <p>3 GENERAL PHIYEGA: I do have to say to 4 you, you should ask me why I do not agree because I want to 5 understand what is political in what we've read?</p> <p>6 MR MPOFU: Okay.</p> <p>7 GENERAL PHIYEGA: What are the political 8 aspects that you want me to concede?</p> <p>9 MR MPOFU: All right.</p> <p>10 CHAIRPERSON: - is he actually cut it 11 short. What it goes on to say is this, you see the 12 impression created, he's putting to you is that the views 13 which the Provincial Commissioner expressed to Mr Mokwena 14 was shared by you and that in fact it has arisen in a 15 conversation that you'd had with her and with them I think. 16 That's what he putting, whether you agree with that is a 17 matter you can deal with in a moment. But then what the 18 Provincial Commissioner goes on to say is this. Let's 19 start with the words "Now our discussion with the National 20 Commission surrounding this thing" she says "With this 21 thing now happening as such that again Malema come and 22 diffuse this thing" referred to the fact that Mr Malema had 23 gone to Impala and spoken and after he'd spoken the police 24 were able to manage the situation which they couldn't do 25 before. This was the point you made you see. So she says</p>	<p style="text-align: right;">Page 37493</p> <p>1 with this thing tomorrow. We've got to move in, we've got 2 to kill it because if we don't a terrible thing will 3 happen. Mr Malema will come, he will make a speech, he'll 4 diffuse the situation, he'll get all the credit and we 5 can't have that. So that's why we've got to act now-now 6 and this she describes as a serious political connotation. 7 I hope you now understand the point that he's trying to 8 convey. Am I right, Mr Mpofo?</p> <p>9 MR MPOFU: 100%.</p> <p>10 CHAIRPERSON: Now you can ask the 11 questions you want to ask and then your time is -</p> <p>12 MR MPOFU: Thank you, Chairperson. So 13 you do understand now the political connotation.</p> <p>14 GENERAL PHIYEGA: I do not understand 15 political connotation because what I hear from this 16 conversation is people who are interested in ending a 17 strike.</p> <p>18 MR MPOFU: No, no it's exact opposite. 19 There are people who are interested in ensuring that the 20 strike is not ended by a particular political figure, not 21 end it. In other words he must not come and diffuse the 22 situation. Why? Because this mine's not nationalised. 23 Why? Because one of the shareholders was in a disciplinary 24 hearing and in case you think there's any debate she says 25 in her own words, the Chairperson has read it out to you</p>
<p style="text-align: right;">Page 37492</p> <p>1 "Our discussion with the National Commissioner surrounding 2 this thing," I think that should "if this thing happening 3 as such that again Malema come and diffuse this thing" so 4 she was in effect that Mr Malema or so he will argue, 5 afraid that Mr Malema was going to come and diffuse this 6 situation as well. So that it becomes as if Malema's taken 7 charge of the mining, the mine, Mokwena says ja, the 8 Provincial Commissioner continues "The mine, once again 9 remember Malema's view is the mine should be nationalised." 10 And the Provincial Commissioner says nationalise and all 11 that. And then he goes on with this, this is the passage 12 that he left out, but it really is what he's trying to 13 convey to you. "So it has got a serious political 14 connotation that we need to take into account, but which we 15 need to find a way of diffusing. Hence, I just told these 16 guys that we need to act such that we kill this thing." 17 Mokwena immediately "Yes." Provincial Commissioner "When 18 tomorrow we have to move in, if today we don't find co- 19 operation with these people we need to move in such that we 20 kill it." And the point I think Mr Mpofo - I'm trying to 21 make it clearer to you because he won't be satisfied to 22 hear me say this but I'm not sure he's making it as clear 23 to you as he should. The point he's trying to make is this 24 that the Provincial Commissioner if she's correctly 25 interpreted, was saying to Mr Mokwena we've got to deal</p>	<p style="text-align: right;">Page 37494</p> <p>1 "So it has got serious political connotations that we need 2 to take into account." It can't be clearer than that, but 3 which we need to find a way of diffusing. Hence, we must 4 kill this thing and so on and later she says "When tomorrow 5 we have to move in, if today we do not find co-operation 6 these people, we need to move in that we kill it, because" 7 that is word is connected "because we need to protect a 8 situation where any Jack and Jill from a political area" 9 and then it gets interrupted. So political comes out even 10 twice in her own words. What do you mean you don't 11 understand the political connection?</p> <p>12 GENERAL PHIYEGA: I don't because what I 13 hear and interpret - remember that's a conversation that 14 says I'm not in, but what I hear is an interest to end the 15 protest. That's what I hear.</p> <p>16 MR MPOFU: Okay that's fine.</p> <p>17 CHAIRPERSON: We're running out of time, 18 okay last question.</p> <p>19 MR MPOFU: Yes I'll ask this last 20 question. Let's assume that we are all wrong about this, 21 there's nothing political in what I've just read out to you 22 it's about ending the situation as you suggest. Now what 23 I'm asking you then is if on the off chance that we are not 24 wrong, that this discussion had political implications and 25 it implicated you, would a situation, where no less than</p>

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1 the National Commissioner of the country and the Provincial
2 Commissioner are discussing a situation where they say do
3 not diffuse a potentially volatile situation only because
4 of Political considerations, would that amount to
5 unlawfulness and do those people belong in SAPS? As you
6 understand it.

7 GENERAL PHIYEGA: As I understand it,
8 Advocate, people discussing the interest of ending a
9 strike, that's how I understand it and I also make a very
10 clear distinction between political responsibility and
11 political interference. And in our operation we take those
12 two premises very clearly. I've said so right at the
13 beginning when I asked of my role and when I asked of -
14 you've also articulated to say what did the Minister say.

15 MR MPOFU: Yes.

16 GENERAL PHIYEGA: So what I've heard
17 throughout this discussion is people who are talking, they
18 could have used other words, but I hear and I'm honest and
19 I'm interpreting the best way I can, people who are seeking
20 to end a protest.

21 MR MPOFU: Yes for the purposes of – and
22 I'm asking really now for the last time, I accept that for
23 purpose of – I promise you I won't accept it when we do the
24 argument, but just for progress. Let's say I accept that
25 answer, all I'm saying to you now is let us assume that we

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1 are going to be so wayward as to assume that this was a
2 discussion about politics. If that is so would you agree
3 that it would indicate a situation where the participants,
4 insofar as they are SAPS members, do not belong to a police
5 service of the democratic South Africa as defined in the
6 constitution which should be shielded according to the
7 Minister from political consideration? And according to
8 the constitution.

9 GENERAL PHIYEGA: My response to you
10 would be any person who works in SAPS and is a leader like
11 myself would be clearly understanding what I call political
12 responsibility and political interference. And we make a
13 very clear distinction between those two things. It's very
14 critical. The executive is political responsible, the do
15 not interfere with our operations.

16 MR MPOFU: Is that what you meant when
17 you said now I see, I get it?

18 MR SEMENYA SC: Chair, may I –

19 CHAIRPERSON: You made your last
20 question, but let me try to put your question –

21 MR MPOFU: Thank you very much,
22 Chairperson.

23 CHAIRPERSON: Let me try and put your
24 question in terms the witness will understand.

25 MR MPOFU: I'll be indebted.

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1 CHAIRPERSON: Mr Semenya?
2 MR SEMENYA SC: Well I was going to make
3 a point his time was up five minutes ago.

4 CHAIRPERSON: His time is up, I'm aware
5 of that. The problem is he hasn't put his point as clearly
6 as I think he wants to put it. Whether it's a good point
7 is another matter. What he's trying to say, I think, is
8 that he's going to argue that the Provincial Commissioner
9 said to the Lonmin people we've got to act tomorrow even if
10 it's risky, it doesn't matter. We've got to act tomorrow
11 because Malema's going to come and sort the thing out,
12 that's a bad thing, that's a political factor we have to
13 take into account. That he's going to argue and he's going
14 to go further and he's going to say, based on the passage
15 he read you, that that idea was one with which you agreed.
16 Now all he's asking you is – he's asking you the purpose of
17 answering the question to assume certain things which I
18 know you don't assume. What he's saying is if the decision
19 to move on the Thursday was prompted by a desire, even
20 though it was risky, prompted by a desire to get in and
21 sort the problem before Mr Malema came and got all the
22 political credit for sorting it out, would that be wrong
23 approach?

24 GENERAL PHIYEGA: Chairperson, my
25 response to you would be our being there for more than

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1 nine, ten days if indeed the desire was just that sincerely
2 we wouldn't have been there for that time. And this is
3 why, Chairperson, I would not agree to what is being
4 proposed.

5 CHAIRPERSON: All right well that's your
6 answer. Mr Mpofo, that's it then. Thank you for your
7 cross-examination.

8 MR MPOFU: Thank you, Chairperson, I note
9 that you wanted to end the strike, but that will be a topic
10 for another day.

11 [12:52] CHAIRPERSON: We won't go there now.

12 MR MPOFU: Thank you very much,
13 Chairperson.

14 CHAIRPERSON: That's the end of the
15 witness's evidence. Thank you very much for coming back
16 and for answering our questions. You're excused from
17 further attendance.

18 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

19 MR CHASKALSON SC: Chair –

20 CHAIRPERSON: Yes, Mr Chaskalson, there's
21 something I want to raise with you in chambers in a minute
22 or two, so whatever you want to say we can deal with then.
23 Mr Burger, do you want to lead the witness for the next
24 seven minutes or should we take the lunch adjournment now?

25 MR BURGER SC: No, is the witness still

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1 under cross-examination?

2 CHAIRPERSON: Sorry, I beg your pardon,

3 I'd forgotten. And Mr Bham is leading the witness, the

4 witness is actually being cross-examined by Mr Mpofu and

5 it's Mr Bham's witness, not yours. So do you want the

6 witness to come back now, Mr Bham, for seven minutes or

7 shall we take the tea adjournment now, sorry, the lunch

8 adjournment now and start again after lunch?

9 MR BHAM SC: I would have thought the

10 latter choice is the better one -

11 CHAIRPERSON: Alright, the latter choice

12 is made. We will adjourn until quarter to two.

13 [COMMISSION ADJOURNS COMMISSION RESUMES]

14 [13:58] CHAIRPERSON: The Commission resumes. I

15 see you're back, Mr Jamieson Let me remind you, you're

16 still under oath. You took the oath or did you affirm?

17 MR JAMIESON: I took the oath.

18 CHAIRPERSON: You took the oath. Some

19 people affirm, you're one of the oath takers.

20 MR JAMIESON: Yes.

21 CHAIRPERSON: You're still bound by the

22 terms of your oath.

23 ALBERT JAMIESON: (s.u.o.)

24 CHAIRPERSON: Mr Mpofu, you're still

25 cross-examining.

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1 MR MPOFU: Yes, thank you, Chair.

2 CHAIRPERSON: Sorry, Mr Chaskalson?

3 MR BUDLENDER SC: Chair -

4 CHAIRPERSON: [Microphone off, inaudible]

5 MR BUDLENDER SC: It's not the worst

6 insult I've received in my life, Chair.

7 CHAIRPERSON: It's slightly easier not to

8 make that mistake, only slightly.

9 MR BUDLENDER SC: Just one short

10 announcement, a number of parties have approached us for

11 clarification in relation to the ruling which was made by

12 the Chair on Friday last week. I just wanted to draw the

13 attention of parties to the fact that we have circulated a

14 proposal which we hope will resolve the issue and we ask

15 that parties revert to us as soon as possible in response

16 to the proposal which we have distributed late this

17 morning. Thank you, Chair.

18 CHAIRPERSON: Thank you, Mr Chaskalson -

19 Mr Budlender. Oh dear, after two years one shouldn't make

20 mistakes like that. I'll get it right this time, Mr Mpofu.

21 MR MPOFU: That's right, Chairperson,

22 thank you. I say thank you, Commissioner Tokota.

23 CHAIRPERSON: This is becoming

24 infectious, isn't it? Mr Wesley, to introduce a serious

25 note for a moment - only for a moment - how much time has

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1 Mr Mpofu got left?

2 MR WESLEY: Mr Mpofu has got 74 minutes,

3 Chair, then he'll be followed by the Legal Resources

4 Centre. I remind them, half an hour and then AMCU for two

5 hours.

6 CHAIRPERSON: Thank you. Alright, Mr

7 Mpofu.

8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

9 Thank you very much. Good afternoon, Mr Jamieson.

10 MR JAMIESON: Afternoon.

11 MR MPOFU: Thank you. Right, your last

12 answer before we broke yesterday was, I had - we were

13 dealing with your e-mail of the 15th of August on page 34 of

14 VVVV1, you remember, and your last answer or rather my last

15 question and your answer, my question was that the Minister

16 was right that insofar as this was a wage dispute,

17 management and the unions should sit down and sort it out

18 and you said that it was correct.

19 MR JAMIESON: Yes.

20 MR MPOFU: Do you remember that?

21 MR JAMIESON: Ja.

22 MR MPOFU: Now, and before that you and I

23 had agreed that your characterisation of it as, as you

24 called it, I can't remember the term you used, as simply a

25 criminal matter, would have been wrong. It was actually a

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1 twin-headed, I think that's the term you used, it was a

2 twin-headed monster.

3 MR JAMIESON: Yes, a twin-headed, double-

4 headed, Hydra.

5 MR MPOFU: Correct, yes. Now, you would

6 also agree, I am sure, that if it was true that this could

7 have been sorted out or at least the underlying issue -

8 let's call the labour issue the underlying problem, would

9 you agree with that?

10 MR JAMIESON: No.

11 MR MPOFU: Not denying that there was a

12 subsequent problem of unrest and destabilisation as you

13 call it, and so on, would you be comfortable with that

14 categorisation?

15 MR JAMIESON: No, I thought you and I

16 agreed that it was twin-headed.

17 MR MPOFU: Yes, no -

18 MR JAMIESON: Ja, one -

19 MR MPOFU: - having agreed that it's

20 twin-headed -

21 MR JAMIESON: - one doesn't underlie the

22 other or, there are two separate issues.

