

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 108 18 JUNE 2013 PAGES 11536 TO 11633



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<p style="text-align: right;">Page 11536</p> <p>1 [PROCEEDINGS ON 18 JUNE 2013] 2 [10:28] CHAIRPERSON: The Commission resumes. 3 I'm sorry that we're starting later, in fact an hour later 4 than the scheduled time. The reason is that there was a 5 problem with the airline booking of one of the 6 Commissioners so she was only able to catch the later 7 plane, which explains the delay. Major-General, you're 8 still under oath. Mr Ngalwana, you have some – Mr 9 Ngalwana, I take it, I understand you have further 10 questions but before you ask any of them I'd just like to 11 ask the interpreter, I understand you were going to give an 12 explanation to the people present. I think you should give 13 the explanation as well in Xhosa as part of the formal 14 proceedings because, as you know, they are broadcast on 15 YouTube on the internet and I understand there are people 16 who are watching it on television and who would not have 17 had the advantage of the explanation that you gave to the 18 people present in the auditorium this morning. I think 19 it's an important point that you should – 20 MR MAHLANGU: Thank you, Chairperson. 21 CHAIRPERSON: Perhaps you should explain 22 it briefly in English as well for the rest of us who don't 23 know what's going on otherwise. 24 MR MAHLANGU: Thank you, Commissioner. I 25 want to make an apology to the people listening,</p>	<p style="text-align: right;">Page 11538</p> <p>1 ZONDASI WILLIAM MPEMBE: (s.u.o.) 2 EXAMINATION BY MR NGALWANA (CONTD): Good 3 morning, General. 4 MAJOR-GENERAL MPEMBE: Good morning, 5 Advocate. 6 MR NGALWANA: Chairperson and members of 7 the Commission, you will recall that there are at least 8 three documents that we promised to hand or to submit as 9 exhibits later on and we consider that today is an 10 appropriate an occasion as any. The first are the notes 11 that the General said he had made during the Potchefstroom 12 series of meetings and from which he gave a report-back to 13 Colonel Visser. Before introducing those, I just wish to 14 pose a few questions to the General in regard to those 15 notes. They will be distributed shortly thereafter. 16 CHAIRPERSON: Yes, alright. Unless you 17 want to – if you've got three documents you could hand in, 18 we could possibly mark them as exhibits now. 19 MR NGALWANA: Yes. 20 CHAIRPERSON: And then you don't 21 necessarily have to hand them in immediately but let's mark 22 them as exhibits so that when you lead the evidence it goes 23 more smoothly because you can just refer to the exhibits as 24 described. So unfortunately Ms Pillay is not here but what 25 is the next, what I can call Mpembe exhibit? It's HHH, I</p>
<p style="text-align: right;">Page 11537</p> <p>1 particularly in the isiXhosa language, for a word that was 2 used by my assistant here, my junior. The word that was 3 used is with reference to the miners as "ono-maini" which 4 word was used unfortunately in the past regime, which is 5 rejected by the people and there have been quite a few 6 complaints about it but I explained to the people that the 7 person interpreting is still junior and really apologising 8 for using that word, unacceptable word. Thank you very 9 much, Mr Chair. 10 CHAIRPERSON: Could you tell those of us 11 who are following in English what the offending word was 12 and why it is an offending word and what the proper word 13 is, so that we can all be educated from this experience? 14 MR MAHLANGU: Thank you very much, Mr 15 Chairperson. The word "ono-maini" which he used with 16 reference to the miners, when reference was made to the 17 miners, he referred to those people as "ono-maini." Now 18 he word "ono-maini" was used unfortunately during the past, 19 which is highly rejected by the people as being degrading. 20 The word that is being used now is the workers, which is in 21 Xhosa "abasebenzi – [African language] Sesotho. 22 CHAIRPERSON: Thank you. Mr Ngalwana, 23 would you now care to proceed with your evidence-in-chief? 24 MR NGALWANA: Yes, thank you, 25 Chairperson.</p>	<p style="text-align: right;">Page 11539</p> <p>1 think. I think we got as far as HHH8, is that correct? So 2 this, these notes will be exhibit HHH9, is that correct, Mr 3 Ngalwana? 4 MR NGALWANA: It sounds correct, Chair. 5 CHAIRPERSON: That's the document which 6 looks like this. It's an extract from a diary, 11 7 September. We'll make that HHH9. And what is the next 8 document? Is that this document headed "Statement I – 9 blank – with ID number – blank?" 10 MR NGALWANA: Yes, that's what we call Mr 11 Y's statement. 12 CHAIRPERSON: Mr Y's statement, alright. 13 So that will be HHH10 and I will record it as statement by 14 Mr Y, putting "Mr Y" in quotation marks. And then I see 15 the third document appears to be another version of the 16 slide that we saw. 17 MR NGALWANA: Yes, that would be exhibit 18 L slide 181. The difference is this one is marked A, B, C 19 and D which depicts where the – 20 CHAIRPERSON: I think we – I'm sorry to 21 interrupt you, I think we'd better give it a separate 22 exhibit number so we'll call it exhibit HHH10 but let's 23 call it – oh sorry, 11, I beg your pardon, 11 – "Amended 24 slide L181 with added letters." That's exhibit HHH11. 25 MR NGALWANA: Thank you, Chair. General,</p>

<p style="text-align: right;">Page 11540</p> <p>1 did you make these notes contemporaneously on the 13th of</p> <p>2 August during the event of Monday the 13th of August 2012?</p> <p>3 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>4 MR NGALWANA: When did you make these</p> <p>5 notes in your diary?</p> <p>6 MAJOR-GENERAL MPEMBE: The notes were</p> <p>7 made when I was in Potchefstroom on the 28th. I was also</p> <p>8 looking back on the 13th, what happened on the 13th, then</p> <p>9 that's when I made the notes.</p> <p>10 MR NGALWANA: Now you've made entries in</p> <p>11 your diary under the date on Tuesday the 28th of August 2012</p> <p>12 and Monday the 13th of August 2012 and Sunday the 12th,</p> <p>13 well, from the 11th of August 2012 until 12 – the 11th of</p> <p>14 August, Saturday, 2012, Sunday the 12th of August 2012,</p> <p>15 Monday the 13th of August 2012 and Tuesday the 28th of</p> <p>16 August 2012. Can you explain why you made those entries</p> <p>17 not under the date relating to the date on which you made</p> <p>18 the entries – sorry, let me rephrase that. Can you explain</p> <p>19 briefly to the Commission why you made those entries under</p> <p>20 the dates that you have, on the 11th, the 12th and the 13th</p> <p>21 of August 2012 and the 28th of August 2012?