23 MR MPOFU: So you think that they were

24 all the same, there was no underlying, of the twin heads

25 there was none that you could say is the underlying issue

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1 and the other one the subsequent resultant issue?
 2 MR JAMIESON: No, I wouldn't, I'll stick
 3 with my twin-headed Hydra type –
 4 MR MPOFU: No, I'm not debating your
 5 twin-headed, I actually agree with you but I'm saying
 6 having agreed that it was twin-headed, one can still go
 7 further and say that the labour issue was the underlying
 8 problem which had escalated into criminality or whatever
 9 you want to call it, ja.
 10 MR JAMIESON: Well, then you would
 11 describe it as one was subservient to the other or one was
 12 the root cause of the other and I wouldn't agree with that.
 13 MR MPOFU: Yes. No, I do – so there was
 14 no root cause, as far as you're concerned?
 15 MR JAMIESON: Well, there would be root
 16 causes of each.
 17 MR MPOFU: Ja, but in relation to each
 18 other, which one would you say is the root cause, the
 19 labour dispute or the unrest?
 20 MR JAMIESON: Neither. As I said, I
 21 could describe what I think is the root cause of each, but
 22 not the one was a root cause of the other.
 23 MR MPOFU: Alright let's – fine, I don't
 24 want to debate that with you, but in any event you would
 25 agree that to say that, to say that insofar as the thing is

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1 a labour issue, it must be sorted out between management
 2 and the unions, cannot by any stretch of the imagination be
 3 something that is damaging because it's the truth. You and
 4 I have agreed that it's the truth.
 5 MR JAMIESON: Yes, in part, if I could
 6 add to that.
 7 MR MPOFU: Which part don't you agree
 8 with?
 9 MR JAMIESON: When you say was to be
 10 sorted out by management and the unions, you know, my view
 11 is it had gone beyond that and it needed some other
 12 intervention to be able to sort it out.
 13 MR MPOFU: Ja. No, that's fine, I can
 14 accept that if you're saying it's insufficient. It's
 15 insufficient to simply say it must be sorted out by
 16 management and the unions because you and I have agreed
 17 that it's now twin-headed.
 18 MR JAMIESON: Yes.
 19 MR MPOFU: But that's a different thing
 20 from saying it is damaging to say what is the truth. It
 21 might be insufficient but how can it be damaging to say the
 22 unions and management must sit down?
 23 MR JAMIESON: I wasn't referring to that
 24 being damaging. It was actually, that was referring to the
 25 fact that Minister Shabangu had not denounced the violence.

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1 MR MPOFU: Ja, but how is that damaging?
 2 MR JAMIESON: Not denouncing the
 3 violence? Well, I think she's a senior political figure,
 4 she's the Minister of the DMR, she is our regulator, she is
 5 the person we first turn to, to try and seek her counsel
 6 and assistance and it's already, I think it was probably
 7 Wednesday, there's 10 people in the mortuary and the only
 8 thing she says is it's a labour dispute, that management
 9 and the unions must sit down and – that's the part I was
 10 referring to.
 11 MR MPOFU: Well, Mr Jamieson, I'm going
 12 to argue firstly that you're making up that version because
 13 in your e-mail you don't say anything about this so-called
 14 omission of violence. What you say is simply this, "The
 15 Minister was on Radio Today saying she'd been briefed that
 16 this was a wage dispute and management and unions should
 17 sit down and sort it out," which you and I agree is true.
 18 And then you say – I'm sorry, it's page 34.
 19 MR JAMIESON: I've got it.
 20 MR MPOFU: Yes, VVVV1 page 34. And then
 21 you say, "I'm not sure" – well, sorry – "Not sure who
 22 briefed her. We are waiting to talk to her" –
 23 MR JAMIESON: Ja.
 24 MR MPOFU: - "through Roger," I suppose
 25 "and although not too damaging, it's also not too helpful."

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1 In other words – damaging might not be too damaging but
 2 it's damaging. And what is damaging is the fact that she
 3 says a wage dispute must be sorted out by management and
 4 the unions. You don't say anything about any omission to
 5 mention violence. Would you agree with that much?
 6 MR JAMIESON: That was what was in my
 7 mind when I wrote this.
 8 MR MPOFU: Well, can we really be
 9 concerned by what was in your mind or should we be
 10 concerned about what is on your piece of paper that you
 11 wrote?
 12 MR BHAM SC: Mr Chairperson, I think the
 13 last comment is a little unfair because if you want to know
 14 what he wrote, it's there, you don't have to go through it.
 15 What he was asked is what he meant by what he wrote, so
 16 then he's going to tell you what's on his mind.
 17 MR MPOFU: No, I never asked him that but
 18 anyway, the point I'm making to you Mr – I didn't ask you
 19 what you meant, I wouldn't make that mistake, what I've
 20 said to you is that what you have here is a statement that
 21 is interconnected. You say that she says a dispute and
 22 management and unions should sit down and sort it out.
 23 Then you say, "I'm not sure who briefed her" - in other
 24 words for her to make that statement" – "and although it's
 25 not too damaging, it's also not too helpful." It's clear.

<p style="text-align: right;">Page 37507</p> <p>1 There's nowhere in there where you can imply that actually 2 what you were talking about was her failure to talk about 3 violence. Can you help us with that? 4 MR JAMIESON: Yes, I can help you. It's 5 very clear in the letter written on Monday where I said at 6 the very least, please will you denounce the violence, 7 along with many other people – but that was the least I'd 8 asked her to do. 9 MR MPOFU: No, no, that won't help you. 10 Remember in that letter you also asked for the police and 11 the army – 12 MR JAMIESON: Yes. 13 MR MPOFU: - which we are going to get to 14 just now, so that also cannot, can't be the answer. 15 MR JAMIESON: And to help you more, 16 connected with that was, again we're asking please, to Mr 17 Ramaphosa, can you ask the Minister to talk to us, we've 18 now been waiting for three days and this was headline news 19 on many of the media, whether it be electronic or on the 20 TV. It was inconceivable to think that she wasn't aware of 21 it, even if she wasn't aware that we wanted to talk to her. 22 If we'd have talked to her, this is exactly what we would 23 have said. 24 MR MPOFU: Okay, let me put it this way. 25 Flowing from your misdiagnosis or your wrong</p>	<p style="text-align: right;">Page 37509</p> <p>1 One is the political intervention and one is the army and 2 the police. 3 MR MPOFU: It's the same thing. 4 MR JAMIESON: No. If you look at the 5 letter of Monday, what I was asking for was could she get 6 involved, which is political intervention. It's her, 7 that's who it's directed at, could she get the President of 8 NUM, the President of AMCU, you know, industry and anyone 9 else that she wanted and she could get us all together and 10 find out what was driving the violence, so it was related 11 to that but the police and the army is simply related to 12 restoring law and order. 13 MR MPOFU: Yes. 14 MR JAMIESON: So this is the twin heads 15 that I was talking about. 16 MR MPOFU: No, no – 17 MR JAMIESON: One area is the labour 18 dispute and one area is, or one head, and the other head is 19 the violence. 20 MR MPOFU: No, Mr Jamieson, please. 21 Okay, let's take that answer which I think is, I will 22 submit is not an answer to my question. What political 23 intervention would be needed? I thought you and I had 24 agreed that insofar as it was a labour dispute it needed 25 management and the workers. Why would you need political</p>
<p style="text-align: right;">Page 37508</p> <p>1 characterisation of this as a single-handed, headed beast 2 as opposed to being a double-headed beast, you also said in 3 that same e-mail that it could not be resolved without 4 political intervention and needs the situation to be 5 stabilised by the police and army. You would agree that 6 insofar as it was a labour dispute, you don't need the 7 police or army. 8 MR JAMIESON: Well, two things. One is, 9 it does say that, that's what it said. It said that also 10 in the letter of Monday, so it weapons a repetition. And 11 secondly, this part is not talking about the labour 12 dispute, it's talking about the violence and the murder. 13 MR MPOFU: Yes, but that flows – that's 14 what I am trying to say. That only flows simply from the 15 fact that according to you it weapons not a labour dispute, 16 in capital letters. 17 MR JAMIESON: Yes. Concerning the 18 security situation which is the heading of the e-mail. 19 MR MPOFU: Maybe we are talking past each 20 other and it's probably my fault. I'm saying now that you 21 and I agree that an element of it which you say was of 22 equal importance was the labour dispute, you would agree 23 that that element of it did not need what you call 24 political intervention and the army or the police. 25 MR JAMIESON: Well, it's two questions.</p>	<p style="text-align: right;">Page 37510</p> <p>1 intervention? 2 MR JAMIESON: I thought we agreed that 3 that was insufficient and I added to it. 4 MR MPOFU: No, but listen, you're now 5 evading the question substantially. 6 CHAIRPERSON: I don't think he's evading 7 the question. Just ask your question. 8 MR MPOFU: Well – 9 CHAIRPERSON: I don't think he's evading 10 it. If he evades I will come down on him. 11 MR MPOFU: Okay, well, alright. The 12 record will show that when you talked about the twin heads 13 we were not talking about this, what we're talking about 14 now. I'm saying to you very simply if, on the labour 15 dispute leg of the problem – 16 MR JAMIESON: Okay – 17 MR MPOFU: - what political intervention 18 did you need? 19 MR JAMIESON: We needed her. If she'd 20 have wanted to bring in the Minister of Manpower, which she 21 did subsequently on the 18th and thereafter and she'd have 22 brought all the parties together, because only she could, 23 you know by that time it had gone past us being able to do 24 that. It's the political intervention I'm talking about. 25 MR MPOFU: Yes.</p>

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1 MR JAMIESON: Simply that our Minister
2 who's our regulator, who's the head of the DMR, please get
3 involved and that's what we wanted to talk to her about.
4 MR MPOFU: Yes, but that cannot be a true
5 answer, Mr Jamieson, because according to you this was not,
6 big N-O-T, a labour dispute. So what would the Minister of
7 Labour be doing?
8 MR JAMIESON: Addressing that head. You
9 asked me why did I want political intervention? I wanted
10 political intervention on the other one. That was the
11 letter of Monday.
12 MR MPOFU: No, that's the mistake you're
13 making. You are mixing what you said in this letter with
14 what you and I have subsequently agreed during your
15 evidence now. In your letter you did not have a twin-
16 headed thing. You said it is not, not –
17 MR JAMIESON: Correct.
18 MR MPOFU: Okay, a labour issue.
19 CHAIRPERSON: The question really to ask
20 is, what is this? He writes a letter under the heading
21 "Security situation."
22 MR MPOFU: Yes.
23 CHAIRPERSON: We know that there's been a
24 wage dispute since sometime I think in June 2012, which
25 only ended sometime towards the end of September. We also

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1 know that what then happened, there was an unprotected
2 labour, an unprotected strike which began I think on the
3 10th. That was, according to the evidence, enforced or
4 attempts were made to enforce it by violence and
5 intimidation and that led to the deaths of people and
6 damage of property and injury to people. That was the law
7 and order issue. That was the security situation. There
8 was no security situation from the time in June when the
9 wage dispute started. There was, I take it, or there may
10 have been to some extent but there wasn't the same kind of
11 security situation after, say, the 18th of August but in the
12 middle there was a security situation and that is what he
13 calls – this is why he says this is not an industrial
14 relations issue. That's the way I read it –
15 MR MPOFU: No –
16 CHAIRPERSON: - if I'm wrong you must
17 please tell me.
18 MR MPOFU: Ja. No, Chairperson, with
19 respect, you are because – well, you and I first but also
20 myself and the witness have long agreed that no-one can
21 deny that there was a security situation but that it was
22 not, it was a hybrid or what the witness calls a –
23 MR JAMIESON: A Hydra.
24 MR MPOFU: Hydra, yes, a twin-headed –
25 CHAIRPERSON: A hybrid is actually –

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1 well, you know, a mule is a hybrid.
2 MR MPOFU: Yes.
3 CHAIRPERSON: Siamese twins are double-
4 headed –
5 MR MPOFU: I've used that before as well,
6 yes. In any event –
7 MR JAMIESON: Mr Chairman, if it helps,
8 after my discussion on the issue of insistence yesterday I
9 did go home and look it up in the dictionary to see, if I
10 was questioned again I could come and agree to it, which I
11 can't. I looked up hybrid as well and hybrid is something
12 made by combining two different elements.
13 CHAIRPERSON: Well, that's like a mule.
14 MR JAMIESON: Yes.
15 CHAIRPERSON: Alright –
16 MR MPOFU: That's fine, I'm not –
17 CHAIRPERSON: I'm concerned, I'm
18 concerned with a different question. I'm concerned with a
19 different – we're dealing with analogies and –
20 MR MPOFU: Okay.
21 CHAIRPERSON: I'm concerned with a point
22 which I hope will shorten the debate and that is, Mr Mpofu
23 is saying this was a wage dispute. He says it wasn't a
24 wage dispute, it was a double-headed operation or it was a
25 hybrid or whatever word you want to use. The question

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1 though is, and you don't agree, the question is what was
2 meant by the word "this," in other words what were you
3 talking about? And if it's clear that – and then you go
4 on, you see. In the fourth line of the first bullet you
5 say, "I've had two discussions with the DG and in each case
6 it characterises this," again "this" –
7 MR JAMIESON: Yes.
8 CHAIRPERSON: - "as not an industrial
9 relations issue but a civil unrest, destabilisation,
10 criminal issue."
11 MR JAMIESON: Ja.
12 CHAIRPERSON: Now, which could not be
13 resolved without political intervention.
14 MR JAMIESON: Yes.
15 CHAIRPERSON: So what's got to be
16 resolved with political intervention is a civil unrest,
17 destabilisation, criminal issue.
18 MR JAMIESON: Yes.
19 CHAIRPERSON: Your second bullet, as I
20 read it, you then say what the political intervention was
21 to be aimed at achieving, namely – you'd already got 800
22 police on the site so that was –
23 MR JAMIESON: Correct –
24 CHAIRPERSON: - and there'd been, whether
25 that was brought about by the phone calls to the Minister