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, on</p> <p>23 the 28th when I was in Potch, I was writing on the 13th</p> <p>24 because some of the entries of me reporting on duty were</p> <p>25 made on the 13th but because I was not on duty on that</p>	<p style="text-align: right;">Page 11542</p> <p>1 the Saturday the 11th but I take it it's not important.</p> <p>2 MR NGALWANA: Then with reference to the</p> <p>3 statement of Mr Y, the Commission and members of the</p> <p>4 Commission will recall the evidence of Major-General Mpeembe</p> <p>5 when he gave reasons for implementing stage 3, that people</p> <p>6 were continuing to be killed when they were going to work.</p> <p>7 This was one of the examples that he used of a person who</p> <p>8 had been assaulted in the early hours of Monday morning as</p> <p>9 he was going to work. I'm not going to read this into the</p> <p>10 record, save to simply just paraphrase that it deals with a</p> <p>11 person who was going to work and was stabbed on numerous</p> <p>12 occasions, was left for dead, woke up, washed his face</p> <p>13 which was bloodied and called people to come to his</p> <p>14 assistance, who then came and he has identified at least</p> <p>15 two persons among those who assaulted him. Chairperson and</p> <p>16 members of the Commission, the grammar is not as it should</p> <p>17 be in the statement. What has happened was, it has – this</p> <p>18 is a typed version from the handwritten version so it was</p> <p>19 typed in precisely the same manner or as close as possible,</p> <p>20 as far as I know, in precisely the same manner as it</p> <p>21 appears in the original version.</p> <p>22 CHAIRPERSON: Is this the person who is</p> <p>23 referred to in the occurrence book FFF25 in the entry</p> <p>24 number 21 on page 3? This is an entry made on the morning</p> <p>25 of the 13th at 6:20 about an African male found at Eastern</p>
<p style="text-align: right;">Page 11541</p> <p>1 weekend, I utilised the other spaces because I was on</p> <p>2 leave, I was just using that space to write for me those</p> <p>3 notes.</p> <p>4 CHAIRPERSON: Yes, at the top of the page</p> <p>5 for the 11th is the word "leave," so I take it the rest of</p> <p>6 the page is blank?</p> <p>7 MAJOR-GENERAL MPEMBE: Correct.</p> <p>8 CHAIRPERSON: Equally, the same applies</p> <p>9 for Sunday the 12th.</p> <p>10 MAJOR-GENERAL MPEMBE: Correct,</p> <p>11 Chairperson.</p> <p>12 CHAIRPERSON: So there was a blank space</p> <p>13 in your diary and so you had to have something to write on</p> <p>14 and you chose those pages, is that right?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct,</p> <p>16 Chairperson.</p> <p>17 CHAIRPERSON: As far as the 13th is</p> <p>18 concerned, the entries that you made on what one can call</p> <p>19 the left hand side of the page were very short because they</p> <p>20 just related to places you were at, so you wrote on the</p> <p>21 right hand side in the column.</p> <p>22 MAJOR-GENERAL MPEMBE: Correct,</p> <p>23 Chairperson.</p> <p>24 CHAIRPERSON: I don't quite know why you</p> <p>25 wrote on the right hand side in the column on the page for</p>	<p style="text-align: right;">Page 11543</p> <p>1 Plats next to the railway with firearm wounds. It alleges</p> <p>2 he might have passed away. Is it that person or is it</p> <p>3 somebody else?</p> <p>4 MR NGALWANA: I don't think so,</p> <p>5 Chairperson, because this person did not pass on –</p> <p>6 CHAIRPERSON: No, it said he might have</p> <p>7 passed away. I understand this person is very much alive,</p> <p>8 Mr Y, but I see there were firearm wounds –</p> <p>9 MR NGALWANA: Yes.</p> <p>10 CHAIRPERSON: I don't know that, this</p> <p>11 person claims to – I think he was stabbed, wasn't he? Is</p> <p>12 that somebody else?</p> <p>13 MR NGALWANA: It's someone else, Chair.</p> <p>14 CHAIRPERSON: Alright, thank you.</p> <p>15 MR NGALWANA: In relation to the HHH11</p> <p>16 exhibit, evidence has already been given, nothing more</p> <p>17 needs to be said about that. General, to continue just</p> <p>18 briefly with the sweeping exercise that you performed on</p> <p>19 Friday, just three or four questions in relation to Mr</p> <p>20 Kwadi's statement. May I take you there? It's in file B,</p> <p>21 volume B which is the statements file, exhibit KK, kulu-</p> <p>22 kulu, you'll find it under flag number 12 at pagination</p> <p>23 139, it begins there. I want to refer you specifically to</p> <p>24 paragraph 4 of exhibit KK and that's pagination 142, page 4</p> <p>25 of exhibit KK. Have you found it, General?</p>

<p style="text-align: right;">Page 11544</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 COMMISSIONER HEMRAJ: Sorry, what page 4 are you taking us to, Mr Ngalwana? 5 MR NGALWANA: Page 4 of exhibit KK which 6 is pagination 142 under flag 12 of bundle B. General, you 7 will see in the second sentence of that paragraph, 8 paragraph 4, Mr Kwadi says, "There was nothing of 9 particular significance which occurred on 11 August 2012 10 which I witnessed." Evidently he's talking about that 11 which he did witness. Do you know of anything significant 12 that happened on that day? 13 MAJOR-GENERAL MPEMBE: On the 17th 14 Brigadier Van Zyl – there were some investigations 15 happening. He also informed me that there is a statement 16 of a certain shop owner, whom I'm not going to mention his 17 name, that says that the protesters were buying more pangas 18 from his shop and there were also other significant issues 19 which also happened on the 11th with regard to violence. 20 [10:48] MR NGALWANA: May I take you, General, to 21 that same bundle under flag 8? This is not yet an exhibit, 22 Chairperson, I don't believe. Oh, I'm told it may be, so 23 let's find out. 24 CHAIRPERSON: We haven't got Ms Pillay 25 with us today so it will be dangerous for us to – oh, she</p>	<p style="text-align: right;">Page 11546</p> <p>1 Cassim has deposed to a further statement. In paragraph 2 2 of that statement he says, "Further to my statement made on 3 the 22nd of August 2012 I would like to add that from 11 4 August 2012 there was a sudden great demand for pangas, 5 axes and hatchets. All these items were purchased by 6 African males for an entire week. I was actually running 7 out of stock and I had to order more of these items to meet 8 the demand. From time to time I have been operating this 9 business, this was the first time that I have sold so many 10 pangas, axes and hatchets in a week." 11 CHAIRPERSON: According to my notes, 12 which may be wrong but according to my notes this 13 particular statement hasn't got an exhibit number. It 14 should be 7.3. It should be HHH7.3. If it is already, 15 well, then we don't have to mark it but none of us here has 16 got it marked and it is a continuation obviously of the 17 previous statement which is HHH7.2, isn't it? 18 MR NGALWANA: I would propose it be 19 marked as the Chairperson proposed, 7.3. 20 CHAIRPERSON: Well, I must tell you that 21 page 52 I've got marked as a copy of HHH8 but I seem to 22 remember it was then suggested that the way to deal with it 23 is to make it HHH7.2 because it follows from 7.1. So the 24 second statement, the first typed one on page 52 is HHH7.2 25 and this one which is page 54 in your bundle will then be</p>
<p style="text-align: right;">Page 11545</p> <p>1 is here. Oh, she's sitting – she's crossed the floor. Can 2 you help us Ms Pillay? It's the statement of Mohamed 3 Cassim which is under flag 8 in the B bundle of police 4 documents. 5 MR NGALWANA: My learned friend to my 6 left tells me that he has it as HHH7. 7.1. 7 CHAIRPERSON: Yes, 7.1. So we were wise 8 not to give it an extra exhibit number, weren't we? More 9 happenstance than wisdom, but never mind, we didn't make a 10 mistake. 11 MR NGALWANA: Thank you, Chairperson. Is 12 that the statement to which you refer, General? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 MR NGALWANA: Just briefly, you will see 16 in paragraph 3 Mr Cassim says, "On 2012-08-11" – that's the 17 11th of August 2012 at about – "at 9AM I was on duty in my 18 shop. Since the time at 9 o'clock when I opened, I had a 19 rush of African males buying pangas from me." Then in 20 paragraph 4 he says, "I usually keep about 30 pangas in the 21 stock and it was sold out in no time." Then in paragraph 5 22 he expresses his suspicion about it, "because usually they 23 want to wrap it in numerous, or in newspapers, but on that 24 day they just put it in their pants and left." Then in 25 pagination 54 under the same flag, flag 8, the same Mr</p>	<p style="text-align: right;">Page 11547</p> <p>1 HHH7.3. And then again according to my notes, Mr Ngalwana, 2 according to my notes the statement by Mr Masenya, the 3 video operator – I can't remember his rank but he's a 4 Warrant Officer I think, his statement is HHH8. So 5 everything is neatly in sequence, is that correct? 6 MR NGALWANA: That sounds about right, 7 Chair. 8 CHAIRPERSON: Okay. So anyway, we've now 9 looked at HHH7.3. Is there anything you want to do with it 10 apart from refer to it? 11 MR NGALWANA: No, Chairperson. 12 MR MPOFU: Chairperson, may I just 13 enquire whether this Mr Cassim is intended to be a witness 14 or on which basis the statement is being presented? 15 MR NGALWANA: If the Commission or anyone 16 wishes to subpoena him, we don't intend calling him as a 17 witness but if you want – 18 CHAIRPERSON: One of the things I'm going 19 to be doing tomorrow is I'm going to be going through the 20 witnesses whom it is scheduled will be called, to try to 21 provisionally allocate times to them and also to decide 22 which witnesses don't have to give evidence but whose 23 evidence can be put before the Commission by way of 24 affidavit. So one of the things – I'm going to do that 25 with some of the evidence leaders. One of the things we</p>

<p style="text-align: right;">Page 11548</p> <p>1 will consider, whether Mr Cassim should be called and</p> <p>2 obviously if anyone wants him called and I consider it</p> <p>3 appropriate that he should be called, I'll allow him to be</p> <p>4 called but if it's not controversial that there were a lot</p> <p>5 of pangas bought on the 11th of August, well then that fact</p> <p>6 may be adequately proved simply by his statement, but</p> <p>7 anyway that's a matter we can go into in due course.</p> <p>8 MR MPOFU: Ja. No, Chair –</p> <p>9 CHAIRPERSON: I think you can accept for</p> <p>10 the moment that there is, at least evidential material</p> <p>11 before us setting out what he says. So you can decide to</p> <p>12 act in accordance with that knowledge if you consider it</p> <p>13 appropriate.</p> <p>14 MR MPOFU: Yes, Chair. I appreciate</p> <p>15 that. I think my appeal would be that maybe we should</p> <p>16 assist you in that task as counsel and indicate, if we are</p> <p>17 presenting a statement of someone that we don't intend to</p> <p>18 call, indicate so that we know and then we can set the ball</p> <p>19 –</p> <p>20 CHAIRPERSON: No, well, I think – okay,</p> <p>21 it's possibly a housekeeping matter we can discuss in</p> <p>22 chambers but just to deal with it quickly, I would've</p> <p>23 thought that the questions – the real point is, the</p> <p>24 statements can be produced and it can be suggested that</p> <p>25 it's unnecessary for the witness to give oral evidence.</p>	<p style="text-align: right;">Page 11550</p> <p>1 offices that took place on the 11th?</p> <p>2 MR NGALWANA: Let's ask him, Chair.</p> <p>3 CHAIRPERSON: You obviously weren't aware</p> <p>4 at the time because you were on leave but did you</p> <p>5 subsequently receive a report to the effect, the details of</p> <p>6 the report you don't have to give us but did you receive a</p> <p>7 report that there had been an incident, that a number of</p> <p>8 people had marched to the NUM offices, that NUM people were</p> <p>9 there defending the office, as it were, shots were fired</p> <p>10 and people were injured. Did you receive a report to that</p> <p>11 effect subsequently?</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, it</p> <p>13 was just a verbal report from Captain Govender.</p> <p>14 CHAIRPERSON: When did you – you mean an</p> <p>15 oral report because even written reports are verbal – when</p> <p>16 did you receive that report?</p> <p>17 MAJOR-GENERAL MPEMBE: On the 13th.</p> <p>18 CHAIRPERSON: Thank you.</p> <p>19 MR NGALWANA: Thank you. Is there a</p> <p>20 briefing that you gave to the members on the 13th of August</p> <p>21 prior to engaging with the protesters next to the railway</p> <p>22 line?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>24 MR NGALWANA: Why not?</p> <p>25 MAJOR-GENERAL MPEMBE: There was no time</p>