<p style="text-align: right;">Page 37515</p> <p>1 one doesn't know but the evidence seems to be that in fact 2 it wasn't but anyway, there were 800 – there may be an 3 argument about that so we won't assume that [inaudible] at 4 the moment, but there were 800 police on the site and that 5 you were grateful for. 6 MR JAMIESON: Yes. 7 CHAIRPERSON: You then go on to say, "Our 8 next challenge" and this is presumably what you wanted the 9 political intervention for to sustain this, i.e. you 10 wanted to keep the 800 police on site. 11 MR JAMIESON: Yes. 12 CHAIRPERSON: Ensuring they remain, they 13 must stay, they must take appropriate action so we can get 14 the people back to work. That's a question upon which Mr 15 Mpfu can, I think, legitimately question you, what you 16 meant by appropriate action. Then it goes on, "It would be 17 good to have some independent confirmation that the police 18 have plans to sustain a presence" - so that's going back to 19 keeping them there, sustaining the presence – "for at least 20 a week." 21 MR JAMIESON: Yes. 22 CHAIRPERSON: Sustaining a presence for 23 at least a week doesn't mean on, this is the 15th, doesn't 24 mean launching an operation, highly risky operation on the 25 Thursday and killing 34 people. It means sustaining the</p>	<p style="text-align: right;">Page 37517</p> <p>1 before I've heard all the argument and evidence, the top of 2 the letter tells us what "this" is. That's a security 3 situation. 4 MR JAMIESON: Security situation, ja. 5 CHAIRPERSON: That's in other words the 6 situation which arose from the time of the unprotected 7 strike and attempts were being made according to your 8 information to enforce it by violence and intimidation. 9 There'd been a wage dispute since June, continued till late 10 September, but in the middle was the security situation. 11 Am I understanding correctly? 12 MR JAMIESON: Yes, 100%, Mr Chair. 13 MR MPOFU: Ja. 14 MR JAMIESON: If I could put it in my own 15 words, I mean that would be better, if you'd rather, 16 because where I would start is to go back to the objective 17 and on that I would agree, Mr Mpfu, our objective from 18 Sunday was to say that the violence that had erupted was 19 criminal issues, criminal activity, and we clearly saw in 20 some of the emails and I will say in conversations on the 21 EXCO calls that people were using the word "criminals," you 22 know, quite liberally, and criminal activity quite 23 liberally. So I won't back away from that at all. 24 CHAIRPERSON: [Microphone off, inaudible] 25 of injuring people a criminal conduct in anyone's language.</p>
<p style="text-align: right;">Page 37516</p> <p>1 presence, staying there, keeping the situation under 2 control. And then numbers – and also they must sustain a 3 presence for at least a week and you don't want numbers to 4 wane by the weekend. 5 MR JAMIESON: Definitely – 6 CHAIRPERSON: That seems to me to be what 7 the letter is saying, if I'm reading it correctly. 8 MR JAMIESON: Yes. 9 CHAIRPERSON: "And then if you can talk 10 to the Minister, please, can you influence these things 11 with her, i.e. sustain the police presence, make sure they 12 don't push off over the weekend and so on." 13 MR JAMIESON: Absolutely. 14 CHAIRPERSON: "Encourage her to make time 15 to talk to Roger." You were hoping to arrange an audience 16 if that's the right word with her and for Mr Phillipmore, is 17 that what the letter says? 18 [14:18] MR JAMIESON: Yes and we'd been 19 repeatedly trying to do that and I'd spoken to Roger at the 20 airport before he left the night before and that was the 21 purpose. 22 CHAIRPERSON: Now the other point is in 23 regard to the answer to the question what is "this," the 24 answer to that I again would have thought, but again this 25 is a prima facie view, I mustn't express definitive views</p>	<p style="text-align: right;">Page 37518</p> <p>1 MR JAMIESON: And murder, Chairperson. 2 CHAIRPERSON: I said killing people. The 3 other point that's important, again prima facie - I 4 introduce it in the hope of shortening the debate, I hope 5 it doesn't have the opposite effect – in the first line you 6 say "We've had approaches," I supposed that should be, 7 "from NUM Eastern Plats that they'd like to return to work 8 if police can offer adequate protection." So what seems to 9 be what the letter is about is this; we will break the 10 strike, or certainly substantially reduce the strike, 11 certainly as far as Eastern Plats is concerned, if the 12 police can give adequate protection to those people who 13 according to NUM are minded to work but are afraid of going 14 to work for very good reason, because they can't be sure 15 that if they try to go to work they won't be killed, like 16 Mr Langa was. 17 MR JAMIESON: And that was – 18 CHAIRPERSON: Is that really what you're 19 talking about? 20 MR JAMIESON: Well, that's what you 21 referred me to yesterday in those handwritten notes that 22 Mark Munroe had if we can secure something at Eastern Plats 23 and you were questioning about the circle, and I said I 24 think I recall it was something to do with the bus stop or 25 where people come to work. That was exactly that</p>

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1 conversation.

2 MR MPOFU: Ja.

3 MR JAMIESON: And that was the approach

4 from NUM at Eastern Plats. So as I was saying, I'd spoken

5 to Roger on the phone, he was at the airport the previous

6 night and he was, to say he was angry would, probably does,

7 about does it, that the Minister had not made time to

8 contact him or be available to take his call or to meet us.

9 He was saying, "Albert, if you can have another go at that

10 in some way, shape or form, if I need to meet you at the

11 airport, if I need to fly on down to Cape Town, if I need

12 to drive from OR Tambo directly to her office or wherever

13 she is, see if you can do anything about that." He was

14 angry that she hadn't spoken to us and made the time.

15 MR MPOFU: Okay –

16 MR JAMIESON: So as I drove to work the –

17 MR MPOFU: Okay, Mr Jamieson, I think

18 that's very interesting, but –

19 CHAIRPERSON: [Microphone off,

20 inaudible] –

21 MR MPOFU: It's got nothing to do with

22 what I asked.

23 CHAIRPERSON: Well, let him finish the

24 sentence and then you could ask a question. As you say, as

25 you were driving to work you heard her on the radio and

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1 then you –

2 MR JAMIESON: And in my head I already

3 had the email formulated –

4 CHAIRPERSON: You told us that day before

5 yesterday –

6 MR JAMIESON: The email was two bullets,

7 please –

8 CHAIRPERSON: You went home and you wrote

9 an email – you went back to your office, you went to your

10 office –

11 MR JAMIESON: Ja, in the office.

12 CHAIRPERSON: - at Melrose Arch.

13 MR JAMIESON: Ja.

14 CHAIRPERSON: And what was a two-bullet,

15 two-line –

16 MR JAMIESON: Turned into a –

17 CHAIRPERSON: - email in your mind turned

18 out to be this –

19 MR JAMIESON: - which is this one.

20 CHAIRPERSON: - this one page before –

21 MR JAMIESON: I mean if I could –

22 CHAIRPERSON: No, no, no, I think – look,

23 we've seen it. Mr Mpofo is waiting to ask his next

24 question because his time is running out.

25 MR MPOFU: Ja, alright. Now look, I'll

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1 cut it short like this. When you and I agreed that this

2 was a two-headed problem, surely, surely anyone, even a

3 child will agree that when the security situation, as you

4 call it, as the Chairperson calls it, was introduced, that

5 did not signal the end of the labour dispute. That's why

6 it's a two-headed thing, isn't it?

7 MR JAMIESON: Correct.

8 MR MPOFU: Yes, thank you. Alright, and

9 then to reinforce that issue, on page 47 of the same – Mr

10 Ramaphosa writes a letter to you and other people and says,

11 "I have had a discussion with Susan Shabangu in Cape Town.

12 She agrees that what we are going through is not a labour

13 dispute," which is untrue as you and I have agreed, "but a

14 criminal act." Do you understand the difference between

15 saying it's not only a labour dispute, it's also a criminal

16 act? That's different from saying "She agrees what we are

17 going through is not a labour dispute, but a criminal act."

18 You appreciate the difference?

19 MR JAMIESON: I can see that, but she

20 doesn't –

21 MR MPOFU: Yes.

22 MR JAMIESON: What she doesn't say is

23 what we're going through is not only a labour dispute. I

24 think you said that –

25 MR MPOFU: Yes, that's the whole point.

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1 That's exactly the point. She says –

2 MR JAMIESON: And what Cyril, well what I

3 think-

4 CHAIRPERSON: Sorry, Mr Jamieson, you

5 both can't talk at once. Mr Mpofo, you're still

6 questioning him?

7 MR MPOFU: Yes. No, I defer to him to

8 finish –

9 CHAIRPERSON: Alright, okay.

10 MR JAMIESON: And of course he's replying

11 to the email about the security situation. So we're still

12 talking about the security situation.

13 MR MPOFU: No, Mr Jamieson, please, you

14 know just listen to the question and answer it. Would you

15 agree that that sentence from Mr Ramaphosa that says "She

16 agrees that what we are going through is not a labour

17 dispute, but a criminal act," means that the thing has

18 mutated from one thing to another as opposed to it being a

19 labour dispute with a criminal element?

20 MR JAMIESON: If she was talking about,

21 you know, twin headlights then I would agree.

22 MR MPOFU: And then you say to that

23 characterisation you say, "Many thanks, Cyril, that is very

24 helpful. I will call in to the DG, so I will reinforce."

25 In other words you'll reinforce this notion that it's not a

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1 labour dispute, but a criminal act?
 2 MR JAMIESON: Well, I'd already talked to
 3 him on Tuesday and said exactly the same thing.
 4 MR MPOFU: No, I'm not talking about –
 5 when you say "will" you're talking about the future.
 6 MR JAMIESON: Yes.
 7 MR MPOFU: You said you will reinforce,
 8 correct?
 9 MR JAMIESON: Yes.
 10 MR MPOFU: Yes, and then you also had
 11 asked him – we dealt with this – to influence and encourage
 12 these things, including the characterisation, correct?
 13 MR JAMIESON: Sorry, Mr Mpofo, where are
 14 we now?
 15 MR MPOFU: On page 34 you said that he
 16 must encourage her to, rather "Please could you influence
 17 these things" and that includes the characterisation bullet
 18 point.
 19 MR JAMIESON: Yes.
 20 MR MPOFU: Ja.
 21 MR JAMIESON: Yes.
 22 MR MPOFU: Thank you. Now you are aware
 23 that, you know about abuse of power?
 24 MR JAMIESON: Only what you talked to the
 25 National Commissioner this morning, I think, did you?

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1 MR MPOFU: Oh, the first time you're
 2 hearing about it –
 3 MR JAMIESON: [Inaudible] -
 4 MR MPOFU: Ja, okay. But do you know
 5 that using political influence to achieve certain ends
 6 might amount to abuse of power?
 7 MR JAMIESON: Yes, yes.
 8 MR MPOFU: Yes, now what you had in mind
 9 here was to use Mr Ramaphosa to speak to his people, so to
 10 speak, to speak to the politicians, correct?
 11 MR JAMIESON: To speak to the
 12 politicians, yes.
 13 MR MPOFU: Yes, and not only to speak to
 14 them, but to influence them.
 15 MR JAMIESON: Yes.
 16 MR MPOFU: And one of the things you
 17 wanted him to influence was that what you were going
 18 through at Lonmin should be called a criminal act and not a
 19 labour dispute.
 20 MR JAMIESON: Not specifically, no. By
 21 this time that was a redundant point.
 22 MR MPOFU: Well, if it was a redundant
 23 point then why did you ask him to influence it?
 24 MR JAMIESON: Because –
 25 MR MPOFU: And why when he did influence

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1 it did he report to you and why did you thank him for it?
 2 MR JAMIESON: Because I was repeating the
 3 characterisation that the Minister had put the day before
 4 that I'd spoken to the DG about and he had agreed with me
 5 someone had briefed her. It couldn't have been the DG, I
 6 thought, because he had agreed with me on the
 7 characterisation and this was –
 8 MR MPOFU: Yes.
 9 MR JAMIESON: This was a repeat of that
 10 to say who is briefing her. I mean I say that there. I
 11 don't, I'm not sure who briefed her, but if it was the DG
 12 this is what I said to the DG.
 13 MR MPOFU: Yes, that's fine.
 14 MR JAMIESON: Yes.
 15 MR MPOFU: But the point of what you
 16 want, the action you want to take is that he must influence
 17 the characterisation from being that this is not a labour
 18 dispute, but a criminal act. That's false evidence.
 19 MR JAMIESON: Ja, what I've said. If,
 20 you know, if that's accepted, she –
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: If you see this whole thing
 23 as a – or I can call it a two-pony cart, two-pony team
 24 pulling a cart, one pony is the labour dispute, the other
 25 pony is the law and order issue.

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1 MR JAMIESON: Yes.
 2 CHAIRPERSON: And when you were talking,
 3 when you say what we are going through is not a labour
 4 dispute, but a criminal act, are you talking about both
 5 ponies or only one pony?
 6 MR JAMIESON: I'm talking about the
 7 security situation, which is the criminal acts. If you
 8 want to talk about the labour dispute, I can talk about
 9 that as well and give you my view on that, on how that
 10 should be resolved. I've said as much and I said that in
 11 the letter of Monday.
 12 MR MPOFU: Mr Jamieson, please, the
 13 question is simple; one of the things you wanted Mr
 14 Ramaphosa to influence the politicians on was the
 15 characterisation of what you were going through as a
 16 criminal act only.
 17 MR JAMIESON: Given what I said, that it
 18 was relatively peaceful, there was now already 800 police
 19 on – there was no further reason to characterise it as
 20 criminal because the police were on site. So that's a
 21 passé issue now. The real point is bullet 2, how can we
 22 sustain them. The reminder about the discussions I had
 23 with the DG was related to I'm not sure who briefed her.
 24 But Mr Ramaphosa, here is what I spoke to the DG about, for
 25 your information. So when you speak to her again, which he

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1 clearly said he was going to, you know, who briefed her?
 2 MR MPOFU: Well, okay let me –
 3 MR JAMIESON: Because she said she had
 4 been briefed.
 5 MR MPOFU: Alright, look, I'm going to
 6 argue that your answer cannot be true because what Mr
 7 Ramaphosa says to you is very clear and what you say you
 8 are going to reinforce with the DG must surely be what he
 9 says to you, which is that it's not a labour dispute, but a
 10 criminal act.
 11 CHAIRPERSON: I think you've made your
 12 point, Mr Mpofu –
 13 MR MPOFU: Yes, Chairperson.
 14 CHAIRPERSON: - insofar as it can be
 15 made.
 16 MR MPOFU: That's as far as it –
 17 CHAIRPERSON: And you've got the material
 18 on record to argue the point. Whether it's a good point or
 19 a bad point is a matter to be decided at the end, but I
 20 think you've got enough on record to argue the point –
 21 MR MPOFU: Well, I thought I was
 22 signalling –
 23 CHAIRPERSON: And I think you've got as
 24 much –
 25 MR MPOFU: I was signalling exactly that,

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1 Chairperson.
 2 CHAIRPERSON: You've got as much out of
 3 the witness as you can reasonably hope to get.
 4 MR MPOFU: Yes, once I say I will argue
 5 it means I'm moving to the next point, ja. Or that I can't
 6 take it further than that, ja. Would you agree that in the
 7 situation that was taking place at Lonmin the police or the
 8 army should be the last resort?
 9 MR JAMIESON: When you say the situation
 10 you mean the violent situation or do you mean the labour
 11 dispute?
 12 MR JAMIESON: No, I'm talking of what you
 13 were going through.
 14 MR JAMIESON: Yes, the violent situation.
 15 MR MPOFU: I'm talking about what you
 16 were going through in its hybrid form, Mr Jamieson. Let's
 17 not go around in circles, which you and I have agreed.
 18 MR JAMIESON: Well, I think you –
 19 MR MPOFU: Would you agree that's what
 20 you were going through, in what you were going through the
 21 police and the army should be the last resort?
 22 MR JAMIESON: You said a couple of times
 23 that you and I agreed that it's not a hybrid, it's a twin-
 24 headed issue.
 25 MR MPOFU: Ja, whatever. The twin-headed

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1 issue. Would you agree that in solving the twin-headed
 2 issue the police should be the last resort?
 3 MR JAMIESON: In solving one of the twin-
 4 heads they should be the first resort, which is stopping
 5 the violence, stopping the killing, stopping the murders.
 6 That's their duty.
 7 MR MPOFU: The army –
 8 CHAIRPERSON: The labour dispute started
 9 in June, as I understand.
 10 MR JAMIESON: Yes.
 11 CHAIRPERSON: And continued towards the
 12 end of September.
 13 MR JAMIESON: Yes, there's a different
 14 way of resolving that.
 15 CHAIRPERSON: From the time in June when
 16 the labour dispute started –
 17 MR JAMIESON: Yes.
 18 CHAIRPERSON: - until say the 10th of
 19 August where according to some evidence the intimidation
 20 started, from that time, June to 10th of August were the
 21 police needed?
 22 MR JAMIESON: No, not at all, because –
 23 CHAIRPERSON: The police were summoned I
 24 understand when you got information of the march and so
 25 forth.