<p style="text-align: right;">Page 11549</p> <p>1 MR MPOFU: Correct.</p> <p>2 CHAIRPERSON: That's the point and of</p> <p>3 course if somebody says no, no, I want that witness to come</p> <p>4 because there are some questions I want to ask him or her,</p> <p>5 then obviously that's a matter that'll have to be</p> <p>6 considered and I'll then have to be told what the questions</p> <p>7 are or, you know, what the line of questioning is and if</p> <p>8 it's something that in my view is simply a matter of</p> <p>9 irrelevancy, I won't allow it but if it's clearly something</p> <p>10 that may well be relevant, I will and obviously I'll be</p> <p>11 flexible and do my best to ensure that we get to the truth</p> <p>12 of all these matters.</p> <p>13 MR MPOFU: Thank you, Chair.</p> <p>14 MR NGALWANA: General, we now proceed to</p> <p>15 deal with the criticisms by the various experts, which I'll</p> <p>16 deal with it in a different form than that which we</p> <p>17 envisaged initially. Standing order 262, General, requires</p> <p>18 that in relation to any operation or event there must be a</p> <p>19 briefing and that briefing must be recorded visually.</p> <p>20 There must be a video recording of a briefing, do you</p> <p>21 accept that?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson,</p> <p>23 correct.</p> <p>24 COMMISSIONER HEMRAJ: Mr Ngalwana, was</p> <p>25 the witness not aware of the incident outside the NUM</p>	<p style="text-align: right;">Page 11551</p> <p>1 for me for the briefing but what I know is that I did ask</p> <p>2 the unit commander, Colonel Merafi, then he said to me,</p> <p>3 General, the members that arrived outside the province,</p> <p>4 they were briefed and orientated but the orientation will</p> <p>5 still continue.</p> <p>6 MR NGALWANA: You say you didn't have</p> <p>7 time to brief them. At roughly what time was the</p> <p>8 instruction given to you to attend to the marchers next to</p> <p>9 the railway line on the 13th of August 2012?</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, the</p> <p>11 instruction from the Provincial Commissioner it was at</p> <p>12 about 12:45. I took it upon myself as the overall</p> <p>13 commander to go to the interception and it was at about 2</p> <p>14 o'clock I was already at the place where I met the</p> <p>15 protesters.</p> <p>16 MR NGALWANA: So a period of about an</p> <p>17 hour and 15 minutes. Are you aware of any video recordal</p> <p>18 of the briefing to which Lieutenant-Colonel Merafi</p> <p>19 referred, briefing of the members?</p> <p>20 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>21 MR NGALWANA: Do you know why there was</p> <p>22 no video recording of that briefing to which Mr,</p> <p>23 Lieutenant-Colonel Merafi referred?</p> <p>24 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>25 MR NGALWANA: Were any video operators</p>

<p style="text-align: right;">Page 11552</p> <p>1 present at the time before, when you were addressing the –</p> <p>2 well, let me phrase it this way, you testified earlier</p> <p>3 General, maybe Friday or sometime last week, that you may</p> <p>4 have given some briefing to the members. Can you take the</p> <p>5 Commission through that, what the nature of that was?</p> <p>6 MAJOR-GENERAL MPEMBE: Correct,</p> <p>7 Chairperson. I said that while I was addressing the</p> <p>8 protesters at the interception there was a time where I</p> <p>9 called the commanders that were there with me and then I</p> <p>10 spoke to them. It was the time when I was suggesting that</p> <p>11 when I count to the protesters and we can allow the</p> <p>12 protesters to go.</p> <p>13 MR NGALWANA: Were there any video</p> <p>14 operators present at that time?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson,</p> <p>16 correct.</p> <p>17 MR NGALWANA: Do you know if they took</p> <p>18 any video footage of your talking to the commanders?</p> <p>19 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>20 but what I expected because it was while I was still</p> <p>21 addressing and they were there, I expected that it could</p> <p>22 have been taken.</p> <p>23 MR NGALWANA: Do you know whether or not</p> <p>24 they took video footage?</p> <p>25 MAJOR-GENERAL MPEMBE: No, Chairperson.</p>	<p style="text-align: right;">Page 11554</p> <p>1 testified that I took upon myself as an overall commander</p> <p>2 to intercept because I could speak the language of the</p> <p>3 protesters. Chairperson, I did persuade the protesters to</p> <p>4 lay down their weapons.</p> <p>5 CHAIRPERSON: You didn't persuade them,</p> <p>6 you tried to persuade them. If you had persuaded them we</p> <p>7 probably wouldn't be here. Isn't that right?</p> <p>8 MAJOR-GENERAL MPEMBE: Chairperson, in my</p> <p>9 understanding is that as a senior officer and I expected</p> <p>10 that they could have listened to me.</p> <p>11 CHAIRPERSON: I'm not criticising you.</p> <p>12 You tried to persuade them, you didn't succeed. It wasn't</p> <p>13 your fault but you tried to persuade them. You can't say</p> <p>14 you persuaded them because if you'd persuaded them they</p> <p>15 would've laid down their arms and they didn't.</p> <p>16 MAJOR-GENERAL MPEMBE: Correct,</p> <p>17 Chairperson.</p> <p>18 MR NGALWANA: So what you're saying,</p> <p>19 General, is at least two things. I would like you to add</p> <p>20 if there's anything else to add. You say you tried to</p> <p>21 avoid the loss of life and damage to property and injuries</p> <p>22 by negotiation and by trying to persuade them to put down</p> <p>23 their weapons. Is there anything else?</p> <p>24 MAJOR-GENERAL MPEMBE: The other one is</p> <p>25 that the members that they were with me, they were also</p>
<p style="text-align: right;">Page 11553</p> <p>1 MR NGALWANA: You said you then escorted</p> <p>2 the protesters.</p> <p>3 COMMISSIONER HEMRAJ: Mr Ngalwana, sorry,</p> <p>4 in a video that was shown of the incident at the railway</p> <p>5 line did the witness not point himself out talking to the</p> <p>6 other commanders? I seem to recall that he did, it seemed</p> <p>7 to be shot from a distance that –</p> <p>8 [11:07] MR NGALWANA: Yes, that's my recollection</p> <p>9 too, Commissioner, and I'm quite sure that's the</p> <p>10 recollection of the General but what we are dealing with is</p> <p>11 whether the content of the address was heard because I</p> <p>12 think that's what's required by 262. General, is the use</p> <p>13 of lethal force a consideration in crowd management?</p> <p>14 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>15 MR NGALWANA: Was the use of force on the</p> <p>16 13th of August 2012 something that you contemplated? Sorry,</p> <p>17 I left out a word there apparently. Was the use of lethal</p> <p>18 force contemplated by you in dealing with the crowd</p> <p>19 management issue on the 13th of August 2012?</p> <p>20 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>21 MR NGALWANA: What measures, if any, did</p> <p>22 you and the police who were present on the 13th of August</p> <p>23 at that scene take in order to avoid the loss of life and</p> <p>24 injury to persons and property?</p> <p>25 MAJOR-GENERAL MPEMBE: Chairperson, I</p>	<p style="text-align: right;">Page 11555</p> <p>1 having the equipment that they were to protect themselves,</p> <p>2 equipment such as the helmets, teargas, SS.</p> <p>3 MR NGALWANA: Right.</p> <p>4 MAJOR-GENERAL MPEMBE: I also, impromptu</p> <p>5 briefing with the commanders that I intended to apply</p> <p>6 situational appropriateness with regard to the situation of</p> <p>7 the 13th.</p> <p>8 MR NGALWANA: Thank you, General.</p> <p>9 General, there is a document called the "National</p> <p>10 Instruction Hash Tag of 2012 POP crowd regulation and</p> <p>11 management during public gatherings and demonstrations."</p> <p>12 Perhaps for the sake of, so that we can identify this, if</p> <p>13 you look at White's statement just purely for that purpose,</p> <p>14 under flag 9, WW2, exhibit WW2 at page 11. Page 11 of WW2,</p> <p>15 pagination 65. Do you see in that bullet point there –</p> <p>16 have you found it, General? General, have you found it?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson,</p> <p>18 correct.</p> <p>19 MR NGALWANA: You see there's "National</p> <p>20 Instruction," it's got plus-minus, I think that should be</p> <p>21 hash tag, "of 2012 – POP crowd regulation and management</p> <p>22 during public gatherings and demonstrations." Are you</p> <p>23 familiar with that document? Are you aware of it?</p> <p>24 MR MPOFU: Chairperson, I'm sorry to</p> <p>25 interrupt.</p>

<p style="text-align: right;">Page 11556</p> <p>1 CHAIRPERSON: Have you got your 2 microphone on? 3 MR MPOFU: I do. Maybe I'm too far – 4 CHAIRPERSON: If you have, it's obscured 5 by the water bottle, sorry. 6 MR MPOFU: I'm sorry to interrupt. I 7 know that, I just wanted to check with Ms Pillay. I have 8 used this document, if you remember Chairperson, in 9 relation to the definition of offensive measures and so on. 10 I don't know if it was given an exhibit number – 11 CHAIRPERSON: Your impression is it has 12 been given an exhibit number? 13 MR MPOFU: Yes. 14 CHAIRPERSON: Well, if Ms Pillay can't 15 give it to us now, after the tea adjournment which we'll be 16 taking in a couple of minutes, she'll be able to give it to 17 us, I hope. 18 MR MPOFU: Thank you. 19 MR NGALWANA: You said you are aware of 20 this document, General? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 MR NGALWANA: What is the status of this 24 document? 25 MAJOR-GENERAL MPEMBE: It is a draft.</p>	<p style="text-align: right;">Page 11558</p> <p>1 members of the police service who was killed on the 13th of 2 August, is with us today. This is the first time, she's 3 been in and out of hospital, she has been suffering from 4 ill health. This is the first time that it's been possible 5 for her to attend the sitting of the Commission. We want 6 to welcome her here, to say that we're very pleased that 7 she's been able to come and we hope that she is able to get 8 some information about her late son which she did not 9 previously have. We want also to extend to her, we've 10 extended it previously, we've extended our sympathies and 11 condolences in the past to the relatives of other persons 12 who died during the period that we're concerned with but 13 she hasn't been here before and we want to extend to her 14 our sympathies and condolences at the loss of her son. 15 Thank you, Mr Interpreter. Major-General you're still 16 under oath. Mr Ngalwana, you are continuing with the 17 examination in chief. 18 MR NGALWANA: Thank you, Chairperson. 19 General on the 13th as you were escorting the strikers there 20 are certain areas to which you didn't want them to go and 21 certain areas to which you did want them to go. Can you 22 explain, briefly, what factors you took into account in 23 determining which areas you do not want them to go? 24 MAJOR-GENERAL MPEMBE: Chairperson, based 25 on the briefing that I received of what was happening with</p>
<p style="text-align: right;">Page 11557</p> <p>1 MR NGALWANA: Does it have binding force 2 on the police? Is it binding on the police, General? Does 3 it apply, do the police use it? 4 MAJOR-GENERAL MPEMBE: No, Chairperson. 5 The one that I still know that is binding is the standing 6 order 262. 7 CHAIRPERSON: Ms Pillay, can you tell us 8 whether this draft document has been put in as an exhibit? 9 MS PILLAY: GGG – 10 CHAIRPERSON: GGG? 11 MS PILLAY: 22. 12 CHAIRPERSON: 22, thank you. 13 MR NGALWANA: General – 14 CHAIRPERSON: Mr Ngalwana, when you reach 15 a suitable stage for us to take the adjournment, please let 16 me know but it's for you to say, I don't want to interrupt 17 you if you're in the middle of a point. 18 MR NGALWANA: We can take it now, Chair, 19 if you please. 20 CHAIRPERSON: We'll take the tea 21 adjournment now. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [11:42] CHAIRPERSON: The Commission resumes. 24 I've been informed, we've been informed that Mrs Monene who 25 is the mother of Warrant Officer Monene, who was one of the</p>	<p style="text-align: right;">Page 11559</p> <p>1 regard to the people that were reporting on duty of the 2 protestors that were injured and also the mine managers or 3 the employees that I did not know where they stay. I did 4 not want that the protestors they should go through the 5 informal settlement or any other place knowing that we 6 don't that those who might be injured where they're 7 staying. Chairperson, because of the public road, the 8 railway and also the business place that was there I had 9 the belief that we could not disperse them at that place. 10 CHAIRPERSON: - last week. 11 MAJOR-GENERAL MPEMBE: Chairperson, 12 through the communication that I had with them I could hear 13 that they are willing to go to the koppie and hence I 14 wanted them - I decided to escort them to go to the koppie. 15 MR NGALWANA: After the event of the 16th 16 where at least two policemen were killed and one injured 17 and - on the 13th - 18 CHAIRPERSON: 16th, you meant the 13th I 19 think. 20 MR NGALWANA: I'm running ahead of 21 myself, thank you. After the event of the 13th, General, 22 was there any debriefing done? 23 CHAIRPERSON: I think you should use - 24 you should explain what you mean by debriefing. Remember 25 the evidence so far has been to the effect that debriefing</p>