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1 MR JAMIESON: Well, it was an illegal
 2 gathering, so we had to have –
 3 CHAIRPERSON: Yes, yes, and then you then
 4 had this period with the security situation.
 5 MR JAMIESON: Yes.
 6 CHAIRPERSON: When did the security
 7 situation end as far as you were concerned? Because we
 8 know the labour dispute ended towards the end of September.
 9 MR JAMIESON: Right.
 10 CHAIRPERSON: Did the security situation
 11 continue right up to then?
 12 MR JAMIESON: I think it continued for
 13 quite a while and we did have a police presence, although
 14 it was less.
 15 CHAIRPERSON: Yes.
 16 MR JAMIESON: And I'm not, I'm aware of
 17 there were some further incidents, I think you know during
 18 the rest of August and maybe September there was still some
 19 violence, but of course it was nowhere close to what we
 20 suffered with the 44.
 21 CHAIRPERSON: Your evidence is you accept
 22 the police weren't required till the 10th of August, even
 23 though the labour dispute was going on.
 24 MR JAMIESON: Yes. Yes.
 25 CHAIRPERSON: But what your case is that

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1 once the, if you keep the two ponies theme in mind, once
 2 the security situation pony came on the scene then you say
 3 the police were required to deal with that –
 4 MR JAMIESON: Yes.
 5 CHAIRPERSON: - or to deal with the whole
 6 thing?
 7 MR JAMIESON: Yes - no, to deal with the
 8 violence. I mean the labour dispute, there's a separate
 9 process for dealing with that.
 10 MR MPOFU: Ja. Well, that also can't be
 11 true but we won't go there, because as we know the police
 12 were called on the 10th as well, but that's –
 13 MR JAMIESON: I said they were –
 14 CHAIRPERSON: No, he said that because he
 15 said it was an illegal gathering.
 16 MR JAMIESON: It was an illegal
 17 gathering –
 18 MR MPOFU: Well, I thought you said they
 19 were not needed. Or it was you, Chairperson.
 20 CHAIRPERSON: Ja, but anyway –
 21 MR MPOFU: Okay.
 22 CHAIRPERSON: Whether it was an illegal
 23 gathering I'm not quite sure, but anyway that's on the 10th.
 24 MR MPOFU: Yes, anyway what we do know
 25 for sure is that what was reported to you as Lonmin was

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1 that the Minister of Minerals had accepted the, had changed
 2 the characterisation to that of a criminal act, correct?
 3 MR JAMIESON: Yes, I think that happened
 4 during the course of Wednesday because when I heard her on
 5 the radio in the morning she, I didn't hear her mention it,
 6 but certainly I can recall in the afternoon there was then
 7 a statement made. I don't think it was by her. I think it
 8 was apportioned to her spokesperson, but nevertheless –
 9 MR MPOFU: Ja.
 10 MR JAMIESON: - she then characterised
 11 this as being criminal activity, correct.
 12 MR MPOFU: Yes, so she changed her
 13 characterisation as a result of the discussion with Mr
 14 Ramaphosa, according to him at least.
 15 MR JAMIESON: I can't comment on whether
 16 it was according to him, but I don't think it was according
 17 to the DG because from what I can gather the DG never
 18 briefed her, so it couldn't have been from the DG.
 19 MR MPOFU: Mr Jamieson, please man, Mr
 20 Ramaphosa reported to you in an email –
 21 MR JAMIESON: Correct.
 22 MR MPOFU: - that Susan Shabangu, I think
 23 is what he called her –
 24 MR JAMIESON: Yes.
 25 MR MPOFU: - had now changed her

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1 characterisation. "I have just met with," I even know it
 2 off by heart, I don't even know what number –
 3 MR JAMIESON: Ja, I thought she said she
 4 will –
 5 MR MPOFU: "I have just met with Susan
 6 Shabangu. She has changed her characterisation" –
 7 MR JAMIESON: No, she will. There's the
 8 email –
 9 MR MPOFU: She will now go to the
 10 cabinet, blah, blah, blah.
 11 MR JAMIESON: Doesn't it say she will
 12 change her characterisation?
 13 CHAIRPERSON: On page 47 –
 14 MR JAMIESON: If you know it off by
 15 heart –
 16 CHAIRPERSON: - I think there may be an
 17 email such as the one Mr Mpofo is quoting, but certainly
 18 the one on page 47, which is on the Wednesday afternoon 15th
 19 August, 2:58PM –
 20 MR JAMIESON: She will correct her –
 21 CHAIRPERSON: - she says she agrees what
 22 we are going through is not a labour dispute, but a
 23 criminal act –
 24 MR JAMIESON: She will.
 25 CHAIRPERSON: - she will correct her

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1 characterisation.
 2 MR MPOFU: Ja, that's what it says. Ja.
 3 CHAIRPERSON: But by implication she'd
 4 already changed it in her mind because she'd agreed with
 5 him it's not a labour dispute.
 6 MR JAMIESON: Yes, and possibly you can
 7 check the, when the statement was put out, you know, in
 8 relation to this email and see if that was correct.
 9 MR MPOFU: I'm not talking about
 10 statements, Mr Jamieson, and you know it. I'm saying to
 11 you as a result of that intervention she had agreed to
 12 change her characterisation.
 13 MR JAMIESON: That's what Cyril says.
 14 CHAIRPERSON: Where do we get that? I
 15 assume that you're right, but is that what – is there an
 16 email that says that? Because remember her evidence was
 17 slightly different.
 18 MR MPOFU: No, but that's why I said
 19 according to him. She's a woman, so I said according to
 20 him, Mr Ramaphosa, not according to her. Mr Ramaphosa
 21 says, I asked him specifically did she change her
 22 characterisation as a result of your meeting, and he said
 23 yes.
 24 CHAIRPERSON: Well, I suppose it's a
 25 semantic debate because she does say she will correct her

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1 characterisation.

2 MR JAMIESON: Yes.

3 CHAIRPERSON: The very idea of correcting

4 the characterisation means there was a previous

5 characterisation that was incorrect that she's now changed.

6 So we can leave the semantic issue. The point is

7 established on the documents we have. [Microphone off,

8 inaudible]

9 MR MPOFU: No, that's fine. That's fine,

10 Chairperson. And one of the key issues about this

11 characterisation point, the reason why it's important for

12 us is because it was the characterisation of the situation

13 there as criminal which must have led to the deaths of

14 these people, and I'm asking you this because you are the

15 person who was so obsessed with changing the

16 characterisation, as I'd put it yesterday. Do you

17 understand that? You don't have to agree that it led to

18 the death of the people, but do you understand why it's

19 important for me?

20 MR JAMIESON: I can't agree with your

21 characterisation I was obsessed, but I understand what

22 you're trying to build, yes.

23 MR MPOFU: Yes. Okay, well I thought we

24 will settle – Ms Pillay said you were insistent. I say you

25 were emphatic, which I think we agree on. We do?

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1 MR JAMIESON: I can't remember, but if

2 you can – I thought –

3 MR MPOFU: You, you said –

4 MR JAMIESON: I thought you said you were

5 going to –

6 MR MPOFU: - you agree that's a good

7 emphasis by using –

8 MR JAMIESON: - we were going to go

9 higher. You said to me, you said Mrs Pillay had relayed

10 you're insistent and you were going to go one higher and

11 say it was obsessive.

12 MR MPOFU: Yes. I'm now saying you were

13 emphatic.

14 MR JAMIESON: I emphasised it, yes, I

15 would agree with that.

16 MR MPOFU: You're emphatic, thank you.

17 MR JAMIESON: Yes.

18 MR MPOFU: Ja, now because you were

19 emphatic on changing the characterisation, which according

20 to this theory that I was talking about led to the deaths

21 of the people.

22 [14:38] Because the characterisation linked up with what

23 the police, what the Minister, incidentally the person that

24 you wanted to change the characterisation is the person who

25 once said that criminals must be killed without a warning.

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1 Do you know about that?

2 MR JAMIESON: I didn't know that, but

3 I've heard it subsequently –

4 MR MPOFU: You've heard it.

5 MR JAMIESON: From the Commission here.

6 MR MPOFU: Ja, I'm just –

7 MR JAMIESON: I didn't know it at the

8 time.

9 MR MPOFU: Yes, ja. So that if that is

10 indeed so what you are doing, which was to – by the way,

11 why did you want Mr Ramaphosa to be the one who speaks to

12 these people?

13 MR JAMIESON: Well, because we had been

14 trying to speak to the Minister since Monday and –

15 MR MPOFU: And you failed.

16 MR JAMIESON: And we failed completely,

17 so Roger had phoned Mr Ramaphosa and asked him if he could

18 find a way to get her to agree to speak to him.

19 MR MPOFU: Ja.

20 MR JAMIESON: He didn't, I think his

21 words on the phone were he didn't want Cyril to do his

22 bidding, he wanted to do it himself, but he, we simply

23 couldn't get her to respond.

24 MR MPOFU: Okay, so having given up then

25 he wanted Cyril to do his bidding? He had to, he was

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1 forced into that situation.

2 MR JAMIESON: I, no, he kept pressurising

3 me –

4 MR MPOFU: Ja, and you pressurised him.

5 MR JAMIESON: Well, I pressurised the DG

6 and then I politely asked Cyril if he could also influence

7 the Minister to talk to Mr –

8 MR MPOFU: Yes, you pressurised the DG

9 and then you pressurised Mr Ramaphosa.

10 MR JAMIESON: To talk to Roger, yes.

11 MR MPOFU: Yes, okay, so that's exactly,

12 that's what I call the chain of pressure. You were

13 pressurised by Roger. You pressurised the DG. You

14 pressurised Mr Ramaphosa. He pressurised the Minister. He

15 pressurised the police to kill people.

16 MR JAMIESON: No, I was only pressurising

17 him to talk to Roger.

18 MR MPOFU: Mr Jamieson, please, I'm

19 saying to you that this pressure which you have admitted to

20 that you exerted on Mr Ramaphosa, we now know that it was

21 transmitted to the politicians and it was intended to be

22 transmitted to other politicians who may or may not have

23 been available. I'm saying that same pressure – you heard

24 what I read to the National Commissioner this morning.

25 MR JAMIESON: Yes.

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1 MR MPOFU: Ja, was then referred to in
2 the context of it being causally linked to having to kill
3 this thing immediately, so to speak. That's the same
4 pressure that was transmitted along a chain that included
5 you. Do you understand that?
6 MR JAMIESON: I heard what you said to
7 her this morning and I understood that completely.
8 MR MPOFU: Yes. Ja.
9 MR JAMIESON: The pressure I'm talking
10 about is the first pressure that started from Sunday with
11 the email to the DG and my subsequent conversation was to
12 please get police on site –
13 MR MPOFU: Okay, ja –
14 MR JAMIESON: - because there's a violent
15 situation. That had actually been accomplished by the time
16 this email was written per bullet 2, so that was passé –
17 MR MPOFU: Okay –
18 MR JAMIESON: - because as I said the
19 only other pressure that I wanted from Mr Ramaphosa was
20 please can you get this Minister to talk to our chairman
21 because he's angry and he's now putting pressure on me.
22 MR MPOFU: Yes, and why was Mr Ramaphosa
23 in your estimation the best transmitter of that pressure?
24 MR JAMIESON: Because per his previous
25 emails he had already been talking to the Minister and he

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1 was the only one that was, because she wasn't talking to
2 Roger and Roger wasn't talking to her.
3 MR MPOFU: Yes, but why would Mr
4 Ramaphosa succeed where Roger had failed? What was so
5 special about him?
6 MR JAMIESON: Well, he clearly had her on
7 speed dial and had access to her.
8 MR MPOFU: Because of his political
9 position?
10 MR JAMIESON: I think because of his
11 membership of the ANC, his membership of the NEC –
12 MR MPOFU: Ja, the ANC –
13 MR JAMIESON: Yes.
14 MR MPOFU: - is a political organisation.
15 MR JAMIESON: Yes, yes.
16 MR MPOFU: Is that because of his
17 political organisation?
18 MR JAMIESON: I would say so, yes.
19 MR MPOFU: Yes, because of his position
20 in the ANC.
21 MR JAMIESON: Yes. Clearly.
22 MR MPOFU: Yes, clearly, yes. Now if
23 you're going to use political pressure because of
24 somebody's position in the ANC and that, as I've described
25 it and as you've heard this morning, that political

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1 pressure somehow leads to a situation where 34 people are
2 killed immediately, would you agree that that is an
3 untoward exercise of pressure?
4 MR JAMIESON: I think the way you've
5 described it absolutely, as in similar to what you were
6 saying this morning to the National Police Commissioner,
7 it's a, it's not the right use of political pressure.
8 MR MPOFU: Correct.
9 MR JAMIESON: Yes.
10 MR MPOFU: And it's against the law.
11 MR JAMIESON: Yes.
12 MR MPOFU: Thank you. Alright, now the
13 next issue then is you would also agree of course that as
14 far as we are talking about the – or let me put it this
15 way. Ms Pillay said to you, and I support her in this,
16 that one of the reasons why you were – she didn't use my
17 word "obsessed" – why you were –
18 MR JAMIESON: Insistent.
19 MR MPOFU: - insistent, yes –
20 MR JAMIESON: Yes.
21 MR MPOFU: - on this issue was because
22 you, it was a diversionary tactic so that the public
23 attention, so it was a kind of spin thing, the public
24 attention and the "pressure" should be on the police and
25 the government as opposed to where it belongs, which is