<p style="text-align: right;">Page 11560</p> <p>1 can either mean as it were psychological debriefing 2 designed to deal with trauma, of a psychological nature and 3 debriefing can also have the wider meaning of just 4 obtaining information from those involved as to what 5 happened. I think you mean the former but perhaps you 6 should make it clear in the way you phrase the question. 7 MR NGALWANA: Well I move from the 8 premise that the General knows precisely what I'm talking 9 about, Chairperson, but - 10 CHAIRPERSON: Those who read the record 11 and hear the evidence don't necessarily share that 12 knowledge. 13 MR NGALWANA: Now Standing Order 262, 14 General, and I'll explain this in a moment requires that 15 there be a video recording of what is termed in Standing 16 Order 262 a debriefing, what I'm asking is after the event 17 of the 13th did you do anything of the sort that is 18 envisaged in Standing Order 262? In other words was there 19 an instance where the members reported to their commanders 20 about what their individual actions were during the day? 21 Sorry I said during the day, I meant during that event. 22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson. There was a debriefing between the members 24 and the commanders and the commanders with the Operational 25 Commander.</p>	<p style="text-align: right;">Page 11562</p> <p>1 CHAIRPERSON: Mr Ngalwana, hasn't this 2 point been covered already last week? What's the point of 3 leading the evidence again, does it gain extra cogency by 4 being repeated? 5 MR NGALWANA: I thought that evidence was 6 covered in relation to the 13th, Chairperson, but I'm happy 7 to move on. 8 CHAIRPERSON: I thought he spoke about 9 the 16th as well if - a number of people here are nodding 10 their heads. Not today of course, but we did have evidence 11 last week you will remember. I know it was another week 12 but that's no reason why it should be repeated today. 13 MR NGALWANA: General, in your statement 14 and in your evidence thus far you haven't given any 15 detailed account of the shooting on the 16th of August 2012. 16 Are you able to explain why not? 17 MAJOR-GENERAL MPEMBE: No, Chairperson, 18 because I was not on those scenes. 19 CHAIRPERSON: I understand your evidence 20 to be that firstly you were in the JOC and because you 21 couldn't ascertain from the JOC what exactly was happening 22 you decided to get into the helicopter and the helicopter 23 you were in was the Coin helicopter which was regarded - 24 which was described incorrectly as a Lonmin helicopter but 25 that had a height restriction. It couldn't fly below a</p>
<p style="text-align: right;">Page 11561</p> <p>1 MR NGALWANA: Do you know if there was 2 any psychological assessment of the members who were 3 involved in the event of the 13th of August 2012? 4 MAJOR-GENERAL MPEMBE: A psychological 5 debriefing was done. 6 MR NGALWANA: Say that again for the 7 benefit of the interpreter. 8 MAJOR-GENERAL MPEMBE: A psychological 9 debriefing it was done. 10 MR NGALWANA: Do you know if there was 11 any video recordal of what you call the debriefing by the 12 members to their commanders? 13 MAJOR-GENERAL MPEMBE: I don't know, 14 Chairperson. 15 MR NGALWANA: Were video operators 16 present after the event during the day? 17 MAJOR-GENERAL MPEMBE: The video 18 operators were always there. 19 MR NGALWANA: I suppose it's for them to 20 explain if they did and what they did and if not why they 21 didn't do it. Not for you, General. In the preparation of 22 the report, in relation now to the 16th of August 2012, the 23 answer may or may not be the same, I don't know, General. 24 When you decided that you do not want the protestors to go 25 to Nkaneng what factors did you take into account?</p>	<p style="text-align: right;">Page 11563</p> <p>1 certain altitude. Is that right? So therefore you could 2 only - what you saw was what all that you could see from 3 quite a high altitude, is that correct? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 CHAIRPERSON: Mr Ngalwana, my colleague, 7 Commissioner Hemraj says that although he gave evidence 8 about the factors he took into account when he gave advice 9 that he claims that he gave to the Provincial Commissioner 10 on the Thursday the 16th, it may be that you wish to lead 11 slightly fuller evidence than that in regard to the factors 12 taken into account and so forth. So I shouldn't have 13 stopped you unless you feel that that point was adequately 14 covered because if it wasn't adequately covered then it 15 would be wrong for me to stop you. 16 MR NGALWANA: Let me just understand, 17 Chair, is the issue about the briefing of the Major-General 18 to the PC about moving onto stage 3. 19 CHAIRPERSON: No, sorry, no you asked him 20 a question as to his reasons for wanting to stop the people 21 from going to Nkaneng and I said that I thought that had 22 been covered. What I had in mind was the reasons that he 23 claims to have given to the Provincial Commissioner around 24 about 12 o'clock in support of what he says was his 25 decision that stage 3 should be implemented. And I thought</p>

<p style="text-align: right;">Page 11564</p> <p>1 that covered the point but if I'm wrong and you wanted to</p> <p>2 lead some other evidence or perhaps wider evidence on the</p> <p>3 point from him then it's wrong for me to stop you and I'm</p> <p>4 giving you permission to do that if you wish.</p> <p>5 MR NGALWANA: Thank you, Chair and</p> <p>6 Commissioners. General when preparing and debating</p> <p>7 Operation Platinum which we now understand was prepared</p> <p>8 from the 14th, the evening of the 14th going forward, there</p> <p>9 was a decision and I'm not going to use the technical terms</p> <p>10 that the experts use or negative and positive attractions,</p> <p>11 there was a decision that the protestors should not be</p> <p>12 allowed or in other words should not be dispersed towards</p> <p>13 the Nkaneng side but rather to be disturbed onto the open</p> <p>14 ground towards the west. Do you recall that?</p> <p>15 MR MADLANGA SC: Mr Chairman, Mr</p> <p>16 Chairman, may I ask that the witness not be led on this</p> <p>17 because I am actually going to be cross-examining him</p> <p>18 around the directions that the protestors were intended to</p> <p>19 disperse towards.</p> <p>20 CHAIRPERSON: I think Mr Ngalwana will be</p> <p>21 able to ask the question in a non-leading way to elicit the</p> <p>22 information that he wants. If it is leading then obviously</p> <p>23 we will stop him but he can ask the question in a non-</p> <p>24 leading fashion to elicit this information if he considers</p> <p>25 it important.</p>	<p style="text-align: right;">Page 11566</p> <p>1 MR NGALWANA: Chairperson, are you happy</p> <p>2 I proceed with this slide or do you want me to go to slide</p> <p>3 150 of exhibit L?</p> <p>4 CHAIRPERSON: Lead the evidence the way</p> <p>5 you wish. All I'm saying to you is that you will bear in</p> <p>6 mind that the whole of Nkaneng is not visible on this</p> <p>7 particular slide but if you bear that in mind then you can</p> <p>8 carry on.</p> <p>9 MR NGALWANA: The point that's sought to</p> <p>10 be made, it really doesn't make any difference whether the</p> <p>11 whole of Nkaneng is shown but could you, could the</p> <p>12 technician show slide 150 please? I know it's short</p> <p>13 notice. General, do you see slide 150 on the monitor? The</p> <p>14 vehicles depicted in red and blue, what does that</p> <p>15 represent?</p> <p>16 MAJOR-GENERAL MPEMBE: It represents the</p> <p>17 Nyalas that they had trailers of the barbed wire.</p> <p>18 MR NGALWANA: Now behind that line, in</p> <p>19 other words to the right of the red and blue lines, that's</p> <p>20 east, to the left of it is west. Naturally to the north of</p> <p>21 it is north and to the bottom is south. Which direction</p> <p>22 did the police intend to disperse the protesters to?</p> <p>23 MAJOR-GENERAL MPEMBE: To the westerly</p> <p>24 direction.</p> <p>25 MR NGALWANA: Why would, why did the</p>
<p style="text-align: right;">Page 11565</p> <p>1 MR NGALWANA: General, I don't want us to</p> <p>2 put up slides again. Everyone remembers the exhibit L181.</p> <p>3 Which direction did the police intend to disperse the</p> <p>4 people on the 16th of August according to the plan? To make</p> <p>5 it easier the police were facing westwards and Nkaneng was</p> <p>6 behind them which is east.</p> <p>7 MR MADLANGA SC: Mr Chairman, the</p> <p>8 question is inaccurate. Sitting here, I'm in a position to</p> <p>9 say that I do not agree that the whole of Nkaneng was</p> <p>10 behind the police line. There is that part of Nkaneng</p> <p>11 which is to the far north-east and that was by no means</p> <p>12 behind the police. And should I refer to, I think it's</p> <p>13 exhibit EEE14.1? And I think that makes the point quite</p> <p>14 clearly.</p> <p>15 [12:02] CHAIRPERSON: If one looks at slide 150</p> <p>16 of exhibit L, I take it that what is described as the</p> <p>17 "Greater squatter camp" is Nkaneng. One can see there</p> <p>18 where the police lines were. One can also see where north</p> <p>19 is, so the question I think may have to be reframed to</p> <p>20 bring it in line with the correct points of the compass.</p> <p>21 MR NGALWANA: May I ask the technicians</p> <p>22 to put slide HHH11 on the –</p> <p>23 CHAIRPERSON: The point about HHH11 is it</p> <p>24 doesn't show the whole of Nkaneng you see, that's the point</p> <p>25 that's been raised by Mr Madlanga.</p>	<p style="text-align: right;">Page 11567</p> <p>1 police, or put it this way, did the police not want the –</p> <p>2 why did the police not want the protesters to go to the</p> <p>3 east, in other words behind the police line as depicted on</p> <p>4 that slide?</p> <p>5 MR MPOFU: Chairperson, I'm sorry. I</p> <p>6 don't think, the issue about leading the witness on this</p> <p>7 point has obviously not been heeded in respect of this</p> <p>8 question, this very last question.</p> <p>9 CHAIRPERSON: Well, let's see what Mr</p> <p>10 Ngalwana says about that. What do you say about that, Mr</p> <p>11 Ngalwana?</p> <p>12 MR NGALWANA: I'll rephrase the question,</p> <p>13 Chair. What factors, General, did you take into account in</p> <p>14 deciding that the protesters should be dispersed towards</p> <p>15 the east and not towards the west? I'm sorry, towards the</p> <p>16 west and not towards the east.</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, the</p> <p>18 Wonderkop hostel here, we didn't want to come, they should</p> <p>19 come there because of what has happened on the report which</p> <p>20 I spoke that happened on Saturday. Just also not very far</p> <p>21 from Wonderkop hostel there is also a satellite police</p> <p>22 station. On this side here, the one that is a little bit</p> <p>23 greyish, that is a power station which we do not want they</p> <p>24 should come here, avoiding the stampede. When we dispersed</p> <p>25 them on the westerly direction, they could go also to the</p>

<p style="text-align: right;">Page 11568</p> <p>1 Karee hostel.</p> <p>2 MR NGALWANA: Why would you want them to</p> <p>3 go to the Karee hostel, General?</p> <p>4 MAJOR-GENERAL MPEMBE: There was also a</p> <p>5 report that the majority of them were also coming from the</p> <p>6 Karee hostel. And then on this, this was a forward holding</p> <p>7 area, forward holding area 2. We also said that some of</p> <p>8 the members should just be here for in case when they move</p> <p>9 to Karee they should also not come here.</p> <p>10 MR NGALWANA: General, where was the NUM</p> <p>11 office situated on that slide?</p> <p>12 MAJOR-GENERAL MPEMBE: It is somewhere at</p> <p>13 this direction which I also indicated with Wonderkop</p> <p>14 hostel. It was also not very far from that satellite</p> <p>15 police station. We did also consider that if some of the</p> <p>16 members should come to Nkaneng, just 50 metres there, they</p> <p>17 could come there but not in a group of 10 or 20.</p> <p>18 Individually they could move to Nkaneng.</p> <p>19 COMMISSIONER HEMRAJ: Sorry General, I</p> <p>20 don't understand that. What do you mean that they could</p> <p>21 come there individually and not in groups of 10?