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1 management which should talk to the people. What do you
2 say to that?
3 MR JAMIESON: I think I'd answer in two
4 ways. Coming back to the issue of insistence, that was
5 another thing I looked up in the dictionary last night. It
6 says demand forcefully, not accepting refusal. I thought
7 that was a better description of the strikers' demands
8 personally. It wasn't a description of my behaviour
9 because I'd merely had a conversation with the DG and put
10 it to him and he had agreed with me. There was no
11 insistence in it.
12 In terms of the spin, or what you said PR, I mean
13 I'm just not in that line of work. So these emails were
14 all internal. The PR stuff is handled elsewhere. Tanya,
15 Tanya is quite hands-on –
16 MR MPOFU: Tanya, and you had no concern
17 about the PR issue yourself?
18 MR JAMIESON: Well, she had circulated to
19 me emails asking me to mark up press announcements that
20 were going out on, I think they went out on a Sunday, there
21 was another one that went out on the Tuesday, and I was
22 asked to add to them in any way I could, which I did.
23 MR MPOFU: Ja, well the PR issue, any of
24 your concern?
25 MR JAMIESON: It's a, when you say PR

<p style="text-align: right;">Page 37543</p> <p>1 issue, it's actually a regulatory issue. We have to make 2 announcements, so it's a regulatory issue that we have to 3 make continuous announcements as a public company. 4 MR MPOFU: Maybe you didn't hear my 5 question. Was the PR issue any of your concern? 6 MR JAMIESON: Not specifically, not 7 directly, no. 8 MR MPOFU: In the letter that you wrote, 9 or the email you wrote on the 15th of August 2012, page 40 – 10 MR JAMIESON: Ja, the notes for Simon? 11 MR MPOFU: Yes. 12 MR JAMIESON: Yes. 13 MR MPOFU: Let's go to page 41. You say 14 there, I'm reading towards the end, Chairperson, under the 15 heading "IR" – 16 CHAIRPERSON: [Microphone off, inaudible] 17 IR? 18 MR MPOFU: Mmmm. "Tanya," that you were 19 talking about – 20 MR JAMIESON: Yes. 21 MR MPOFU: You say, "Tanya," – 22 CHAIRPERSON: Sorry to interrupt you, 23 that's page 41. 24 MR MPOFU: 41, Chairperson, yes. You 25 say, "Tanya, you are doing a sterling job in London. Lots</p>	<p style="text-align: right;">Page 37545</p> <p>1 MR JAMIESON: Yes. 2 MR MPOFU: Ja, that's the point. So 3 public relations was part of what you were concerned with 4 when you were analysing these issues, correct? 5 MR JAMIESON: It was just, I mean this 6 was my view. It's not public relations spin. A public 7 relations spin comes when someone turns that into an 8 announce or release. This, as I said this was, these were 9 notes prepared for Simon and Roger. They were a collection 10 of not just my views, but you'll see throughout everybody 11 else's. They're the notes I kept from the, chairing the 12 meetings, so – 13 MR MPOFU: Mr Jamieson, please, what you 14 are saying here is that there is negative press, that this 15 is Lonmin's problem, it's their creation and you say that 16 this is negative, but you say your view is that those 17 comments are largely drowned out by the other messaging 18 which is union rivalry, it's civil unrest, it's bad for 19 South Africa. 20 MR JAMIESON: Correct. 21 MR MPOFU: And you're saying that that is 22 not public relations, those are not public relations 23 issues – 24 MR JAMIESON: You were saying – 25 MR MPOFU: - perception management</p>
<p style="text-align: right;">Page 37544</p> <p>1 of incoming [I suppose] from shareholders, funds and 2 analysts. Questioning has changed from security situation 3 to production losses and financial and covenants and how 4 company will be financed going forward." 5 MR JAMIESON: Yes. 6 MR MPOFU: You remember that? 7 MR JAMIESON: Yes. 8 MR MPOFU: And then you said again, you 9 say, "Feeling from Mark and company that the press is too 10 negative re. Lonmin management / it's our problem I 11 suppose, our problem or creation and this is negative for 12 morale and perhaps a bit of half-empty/half [whatever] 13 syndrome. My view is these comments are largely drowned 14 out by the union rivalry/civil unrest, bad for South Africa 15 and SA platinum industry angles." 16 MR JAMIESON: Yes. 17 MR MPOFU: That spin, what you're talking 18 about there, angles about how the thing is portrayed and 19 that is the PR issue, correct? 20 MR JAMIESON: No, they're not spin. 21 They're exactly as I wrote there, they're self-evident – 22 MR MPOFU: No, but these are – 23 MR JAMIESON: So Mark Munroe – 24 MR MPOFU: Okay, they concern public 25 relations. Would you agree?</p>	<p style="text-align: right;">Page 37546</p> <p>1 issues? 2 MR JAMIESON: You were saying it was 3 spin. Spin comes when someone announces something. This 4 is not an announcement, this is a view and a note for 5 briefing. 6 MR MPOFU: Does it concern public 7 relations? 8 MR JAMIESON: Yes. 9 CHAIRPERSON: Was it necessary for your 10 publicity department to send out communiqués on the union 11 rivalry and civil unrest, or was that a story which was 12 being picked up by the media houses without the benefit – 13 if that's the right word – of communiqués from your 14 publicity section? 15 MR JAMIESON: Well, as you see right in 16 the first sentence under IR we're all over the radio, TV 17 news and wires in SA, mostly first headline, and at that 18 time what they were saying was this is civil unrest, the 19 police must intervene, it's, you know, it's a public 20 disgrace. Those were evidence, self-evident headlines. 21 CHAIRPERSON: What I'm trying to 22 ascertain, it would only be a sort of PR matter of you then 23 had set about – you being Lonmin – 24 MR JAMIESON: Yes. 25 CHAIRPERSON: - had set about getting</p>

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1 those reports into the newspapers –

2 MR JAMIESON: Yes.

3 CHAIRPERSON: - and on the radio and TV.

4 If these are stories that the press and media people were

5 picking up themselves then it's not as a result of any PR

6 efforts by your side?

7 MR JAMIESON: Well, Tanya put out the two

8 press releases I'm aware of, one on the Sunday, one on the

9 Tuesday, by this time and when they – oh no, sorry, that

10 was internal, the ones yesterday, but they were, they're

11 self-evident that they're just factual –

12 CHAIRPERSON: I was going to ask you

13 about that. Perhaps I can do it now, it may safe time

14 later. It appears from the first reference of Tanya that

15 there was a problem in London. The people in London were

16 concerned about loss of production, loss of profits, loss

17 of dividends and so on. So there was lots of incoming

18 queries or emails –

19 MR JAMIESON: To Tanya, yes.

20 CHAIRPERSON: - to her, yes, from

21 shareholders, funds and analysts.

22 MR JAMIESON: Yes.

23 CHAIRPERSON: They were being worried

24 about the effect on the profitability of the company and

25 the value of the share and all that kind of thing. Is that

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1 correct?

2 MR JAMIESON: Yes.

3 CHAIRPERSON: And she was dealing with

4 that. The questioning has changed, that's the questioning

5 she received has changed from a security situation to

6 production losses –

7 MR JAMIESON: Yes.

8 CHAIRPERSON: - and financials and

9 covenants.

10 MR JAMIESON: Yes.

11 CHAIRPERSON: The covenant relates to

12 your debts and financial situation –

13 MR JAMIESON: Financial situation, ja.

14 CHAIRPERSON: And how company will be

15 financed going forward.

16 MR JAMIESON: Yes.

17 CHAIRPERSON: Right, then we skip out the

18 next paragraph. The next reference to Tanya is "Ask Tanya

19 to circulate store man release internally to ready

20 ourselves for the inevitable. How much production have we

21 lost or are losing announcement, but incorporate the whole

22 package of issues in this, needs to be finalised by

23 Friday."

24 MR JAMIESON: Yes.

25 CHAIRPERSON: Now what exactly is a

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1 "store man release"?

2 MR JAMIESON: It's a draft, so she would

3 put a draft out. The previous releases we had put out on

4 Sunday and Tuesday were really concerned with the violence

5 of the situation, so they were acknowledging that and what

6 we were trying to do about it. That had been – we hadn't

7 mentioned production, but she had received phone calls and

8 the phone calls had changed from that, that's what I said.

9 So she then had to, we then had to think about the next

10 release we put out and I think there was also an email

11 commenting from Thandeka Ncube on this and Tanya had

12 responded, saying we can't dodge this issue. Eventually

13 we're going to have to say what production is lost. So

14 what I suggested to her is why don't you put a, why don't

15 you get a draft going because you have to put into that

16 certain, you know, numbers, ounces, tonnes, what we've lost

17 and also when, what we've lost, how long will it take us to

18 get back to where we were. There's a lot to it. So when

19 she started that it would then give people, the people who

20 were dealing with it, technical people at the mine for

21 example, time in which to get those numbers together

22 because you know, it takes a few days to do that.

23 CHAIRPERSON: What did you mean though by

24 the phrase "the whole package of issues"?

25 MR JAMIESON: The whole package of issues

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1 would be tonnes, ounces, the financial considerations, the

2 covenant impacts, etcetera, and Roger had also sent around

3 an email, and I think you saw that, to the board. It's in

4 these emails, and he had said, also he echoed what Thandeka

5 says, we're not going to be able to dodge this, we're going

6 to have to say something.

7 CHAIRPERSON: Do we have the release -

8 the press release that had to be finalised by Friday, was

9 it issued on Friday or issued by Saturday or when?

10 MR JAMIESON: I don't think it ever went

11 out, Mr Chairman, because events overtook us and it was a

12 different ballgame.

13 MR MPOFU: Yes, and when you asked her to

14 do the press release, that was public relations?

15 MR JAMIESON: No, it's regulatory.

16 MR MPOFU: So it's not public relations?

17 MR JAMIESON: No, it's regulatory. We, I

18 don't, we didn't have a public relations department at that

19 time, apart from communications at the mine.

20 MR MPOFU: Okay, let me put it this way.

21 Your concern about what Minister Shabangu had said, was it

22 because she was thinking it or was it because she had said

23 it on radio?

24 MR JAMIESON: Sorry, sorry, Mr Mpofu –

25 MR MPOFU: No, I'm saying –

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1 MR JAMIESON: Did she?

2 MR MPOFU: Ja, we've had a long

3 discussion about what Ms Shabangu had said on SAfm. I'm

4 putting it to you that your concern was the fact that she

5 had said it on radio, so it was the public impact of what

6 she had said, wasn't it?

7 MR JAMIESON: My concern was that she

8 hadn't denounced the violence. That's –

9 MR MPOFU: In public.

10 MR JAMIESON: On that radio that I

11 heard –

12 MR MPOFU: Yes.

13 MR JAMIESON: - as I was driving in to

14 work, but I do know that later that afternoon her spokesman

15 released – we talked about that earlier. Your view was her

16 characterisation had been changed –

17 MR MPOFU: Okay, let's go to page 31.

18 You say there, "Mick Davis, our largest shareholder, told

19 me we have his support and offered help and assistance if

20 needed. ETV news tonight quite even to positive in

21 characterising this as a police issue."

22 MR JAMIESON: Yes.

23 MR MPOFU: "Even NUM said this and had to

24 have company criticism dragged out of them." So do you see

25 here you are transposing the idea of this thing being spun

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1 as a police issue as against, or what you call company

2 criticism? That's what Ms Pillay said, it's a diversionary

3 issue to make sure that the world out there concentrate on

4 this police issue and let you get away with the idea of,

5 the criticism of not engaging the strikers. That's self-

6 evident, Mr Jamieson.

7 MR JAMIESON: No, I don't –

8 MR MPOFU: Well, then how do you explain

9 that?

10 MR JAMIESON: Which part of it? The Mick

11 Davis –

12 MR MPOFU: All of it.

13 MR JAMIESON: Mick Davis –

14 MR MPOFU: The part that says "ETV news

15 is quite, even to positive in characterising this as police

16 issue. Even NUM said this and had to have company

17 criticism dragged out of them."

18 MR JAMIESON: Yes, that's, I watched both

19 of those on the TV –

20 MR MPOFU: I know that.

21 MR JAMIESON: - and that's the reflection

22 that I had of them. That's a description I had of them.

23 MR MPOFU: No, Mr Jamieson, please man,

24 please answer the question. What did you seek to convey by

25 saying that the definition by eTV was positive because they

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1 were saying it's a police issue, and superimposing that, or

2 contrasting that with what you call company criticism which

3 had to be dragged out?

4 MR JAMIESON: Ja, well so –

5 MR MPOFU: Isn't it obvious?

6 MR JAMIESON: You've asked me what I

7 meant to convey, correct? So what I meant to convey was if

8 you look at that string of emails, Mark in particular was

9 concerned about the morale at the mine. He thought it was

10 negative news. So what I was doing was responding to him,

11 saying hey Mark, you know, don't be down. So if you're

12 looking at what I sought to convey, you know, don't have

13 the glass half full, half empty. So Mick Davis has phoned

14 us, you can see from the string of emails here that many

15 other shareholders were conveying their support for us.

16 That was evident then –

17 MR MPOFU: Forget Mick Davis –

18 MR JAMIESON: - and look, you know, I was

19 calling his attention to two things that I'd seen on the

20 TV –

21 MR MPOFU: Sure.

22 MR JAMIESON: - where the tide seems to

23 be swinging between –

24 MR MPOFU: Which way?

25 MR JAMIESON: Well, between blaming the

Page 37554

1 company to saying this is now a criminal issue.

2 MR MPOFU: Thank you.

3 MR JAMIESON: That was all I was saying

4 to him.

5 MR MPOFU: Yes, thank you very much.

6 Okay, that's the whole point that I've been trying to

7 extract from you.

8 [14:58] But why, going back to the issue of political

9 pressure seeing that you were the torch bearer of this

10 particular campaign. Why was it necessary for Lonmin to be

11 liaising with the ANC?

12 MR JAMIESON: I'm not aware that – who in

13 Lonmin was liaising with the ANC?

14 MR MPOFU: I should be asking you.

15 MR JAMIESON: Then my answer is I don't

16 know.

17 MR MPOFU: Go to page 106.

18 CHAIRPERSON: While we're doing that can

19 I ask you a question? It's related to something you said

20 a minute ago. I don't quite understand. Mr Mpofo was

21 suggesting to you that what was happening with PR,

22 summarising rather broadly and you set no that was

23 regulatory. Now what exactly did you mean by regulatory?

24 Were you referring to a kind of disclosure requirements

25 that are imposed by the London Stock Exchange?

<p style="text-align: right;">Page 37555</p> <p>1 MR JAMIESON: Yes.</p> <p>2 CHAIRPERSON: Because Lonmin was a</p> <p>3 company listed on the London Stock Exchange or were you</p> <p>4 referring to something else?</p> <p>5 MR JAMIESON: And SENS on the</p> <p>6 Johannesburg Stock Exchange, we're dual listed.</p> <p>7 CHAIRPERSON: Now I notice that from page</p> <p>8 32 there's a reference to an announcement, it's sent by</p> <p>9 Verity Portway on behalf of Tanya Chikansa on the 14th,</p> <p>10 that's a Tuesday at 11:42.</p> <p>11 MR JAMIESON: Yes.</p> <p>12 CHAIRPERSON: And it's subject London</p> <p>13 PLC, violence at Lonmin operation. Please find attached an</p> <p>14 announcement regarding a serious and ongoing outbreak of</p> <p>15 violence at our operations in South Africa which was</p> <p>16 released this morning. And I see that Tanya is described</p> <p>17 as being your London PLC and a London address is given. So</p> <p>18 this announcement that she's talking about, was that</p> <p>19 intended to be PR or was this possibly what Mr Mpofo called</p> <p>20 a hybrid? Was it intended to be PR or was it something</p> <p>21 that you were virtually required by the conditions of</p> <p>22 listing and so forth in London and in Johannesburg to</p> <p>23 regularly send out to the market so that shareholders and</p> <p>24 analysts and others could know what was going on about this</p> <p>25 listed share?</p>	<p style="text-align: right;">Page 37557</p> <p>1 MR MPOFU: Thank you.</p> <p>2 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>3 [15:24] CHAIRPERSON: The Commission resumes. Mr</p> <p>4 Jamieson, you're still under oath.</p> <p>5 ALBERT JAMIESON: [s.u.o.]</p> <p>6 CHAIRPERSON: Mr Mpofo.</p> <p>7 MR JAMIESON: Mr Chairperson, could I</p> <p>8 please clarify something from earlier?</p> <p>9 CHAIRPERSON: I don't see why not.</p> <p>10 MR JAMIESON: When I was being questioned</p> <p>11 by Mr Mpofo on page 41 –</p> <p>12 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p> <p>13 41?</p> <p>14 MR JAMIESON: Yes, and you took me down</p> <p>15 to the press and the media and the PR –</p> <p>16 CHAIRPERSON: PR section, yes.</p> <p>17 MR JAMIESON: Yes, what is your</p> <p>18 understanding of what IR means? Industrial relations? Is</p> <p>19 that correct?</p> <p>20 MR MPOFU: Are you asking me?</p> <p>21 MR JAMIESON: Both of you.</p> <p>22 MR MPOFU: No, I'm not answering your</p> <p>23 question.</p> <p>24 MR JAMIESON: Oh, well it's –</p> <p>25 CHAIRPERSON: [Microphone off, inaudible]</p>
<p style="text-align: right;">Page 37556</p> <p>1 MR JAMIESON: Yes, Mr Chairman, the</p> <p>2 requirement is not regularly, it's continuous disclosure.</p> <p>3 So if there is something which is material happening within</p> <p>4 the company the public should know about it, public, you</p> <p>5 know primarily meaning the market and shareholders. Then</p> <p>6 we are obligated to make an announcement. So the</p> <p>7 unprotected strike that started on 9th, 10th and then went</p> <p>8 over onto Sunday we were obligated to make that</p> <p>9 announcement. You're then obligated to make any further</p> <p>10 announcements that update the situation if there's been a</p> <p>11 material change. And so that's what these announcements</p> <p>12 were, so they are regulatory announcements.</p> <p>13 CHAIRPERSON: I presume if there was a</p> <p>14 strike which would impact on production that would be</p> <p>15 something that investors and shareholders and so forth are</p> <p>16 entitled to know about in terms of the rules of the two</p> <p>17 stock exchanges. Is that correct?</p> <p>18 MR JAMIESON: Yes.</p> <p>19 CHAIRPERSON: Yes thank you. Mr Mpofo I</p> <p>20 know you're moving onto the next question, but would you</p> <p>21 object too vigorously if we took the tea adjournment at</p> <p>22 this stage?</p> <p>23 MR MPOFU: No I wouldn't object,</p> <p>24 Chairperson.</p> <p>25 CHAIRPERSON: 15 minutes.</p>	<p style="text-align: right;">Page 37558</p> <p>1 asking me and I have to –</p> <p>2 MR JAMIESON: Yes, sorry.</p> <p>3 CHAIRPERSON: - I had to give an answer</p> <p>4 which we've heard often in this Commission in the –</p> <p>5 MR JAMIESON: It's investor relations. I</p> <p>6 don't know if that helps.</p> <p>7 CHAIRPERSON: [Microphone off, inaudible]</p> <p>8 MR JAMIESON: It's investor relations.</p> <p>9 So this is not a –</p> <p>10 CHAIRPERSON: Not industrial relations,</p> <p>11 you say? It's industrial relations –</p> <p>12 MR JAMIESON: Investor relations.</p> <p>13 CHAIRPERSON: Investor relations?</p> <p>14 MR JAMIESON: IR here stands for investor</p> <p>15 relations.</p> <p>16 CHAIRPERSON: I see. The nice thing</p> <p>17 about this Commission, you learn something new every day.</p> <p>18 MR JAMIESON: Sorry, I thought that might</p> <p>19 have caused some confusion –</p> <p>20 MR MPOFU: Ja.</p> <p>21 MR JAMIESON: - because you then think</p> <p>22 all of this is sitting under a heading which is industrial</p> <p>23 relations, so –</p> <p>24 MR MPOFU: That's fine.</p> <p>25 MR JAMIESON: Okay.</p>

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1 MR MPOFU: So investor relations
 2 incorporates media and public relations, correct?
 3 MR JAMIESON: No, it's just regulatory.
 4 MR MPOFU: Then why does it say in the
 5 second sentence under that IR, "Press/media all over at the
 6 mine," blah, blah, blah, why does it talk about the press
 7 and the media if it is not, doesn't include public, media
 8 relations?
 9 MR JAMIESON: Well, the press and media
 10 were also speculating –
 11 MR MPOFU: Ja, ja.
 12 MR JAMIESON: - on this production and
 13 what have you, not just the public, you know, the public
 14 relations as you would call it.
 15 MR MPOFU: No.
 16 MR JAMIESON: So it was the, you know,
 17 loss, loss of production, what this means for the platinum
 18 industry, all of the things that we discussed at MIGDETT.
 19 MR MPOFU: Ja, all I'm saying to you is
 20 that heading, whatever it says, incorporates the issue of
 21 media and press as you have put there, correct?
 22 MR JAMIESON: Well the heading is to, if
 23 you're talking about the heading it's investor relations –
 24 MR MPOFU: No, I'm not talking about the
 25 heading. I'm talking about the contents –

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1 MR JAMIESON: Whether it incorporates
 2 press and media, yes, there's a comment there about it.
 3 MR MPOFU: Thank you.
 4 COMMISSIONER HEMRAJ: Mr Jamieson, in the
 5 light of what you've just said, on page 40, paragraph 1 –
 6 MR JAMIESON: Yes.
 7 COMMISSIONER HEMRAJ: - where it says
 8 "Not IR issue," what does that –
 9 MR JAMIESON: That's industrial
 10 relations.
 11 COMMISSIONER HEMRAJ: That's industrial
 12 relations?
 13 MR JAMIESON: Yes.
 14 CHAIRPERSON: So IR is ambiguous, it can
 15 be one or the other.
 16 MR JAMIESON: Correct.
 17 MR MPOFU: Thank you. Alright, but the
 18 one of industrial relations incorporates public and media
 19 and press, yes?
 20 MR JAMIESON: No, I've said that already.
 21 In –
 22 CHAIRPERSON: But you have –
 23 MR JAMIESON: In that paragraph there's a
 24 comment about it, but our investor relations department is
 25 concerned with investor relations and Tanya runs the

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1 investor relations department. She doesn't run a PR
 2 department.
 3 MR MPOFU: Anyway, to save time I think
 4 and you –
 5 CHAIRPERSON: Look, it is a bit of a, the
 6 line between public relations and investor relations is a
 7 bit of a faint one because obviously if I was an investor
 8 and I held a parcel of Lonmin shares and I read in the
 9 newspapers the ordinary reports about everything that was
 10 going on at Lonmin I might decide to, I might either get
 11 worried or I might decide to sell my shares. So there's no
 12 clear dividing line surely between investor relations and
 13 public relations.
 14 MR JAMIESON: Yes –
 15 CHAIRPERSON: There must be an overlap to
 16 some extent.
 17 MR JAMIESON: Not that I'm aware, but
 18 Tanya will be able to qualify that. If we get –
 19 MR MPOFU: No –
 20 MR JAMIESON: If we get incoming phone
 21 calls and they're of that, you know, the issues that you
 22 said, then it would be referred out to the mine and it
 23 would be referred out to the communications department on
 24 the mine.
 25 CHAIRPERSON: You say the paragraph IR

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1 really relates to what Tanya is supposed to be doing?
 2 MR JAMIESON: And that is investor
 3 relations, which is really the market, and investors being
 4 shareholders. So if it's a shareholder query that comes in
 5 and something related to the regulatory announcements that
 6 are required, Tanya deals with it. If not, she refers it
 7 on to the communications department in the mine if it's
 8 anything else.
 9 MR MPOFU: Mr Jamieson, you know I don't
 10 want to be too hard on you, but you know – you know, let me
 11 just tell you, I have been an executive director like you
 12 of a listed company. You know that SENS announcements –
 13 MR JAMIESON: I'm not an executive
 14 director of a company –
 15 MR MPOFU: Do you know that SENS
 16 announcements have to be published in the newspaper?
 17 MR JAMIESON: Yes.
 18 MR MPOFU: So that's what the Chairperson
 19 is saying. The line between investor relations and SENS
 20 announcements and the public as it were is exactly that,
 21 that's why those things are not just sent to shareholders,
 22 but they're also sent to the newspapers. Do you understand
 23 that?
 24 MR JAMIESON: Yes, but not for the
 25 purposes of PR, for the purposes of regulatory

<p style="text-align: right;">Page 37563</p> <p>1 announcements.</p> <p>2 MR MPOFU: To the public.</p> <p>3 MR JAMIESON: To the, for the purposes of</p> <p>4 regulatory announcements.</p> <p>5 MR MPOFU: Yes, but part of the</p> <p>6 regulation, the SENS regulation says that you issue your</p> <p>7 SENS announcement to your shareholders, but you also, it</p> <p>8 must be published in a newspaper.</p> <p>9 MR JAMIESON: Yes, so that shareholders</p> <p>10 can read it.</p> <p>11 CHAIRPERSON: [Microphone off, inaudible]</p> <p>12 not only shareholders who read it, and the other point is</p> <p>13 shareholders don't only read, look at The Star or Pretoria</p> <p>14 News. They don't only read the business report part, they</p> <p>15 read the rest of the paper too, do they?</p> <p>16 MR JAMIESON: Yes, I guess you could also</p> <p>17 add to that potential shareholders, so potential</p> <p>18 shareholders who haven't yet bought shares –</p> <p>19 MR MPOFU: Alright.</p> <p>20 MR JAMIESON: - should know what's going</p> <p>21 on in the company, yes.</p> <p>22 MR MPOFU: That's alright, Mr Jamieson.</p> <p>23 Okay, now just to clear out a few points before we go back</p> <p>24 to what we were talking about. Firstly in fairness to you,</p> <p>25 would it be fair to say that insofar as I described</p>	<p style="text-align: right;">Page 37565</p> <p>1 MR MPOFU: No –</p> <p>2 MR JAMIESON: Yes.</p> <p>3 MR MPOFU: Mr Jamieson, I'm saying all</p> <p>4 these activities that you were involved in, captured in</p> <p>5 emails, letters, what have you, you were doing that not as</p> <p>6 a man, as yourself, you were doing that as part, in the</p> <p>7 course and scope of your duties as an official of Lonmin,</p> <p>8 correct?</p> <p>9 MR JAMIESON: Well, there's two aspects</p> <p>10 to your question. I'm trying to answer both of them. The</p> <p>11 answer to one is yes, the answer to the other is no.</p> <p>12 CHAIRPERSON: I think you're actually</p> <p>13 misunderstanding each other.</p> <p>14 MR JAMIESON: Oh, sorry.</p> <p>15 CHAIRPERSON: As far as external</p> <p>16 communication was concerned, clearly that you were doing on</p> <p>17 behalf of Lonmin.</p> <p>18 MR JAMIESON: Yes.</p> <p>19 CHAIRPERSON: You were speaking clearly</p> <p>20 on behalf of Lonmin.</p> <p>21 MR JAMIESON: Yes.</p> <p>22 CHAIRPERSON: What you're doing</p> <p>23 internally in the company, you're not doing necessarily on</p> <p>24 behalf of Lonmin –</p> <p>25 MR JAMIESON: No.</p>
<p style="text-align: right;">Page 37564</p> <p>1 earlier, insofar as you triggered the, what I call the</p> <p>2 chain of political pressure and so on, you were not doing</p> <p>3 that personally as Albert Jamieson, you were doing that on</p> <p>4 behalf of Lonmin, correct? All these communications were,</p> <p>5 you were doing them on behalf of Lonmin, or in the</p> <p>6 interests of Lonmin.</p> <p>7 MR JAMIESON: Which communications?</p> <p>8 MR MPOFU: Everything we've spoken about.</p> <p>9 MR JAMIESON: Well, internal is, no, it's</p> <p>10 not –</p> <p>11 MR MPOFU: The emails, the pressure, the</p> <p>12 characterisation, what have you.</p> <p>13 MR JAMIESON: No, I was doing that in</p> <p>14 my –</p> <p>15 MR MPOFU: Were you doing those</p> <p>16 personally as yourself?</p> <p>17 MR JAMIESON: - personal capacity as a</p> <p>18 chief commercial officer.</p> <p>19 MR MPOFU: Of Lonmin.</p> <p>20 MR JAMIESON: Yes, and these are all –</p> <p>21 MR MPOFU: Yes, that's the point.</p> <p>22 MR JAMIESON: - these are internal. The</p> <p>23 letter to the Minister clearly was on behalf of Lonmin, so</p> <p>24 it was originally going to be signed by Ian but it was</p> <p>25 signed by me. The email to the DG was on behalf of Lonmin.</p>	<p style="text-align: right;">Page 37566</p> <p>1 CHAIRPERSON: - but you're doing it for</p> <p>2 Lonmin. You're not doing it for your own personal</p> <p>3 purposes. You are doing them in your capacity, in the</p> <p>4 course and scope as it were of your employment as the</p> <p>5 commercial manager, whatever your capacity was –</p> <p>6 MR JAMIESON: Yes, yes.</p> <p>7 CHAIRPERSON: - of Lonmin. That's the</p> <p>8 point he's making. Is that right?</p> <p>9 MR MPOFU: Thank you, Chairperson.</p> <p>10 MR JAMIESON: Agreed, sorry.</p> <p>11 MR MPOFU: Yes, and again for clarity,</p> <p>12 for the reasons which you have described, which we won't go</p> <p>13 into, you yourself, you acting as we have just explained,</p> <p>14 you deliberately chose Mr Ramaphosa to be the conveyor of</p> <p>15 the messages and the pressure and so on, correct?</p> <p>16 MR JAMIESON: I was in, I was asked by</p> <p>17 Ian Farmer and also by Roger Phillimore to keep him in the</p> <p>18 loop on anything I thought that I wanted to use my judgment</p> <p>19 was important that he should know.</p> <p>20 MR MPOFU: Yes, and in your judgment –</p> <p>21 MR JAMIESON: These things were, yes.</p> <p>22 MR MPOFU: - you picked him out to be the</p> <p>23 conveyor of the political pressure.</p> <p>24 MR JAMIESON: No, in my judgment I</p> <p>25 thought that he should be in the loop on some</p>

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1 correspondence.

2 MR MPOFU: No, I know that.

3 MR JAMIESON: Yes.

4 MR MPOFU: He was in the loop because he

5 was on the circulation list, but I'm saying –

6 MR JAMIESON: Yes.

7 MR MPOFU: - you have already agreed that

8 he was to convey the political pressure, but you in your

9 judgment identified him as the best conveyor for that

10 political pressure.

11 MR JAMIESON: Well, he was the only one

12 because he was the only one speaking to the Minister.

13 MR MPOFU: He was the only conveyor

14 possible?

15 MR JAMIESON: He was the only one

16 speaking to the Minister, who we desperately wanted to talk

17 to.

18 MR MPOFU: Yes. The next thing is the

19 communication that was flying around was not confined to

20 executives or non-executives. At this stage it straddled

21 across those artificial divides, if you look at the

22 circulation list. So you'd have non-executives and the

23 executive being circulated on the same communication,

24 correct?

25 MR JAMIESON: Roger Phillimore, the

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1 chairman, was circulating everything to the non-executives.

2 I think that's evident.

3 MR MPOFU: Ja, and Cyril Ramaphosa was –

4 MR JAMIESON: Mr Ramaphosa is a –

5 MR MPOFU: - a non-executive.

6 MR JAMIESON: A non-executive, yes.

7 MR MPOFU: And a shareholder.

8 MR JAMIESON: Yes.

9 MR MPOFU: And the rest of the people

10 were executives, yourself, Mokwena and so on.

11 MR JAMIESON: We were on the EXCO. The

12 executive directors are Simon and Ian and there were

13 management involved in that as well, so you saw like Frank

14 Russo-Bello or Abey Kgotle, you know, Mike Da Costa,

15 they're all just below the EXCO.

16 MR MPOFU: Yes, I'm not talking about

17 EXCO, I'm talking about management. I'm saying that the

18 communication was straddling the divide between management

19 and non-executives.

20 MR JAMIESON: Not – unless you can show

21 me specifically and –

22 MR MPOFU: Okay, well that is –

23 MR JAMIESON: - the only non-executive I

24 was communicating with was Cyril, but in his capacity as

25 Shanduka and our shareholders that, you know, clearly he

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1 was the only one who was, had access to the Minister and

2 could influence her to talk to us.

3 MR MPOFU: And Roger, was he not a non-

4 executive –

5 MR JAMIESON: Roger is the chairman, yes.

6 MR MPOFU: Non-executive chairman?

7 MR JAMIESON: Yes.

8 MR MPOFU: Thank you.

9 MR JAMIESON: Ja, but he at the beginning

10 of the week, don't forget, on the Monday had actually

11 volunteered himself to become executive, so he had

12 originally said he was going to chair the EXCOS. Similarly

13 Mahomed Seedat was being brought back, who was a non-

14 executive, but he was going to be brought back in an

15 executive capacity. So –

16 MR MPOFU: That's the point I'm making.

17 MR JAMIESON: Okay, then we can agree to

18 that –

19 MR MPOFU: When you were communicating

20 now you were not respecting those lines. Whether one was

21 an executive or non-executive, the communication was

22 straddling those lines, correct?

23 MR JAMIESON: The lines got reset because

24 Roger was executive and Mahomed was executive.

25 MR MPOFU: Anyway, did you – you see,

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1 Minister Shabangu suggested that Mr Ramaphosa maybe in the

2 report back to you was, some of the report-backs were

3 untrue and maybe were deliberately embellished to impress

4 you, you in plural. Did you factor in that some of the

5 report-backs you were getting from the political pressure

6 conveyance might have been deliberately embellished or

7 untrue?

8 MR JAMIESON: Where was that, Mr Mpofo?

9 Sorry.

10 MR MPOFU: Where's what?

11 MR JAMIESON: Where you said there was

12 some, the feedback, which email are you referring to?

13 MR MPOFU: Okay, the feedback, I'll just

14 pick anything. The feedback was for example what I read to

15 you earlier where he says "I've met with Susan Shabangu.

16 She has changed her characterisation, she's going to take

17 it to cabinet," and that kind of thing. That's the

18 feedback and for which you said thank you, Cyril.

19 MR JAMIESON: Correct.

20 MR MPOFU: Remember that?

21 MR JAMIESON: Yes.

22 MR MPOFU: Ja, now I'm saying did you

23 factor in that any of that feedback might have been untrue?

24 MR JAMIESON: No.

25 MR MPOFU: No?

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1 MR JAMIESON: No.

2 MR MPOFU: So when he said she has

3 changed – well, for example she said she never changed her

4 characterisation, but you believed, because the feedback

5 was that she will change her characterisation, that that

6 was true, correct?

7 MR JAMIESON: Yes.

8 MR MPOFU: That's why you thanked him.

9 MR JAMIESON: Yes.

10 MR MPOFU: You didn't consider that you

11 might be thanking him for some embellishment?

12 MR JAMIESON: No.

13 MR MPOFU: Okay, and she also says that

14 there was no, or rather the message was not conveyed to the

15 President and Minister Mthethwa, but according to the

16 feedback those things had happened, correct?

17 MR JAMIESON: Yes.

18 MR MPOFU: Yes, and you never considered

19 that those might be untrue or false?

20 MR JAMIESON: No.

21 MR MPOFU: And you never considered the

22 possibility that he simply wanted to impress his masters,

23 as Ms Shabangu alluded, correct?

24 MR JAMIESON: No, I didn't.

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

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1 go back to the issue of the ANC that we were busy with

2 before the break. Let's start on page 31. I'm sorry, no,

3 is it 31? 35. 35, sorry. Paragraph 3 of that letter, of

4 that email from Mr Ramaphosa says, "I will be speaking to

5 Gwede Mantashe, the ANC secretary-general, and suggest that

6 the ANC should intervene." What did you understand by

7 that?

8 MR JAMIESON: I didn't know what to

9 understand. I was just copied on the email, so, "I'll be

10 speaking to Gwede Mantashe, the ANC secretary-general, and

11 suggest that the ANC should intervene." I don't know.

12 MR MPOFU: What's your answer?

13 MR JAMIESON: I don't know.

14 MR MPOFU: You don't know what?

15 MR JAMIESON: You said what do I

16 understand by that. I don't understand what –

17 MR MPOFU: You don't know what you

18 understand?

19 MR JAMIESON: - other than what it says,

20 he's going to ask him to intervene. What he's going to ask

21 him to intervene in I'm not sure.

22 MR MPOFU: Alright, so you don't know.

23 The answer is you don't know.

24 MR JAMIESON: Don't know.

25 MR MPOFU: That's fine. Okay, let's go

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1 to page 106.

2 CHAIRPERSON: What page?

3 MR MPOFU: One zero six, Chairperson.

4 4.4, it's a feedback from other stakeholders and then 4.4

5 says, "To consider the extent to which Lonmin should

6 contact Luthuli House and remain in direct contact with

7 them." What did you understand by that? Or what was meant

8 by that, since you were in the meeting?

9 MR VAN AS: Sorry, Mr Chairperson, I just

10 want to draw the Commission's attention to the fact that

11 these are minutes of a meeting of the 3rd of September 2012.

12 MR MPOFU: Yes.

13 MR VAN AS: After the incident of the 16th

14 of August. So I fail to understand the relevance of this

15 question.

16 MR MPOFU: Well, I don't know, but the

17 incident, Chairperson, we know that by the, on the 3rd of

18 September the situation –

19 CHAIRPERSON: Mr Mpofo, I would imagine

20 you're entitled to rely on contact with the ANC after the

21 event to support your argument that there may well have

22 been some kind of –

23 MR MPOFU: Thank you, Chairperson.

24 CHAIRPERSON: - similar contact before,

25 so I do see the relevance of the question. I'm sorry Mr

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1 Van As doesn't, but I disallow the objection. Carry on.

2 MR MPOFU: Thank you, Chairperson.

3 Please answer the question.

4 MR JAMIESON: Sorry, I'll just have to

5 just read a little bit to refresh my memory which meeting

6 it was. By this time we had, Natasha Viljoen, which is NV

7 who was the EVP of Processing, had actually been given the

8 portfolio of communications, external communications. So

9 she was asked the question should we consider talking

10 directly to the ANC in terms of now communications when,

11 and when I say communications I now come a lot closer to

12 what you were saying earlier about PR because by this time

13 I think, if memory serves, we had engaged Brunswick, who

14 are PR company, and Natasha was working with Brunswick, who

15 are the PR company. So the question was asked of her, she

16 had this under her responsibility. That's what that refers

17 to.

18 MR MPOFU: Okay, before I interrogate

19 that answer, so that I give you a full picture can you go

20 to page 107?

21 MR JAMIESON: Yes.

22 MR MPOFU: Under matters arising, "RP,"

23 whoever that is, "to speak to Cyril Ramaphosa about the

24 merits of contacting Luthuli House directly."

25 CHAIRPERSON: RP is obviously Mr

<p style="text-align: right;">Page 37575</p> <p>1 Phillimore.</p> <p>2 MR MPOFU: Who is it?</p> <p>3 CHAIRPERSON: RP is obviously –</p> <p>4 MR JAMIESON: Roger Phillimore.</p> <p>5 CHAIRPERSON: - Mr Phillimore, Roger</p> <p>6 Phillimore.</p> <p>7 MR MPOFU: Oh yes, thank you,</p> <p>8 Chairperson.</p> <p>9 MR JAMIESON: Ja.</p> <p>10 MR MPOFU: “Roger Phillimore to speak to</p> <p>11 Cyril Ramaphosa about the merits of contacting Luthuli</p> <p>12 House directly.” You see that one?</p> <p>13 MR JAMIESON: Yes.</p> <p>14 MR MPOFU: And then let’s go to page 111,</p> <p>15 which is the next meeting, 2.7, sorry –</p> <p>16 MR JAMIESON: 2.7?</p> <p>17 MR MPOFU: Yes.</p> <p>18 MR JAMIESON: Ja.</p> <p>19 MR MPOFU: “To brief Gwede Mantashe face</p> <p>20 to face on the situation post the meeting with the deputy</p> <p>21 president.”</p> <p>22 MR JAMIESON: Yes.</p> <p>23 MR MPOFU: Now I’m just saying, so that I</p> <p>24 don’t have to ask you about each, obviously this is, the</p> <p>25 subject matter of this is contact with the ANC about the</p>	<p style="text-align: right;">Page 37577</p> <p>1 MR JAMIESON: Sorry, which – is that in</p> <p>2 this, on page 111?</p> <p>3 MR MPOFU: No. Were you aware of the</p> <p>4 people at the hill being labelled as criminals?</p> <p>5 MR JAMIESON: Yes. Yes.</p> <p>6 MR MPOFU: And you didn’t object to that?</p> <p>7 MR JAMIESON: No.</p> <p>8 MR MPOFU: So you must have associated</p> <p>9 yourself with that sentiment. Why did you think they were</p> <p>10 criminals?</p> <p>11 MR JAMIESON: Because, and clearly not</p> <p>12 all of them, but only the ones who may have been involved</p> <p>13 in criminal activity and had been involved in the killings</p> <p>14 or the violence or the intimidation.</p> <p>15 MR MPOFU: Well, if you go to page 24, Mr</p> <p>16 Kgotle –</p> <p>17 MR JAMIESON: Yes.</p> <p>18 MR MPOFU: - says that, “It’s said to</p> <p>19 report that a 10th person has been killed, his body was</p> <p>20 close to the hill where these criminals meet daily.”</p> <p>21 MR JAMIESON: Yes.</p> <p>22 MR MPOFU: So that must have meant all</p> <p>23 the people at the koppie.</p> <p>24 MR JAMIESON: You’d have to ask Mr Kgotle</p> <p>25 who he meant –</p>
<p style="text-align: right;">Page 37576</p> <p>1 situation. What was that in aid of?</p> <p>2 MR JAMIESON: As I said it was, there was</p> <p>3 consideration given when we retained Brunswick in terms of</p> <p>4 external stakeholder communications, so ANC were identified</p> <p>5 by Brunswick as a stakeholder and then there was a debate</p> <p>6 on whether we should open lines of communication with them.</p> <p>7 So if you go further, 3, Natasha Viljoen had Brunswick</p> <p>8 under her responsibility. The second one I think was,</p> <p>9 possibly sounds like she came back and said well we thought</p> <p>10 about it and think it’s a good idea.</p> <p>11 [15:43] Roger Phillimore, who was then on the EXCO - as</p> <p>12 I’ve said earlier, he was chairing the EXCO meetings - he</p> <p>13 had said perhaps it’s prudent for me to speak to Mr</p> <p>14 Ramaphosa before we do that, and that’s minuted, and then</p> <p>15 it was, MS is Mahomed Seedat. Just by way of background</p> <p>16 Lonmin had sponsored the, what is the, where the Rivonia</p> <p>17 trialists were? Liliesleaf Farm, we did some work with</p> <p>18 that and Mahomed was the deputy president. [Inaudible]</p> <p>19 Velanti I think is a trustee of that. So Mahomed had</p> <p>20 spoken to him and there was a decision then the press,</p> <p>21 Gwede Mantashe would be spoken to after that. That was,</p> <p>22 that’s my recollection of the sort of chain of events, Mr</p> <p>23 Chairman.</p> <p>24 MR MPOFU: Why did you label the people</p> <p>25 who were at the koppie as criminals?</p>	<p style="text-align: right;">Page 37578</p> <p>1 MR MPOFU: No –</p> <p>2 MR JAMIESON: But what I can say is the</p> <p>3 word “criminal activity, criminals,” was used quite freely</p> <p>4 on the calls that were occurring at that time, specifically</p> <p>5 after the 12th.</p> <p>6 MR MPOFU: Did you regard those people as</p> <p>7 your fellow colleagues?</p> <p>8 MR JAMIESON: Yes.</p> <p>9 MR MPOFU: Or just as criminals?</p> <p>10 MR JAMIESON: I, the ones that were</p> <p>11 peaceful and were protesting peacefully, even though it was</p> <p>12 an unprotected strike, were clearly not criminals. Only</p> <p>13 the people who indulged in killing, murder, assault and</p> <p>14 intimidation, those were the ones that would be labelled</p> <p>15 criminals.</p> <p>16 MR MPOFU: And who said to you that those</p> <p>17 people who were involved in those things were at the</p> <p>18 koppie?</p> <p>19 MR JAMIESON: It was reported back from</p> <p>20 the mine on the calls.</p> <p>21 MR MPOFU: By who?</p> <p>22 MR JAMIESON: From Mark, Frank, Abey,</p> <p>23 Barnard, Natasha, really I mean they were all quite clear.</p> <p>24 MR MPOFU: Okay, and while we are on that</p> <p>25 subject, on page 40, you said there, after the worry of</p>

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1 [inaudible] with Bapo, can you see where that is?
 2 MR JAMIESON: Yes.
 3 MR MPOFU: You say, "Police action to
 4 deterring and resolve the situation today." That's, what
 5 does that mean?
 6 MR JAMIESON: Market report, as Frank had
 7 reported earlier than that, I think that the, there was
 8 going to be a police plan to do exactly what it said here –
 9 MR MPOFU: Yes.
 10 MR JAMIESON: - give an ultimatum to lay
 11 down arms. It had been reported on by Frank sort of, I
 12 think as early as Monday and then it was reported on by
 13 Mark again on Tuesday and he had then related that it, that
 14 had been postponed and it was now going to be today, being
 15 Wednesday. It subsequently got postponed again, but that
 16 was what he'd reported at that time.
 17 MR MPOFU: Okay, when did you hear about
 18 the, what you politely call the postponement of the killing
 19 of the people to Thursday?
 20 CHAIRPERSON: [Microphone off, inaudible]
 21 MR MPOFU: Oh well, of the operation, ja.
 22 CHAIRPERSON: Mr Mpofu, I don't think
 23 that's a proper –
 24 MR MPOFU: The postponement of the
 25 operation to Thursday, when did you hear about it?

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1 MR JAMIESON: I can't recall but it had
 2 to be obviously some time during the course of the 15th.
 3 MR MPOFU: Yes.
 4 MR JAMIESON: Because it didn't happen on
 5 the 15th.
 6 MR MPOFU: Yes.
 7 MR JAMIESON: Ja.
 8 MR MPOFU: So the matter was postponed.
 9 MR JAMIESON: Ja.
 10 MR MPOFU: Okay, now the next sentence
 11 there it says, "Police have given ultimatum to lay down
 12 arms and return to work to 2 000, 3 000," and then you put
 13 in quotes, "'people' on the koppie." Why did you, did you
 14 regard those people as not really people? Why did you
 15 punctuate it like that?
 16 MR JAMIESON: Because again the reports
 17 that were coming from the mine is that if you were to
 18 describe them as, all as strikers or you know, unprotected
 19 strikers, that might not be the correct description because
 20 we were told that there were other people that were there
 21 that could be from the local communities or could even be
 22 from other companies, i.e. I think Shaft Sinkers was
 23 mentioned as one of them. So that's the reason for the –
 24 MR MPOFU: Yes.
 25 MR JAMIESON: - inverted commas.

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1 MR MPOFU: No, fine. Well, to your
 2 credit, whatever you meant there, it was better than what
 3 Mr Kgotle said about those criminals who meet at the hill
 4 daily. I'll give you that much. Finally, Mr Jamieson,
 5 within the next five minutes I'm going to put the final
 6 proposition, or rather – yes, let me put it as a
 7 proposition. You remember that I said to you yesterday
 8 that, I said to you that your decision that you were party
 9 to of not talking to the people was in breach of Lonmin
 10 policy. You remember that?
 11 MR JAMIESON: Yes.
 12 MR MPOFU: Yes, but before that I had
 13 said that it was also illogical. Remember?
 14 MR JAMIESON: Yes.
 15 MR MPOFU: Yes, now one of the reasons –
 16 and I want your comment – one of the reasons for making it
 17 illogical is because from everything that you have
 18 discussed and some of the issues put to you by my learned
 19 colleague Ms Pillay, it was at that stage evident to you as
 20 management that the NUM had lost the confidence of the
 21 workers and even of its own members, correct?
 22 MR JAMIESON: Yes.
 23 MR MPOFU: And yet knowing that that was
 24 the situation, really what you were saying to the workers
 25 was that you will not listen to them, you will only listen

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1 to them if they speak through the NUM, which they had lost
 2 confidence in. That's illogical, isn't it?
 3 MR JAMIESON: Sorry, when – just to
 4 correct what I said to Ms Pillay yesterday, she said they
 5 had lost confidence and I said their confidence was waning,
 6 I think is what I actually said.
 7 MR MPOFU: No, well you –
 8 MR JAMIESON: I didn't say it was
 9 completely lost, it was waning, is the word I used.
 10 MR MPOFU: Well, I remember that, ja.
 11 You were wrong.
 12 MR JAMIESON: Ja.
 13 CHAIRPERSON: Just to save time, if you
 14 look at page 134 –
 15 MR MPOFU: 134?
 16 CHAIRPERSON: 134, the trade union
 17 scenario document.
 18 MR JAMIESON: Yes.
 19 CHAIRPERSON: Talking about NUM the
 20 following is said, "NUM seems to have lost touch with their
 21 members and their confidence."
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: That's point I think Mr
 24 Mpofu is putting to you.
 25 MR MPOFU: Thank you, yes.

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1 MR JAMIESON: I can't object with that.
 2 It's written here.
 3 MR MPOFU: Yes. Ja, well it doesn't
 4 matter the degree. I'm just saying knowing that what the
 5 Chairperson has just read, 134, second bullet, "The NUM
 6 seems to have lost touch with their members and their
 7 confidence."
 8 MR JAMIESON: Yes.
 9 MR MPOFU: Knowing that –
 10 MR JAMIESON: Yes.
 11 MR MPOFU: - would you agree therefore
 12 that it was an illogical demand to put on the workers to
 13 say we will only talk to you via the organisation in which
 14 we know you have lost confidence and lost touch? Just as a
 15 logical thing. Forget about now all these titles that we
 16 both hold.
 17 MR JAMIESON: The locality I don't know,
 18 but my answer would be that there are processes which you
 19 can go through. They might not be quick, they might not be
 20 fast and they might not get you the answer that you want,
 21 but – and I'm not an IR expert, and when I say IR I mean
 22 industrial relations, not investor relations – the option
 23 was open there to anyone who was disgruntled with their
 24 representatives that not long ago they had voted for and
 25 given mandates to, to go, to either have a grievance, which

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1 is the Mike Da Costa route, as I would say it. They could
 2 have gone to the CCMA individually or collectively, or they
 3 could have withdrawn their mandate by changing their stop
 4 orders or cancelling their stop orders and they could have
 5 come and then said we want worker committees for example.
 6 Now that takes some time, I'll grant, but that's the
 7 democratic and I think legal process that should have been
 8 followed. But I'm not an IR expert, sorry.
 9 MR MPOFU: Ja, maybe it's my fault, ja.
 10 I'm saying to you it's got nothing to do with IR, whichever
 11 one of the IRs. I'm saying logically you cannot say that
 12 if, like us here in this room, if we have lost confidence
 13 in an organisation, the SPCA, whatever it is, you can't
 14 then say you will only talk on our behalf through the SPCA,
 15 in which you know that we've lost confidence. That is
 16 illogical. It's got nothing to do with labour relations.
 17 It's got something to do with logic.
 18 MR JAMIESON: I think I would agree with
 19 you.
 20 MR MPOFU: Thanks.
 21 MR JAMIESON: And add that it would
 22 probably have been better to say go and follow the
 23 processes you have at your disposal to rectify the
 24 situation. That might have been helpful, I think.
 25 MR MPOFU: So in closing then what I want

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1 to say to you is this; you acting on behalf of Lonmin or as
 2 we qualified it earlier, you were party to two important
 3 events which are possibly causally connected to the deaths
 4 of the 44 people. The first one is a decision which you
 5 have agreed might have possibly had that effect, which was
 6 the no talking decision on the 10th. You accept that?
 7 MR JAMIESON: Yes.
 8 MR MPOFU: Secondly you were also, may I
 9 use the word maybe uncharitably of torchbearer, but you
 10 were emphatic – let's use the word that you and I have
 11 agreed on. You were emphatic in the crusade to change the
 12 characterisation which was part of what I've called the
 13 chain of political pressure which may also have been
 14 causally connected to the deaths of the people, correct?
 15 MR JAMIESON: I was emphatic on that,
 16 yes.
 17 MR MPOFU: Yes, thank you very much.
 18 I've nothing further, Chairperson.
 19 CHAIRPERSON: Thank you very much, Mr
 20 Mpofo. I understand the next cross-examination is going to
 21 be on behalf of the LRC. Do you want to use five minutes
 22 now? Do you think there is a point you can deal with
 23 quickly in five minutes?
 24 MR NGCUKAITOBI: Well, if I have the
 25 option I would rather start tomorrow, but if I don't have

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1 the option I'll use the five minutes.
 2 CHAIRPERSON: Well look, if you haven't
 3 got a five-minute point you can start tomorrow. Have you
 4 not got a five-minute point?
 5 MR NGCUKAITOBI: Perhaps I should ask a
 6 few questions.
 7 CHAIRPERSON: Yes, you know, you can
 8 introduce yourself and set the scene –
 9 CROSS-EXAMINATION BY MR NGCUKAITOBI: Mr
 10 Jamieson, my name is Tembeka Ngcukaitobi. I am at the
 11 Legal Resources Centre. Can I ask you if I understand the
 12 case of Lonmin about why Lonmin decided to disengage with
 13 the RDOs after Mr Da Costa had started the engagement
 14 process, you've just given the answer to Mr Mpofo where you
 15 say that they did not follow the correct legal processes.
 16 I want to suggest to you two possible legal processes. The
 17 first is the wage agreement that was a two-year wage
 18 agreement, everybody knows about it, between 2011 and 2013.
 19 Would you accept that that was one open avenue?
 20 MR JAMIESON: You're referring to the
 21 RDOs –
 22 MR NGCUKAITOBI: Yes.
 23 MR JAMIESON: - who approached Mr Da
 24 Costa –
 25 MR NGCUKAITOBI: Yes.

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1 MR JAMIESON: - some time during the
 2 course of June –
 3 MR NGCUKAITOBI: Yes who wanted an
 4 adjustment to their wages.
 5 MR JAMIESON: Yes.
 6 MR NGCUKAITOBI: Yes, alright. So do you
 7 accept that the way in which the wages issue was dealt with
 8 was through the wage agreement?
 9 MR JAMIESON: No, it was more dealt with
 10 as a grievance.
 11 MR NGCUKAITOBI: Yes. No, I'm saying the
 12 way Lonmin wanted it to be dealt with was through the wage
 13 agreement.
 14 MR JAMIESON: Yes, to refer back to your
 15 representatives who are part of the wage, you know, the
 16 wage council. So in the case of the RDOs I think it was
 17 NUM, but there were other members of that, UASA,
 18 Solidarity, who were also members of the bargaining unit
 19 and it was across LPD.
 20 MR NGCUKAITOBI: Yes.
 21 MR JAMIESON: So they were referred back
 22 to them.
 23 MR NGCUKAITOBI: Yes, so in other words
 24 you refused to negotiate on the basis that if they wanted
 25 discussions about wages that must happen centrally, at the

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1 central bargaining forum.
 2 MR JAMIESON: When you say centrally, you
 3 mean at Lonmin?
 4 MR NGCUKAITOBI: Yes.
 5 MR JAMIESON: Yes.
 6 MR NGCUKAITOBI: Now did you think that
 7 your refusal to negotiate, or rather your negotiation would
 8 be in breach of the wage agreement?
 9 MR JAMIESON: No. No, I didn't.
 10 MR NGCUKAITOBI: So you didn't believe
 11 that if you negotiated with the workers you would violate
 12 the wage agreement?
 13 MR JAMIESON: Yes, sorry if I got that
 14 the wrong way around.
 15 MR NGCUKAITOBI: Yes.
 16 MR JAMIESON: If we had negotiated, which
 17 we didn't, it would have been violation of the agreement,
 18 yes.
 19 MR NGCUKAITOBI: Alright, now I want to
 20 take you through the wage agreement.
 21 MR JAMIESON: Okay, I should caution that
 22 I'm not on –
 23 MR NGCUKAITOBI: No, Mr Jamieson –
 24 MR JAMIESON: - not an IR person –
 25 MR NGCUKAITOBI: - you told me that there

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1 would be a breach. I want to take you to the agreement. I
 2 don't know why you're anticipating my question.
 3 MR JAMIESON: No, I'm just cautioning
 4 that I'm not familiar with the wage agreement.
 5 CHAIRPERSON: It sounds as if this cross-
 6 examination on this issue may take a bit of time if you're
 7 going to take him through the agreement. May I suggest it
 8 would be sensible at this stage to adopt the suggestion you
 9 made earlier, let him study the wage agreement overnight
 10 and then tomorrow morning you can make the points that you
 11 wish to make and get his responses.
 12 MR NGCUKAITOBI: Thank you. The exhibit
 13 number is XX2.9, so that Mr Jamieson can familiarise
 14 himself with it.
 15 CHAIRPERSON: Yes, I'm sure he knows the
 16 terms of the wage agreement. I'd be very surprised if he
 17 doesn't, but I'm sure he's notwithstanding that is grateful
 18 to you for telling him what the exhibit number is. 9
 19 o'clock tomorrow morning.
 20 MR JAMIESON: Sorry, which, where have I
 21 got it in? Which bundle?
 22 CHAIRPERSON: I suggest you speak to your
 23 counsel –
 24 MR JAMIESON: And get it.
 25 CHAIRPERSON: - even though you're under

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1 cross-examination, if there's no objection to them giving
 2 it to you, you may –
 3 MR JAMIESON: Thank you.
 4 [COMMISSION ADJOURNED]
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