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>23 testify that if they move in the group of 10, we could</p> <p>24 still have approached them to disperse to, as a smaller</p> <p>25 group because normally when they enter in that group we</p>	<p style="text-align: right;">Page 11570</p> <p>1 should have sought the opinion of IPID whether or not it</p> <p>2 was appropriate to hold those meetings. Do the police</p> <p>3 usually seek the advice of IPID about how they should</p> <p>4 conduct their business as the police?</p> <p>5 CHAIRPERSON: Mr Ngalwana, who said that?</p> <p>6 I can't remember – I'm not saying you're incorrectly</p> <p>7 putting it but I just can't remember who suggested that.</p> <p>8 MR NGALWANA: It's Mr White, Chair –</p> <p>9 CHAIRPERSON: Okay, I'll find the</p> <p>10 reference. If that's what Mr White said you can carry on.</p> <p>11 MR NGALWANA: 427, Chair. The answer,</p> <p>12 paragraph 4.2.7 of White's statement, Chair. General, is</p> <p>13 the police in the habit of seeking the advice of IPID about</p> <p>14 how the police should do their work?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, no.</p> <p>16 CHAIRPERSON: Mr Ngalwana, I'm not sure</p> <p>17 that you're summarising Mr White's point accurately. What</p> <p>18 Mr White says, it's page 74 of your bundle and page 20 of</p> <p>19 the statement, the statement being exhibit WW2 – what he</p> <p>20 says is, "In addition," this is in addition to the point he</p> <p>21 made in 4.2.6 which is also critical about what the, the</p> <p>22 Potchefstroom process but in another respect – he says, "In</p> <p>23 addition, given that there was an IPID investigation into</p> <p>24 the incidents, I would have expected that the SAPS notified</p> <p>25 the senior investigating officer at IPID of their intention</p>
<p style="text-align: right;">Page 11569</p> <p>1 also thought that they might also take their frustrations</p> <p>2 to whatever businesses are there. Or psychologically</p> <p>3 speaking, while they are still in groups they normally</p> <p>4 also, they can continue with other violent actions but when</p> <p>5 they are acting individually they will also take individual</p> <p>6 decisions and they will disperse and go home.</p> <p>7 MR NGALWANA: General, did the police at</p> <p>8 any stage before the deployment of barbed wire allow people</p> <p>9 in individual, as individuals to go towards the Nkaneng</p> <p>10 side? Sorry, let me rephrase that question because – was</p> <p>11 it contemplated in the plan that people as individuals</p> <p>12 would be allowed to go towards Nkaneng?</p> <p>13 CHAIRPERSON: That sounds a bit like a</p> <p>14 leading question, Mr Ngalwana. Where is this plan that</p> <p>15 you're referring to? What is the exhibit? Where do those</p> <p>16 words appear?</p> <p>17 MR NGALWANA: I'll move on, Chair.</p> <p>18 CHAIRPERSON: Thank you.</p> <p>19 MR NGALWANA: General, it's been</p> <p>20 suggested that holding a 9-day meeting in Potchefstroom was</p> <p>21 intended as collusion, in other words to collude as the</p> <p>22 police. What's your response to that?</p> <p>23 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>24 MR NGALWANA: It's been suggested that</p> <p>25 inasmuch as there was an investigation by IPID, the police</p>	<p style="text-align: right;">Page 11571</p> <p>1 to hold the meeting at Potchefstroom and to have set out to</p> <p>2 that officer the scope and purpose of the meeting in order</p> <p>3 to seek their opinion on whether it was appropriate." In</p> <p>4 other words, they're not asking permission, they're simply</p> <p>5 seeking the – rather what Mr White suggests should be done</p> <p>6 is that the opinion of IPID could be obtained as to whether</p> <p>7 what was envisaged was appropriate. He goes on to say,</p> <p>8 "I've not seen any indication that such notification was</p> <p>9 given." So I think you've summarised it incorrectly, if I</p> <p>10 may say so, but summarise it correctly – or you don't have</p> <p>11 to now I've read it. Perhaps you can just, we can just get</p> <p>12 the witness's response to the opinion expressed by Mr White</p> <p>13 in that paragraph.</p> <p>14 MR NGALWANA: With your leave, Chair, I</p> <p>15 shall do that. That's precisely what I was trying to</p> <p>16 avoid. I didn't want to put an expert's opinion to the it</p> <p>17 to give his opinion on what the expert says but let's make</p> <p>18 an exception in this regard. General, the opinion of Mr</p> <p>19 White is that the police should have sought the advice of</p> <p>20 IPID as regards whether or not it was appropriate to hold</p> <p>21 the Potchefstroom meeting. Here's the question I want to</p> <p>22 ask you and I don't want to deal with White's opinions.</p> <p>23 The question is this, is the police in the habit of seeking</p> <p>24 the opinion of IPID in relation to the appropriateness or</p> <p>25 otherwise of the police action?</p>

<p style="text-align: right;">Page 11572</p> <p>1 MR MPOFU: Chair –</p> <p>2 CHAIRPERSON: Let's get his answer first.</p> <p>3 I think I know where you're coming from. I want to raise a</p> <p>4 point as well but if I may be permitted on this occasion to</p> <p>5 put my point before you but let's get his answer first.</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson no, I</p> <p>7 do not know of any policy that might, that I should or I</p> <p>8 may ask an opinion from the IPID.</p> <p>9 CHAIRPERSON: The events at Marikana were</p> <p>10 the subject of investigations being conducted by IPID. The</p> <p>11 normal practice under the standing orders is, instances of</p> <p>12 that kind are followed by a review and a briefing as set</p> <p>13 out in the standing order. Is it usual practice by the</p> <p>14 police to depart from what is said in the standing order</p> <p>15 and even though IPID are investigating the matter, to have</p> <p>16 a conference of the kind that was held at Potchefstroom?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson –</p> <p>18 MR NGALWANA: Chair, I'm sorry, I'm not</p> <p>19 aware of this usual practice in 262 that says IPID should</p> <p>20 be involved –</p> <p>21 CHAIRPERSON: No – no, I didn't say IPID</p> <p>22 must be involved. I said is it the usual practice, if it</p> <p>23 was a case where IPID were investigating a whole series of</p> <p>24 dockets, charges that were being investigated, it's not the</p> <p>25 usual practice to depart from the standing order and not</p>	<p style="text-align: right;">Page 11574</p> <p>1 Potchefstroom process?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, as I</p> <p>3 explained earlier on, the Potchefstroom was to collate the</p> <p>4 information for the Commission.</p> <p>5 MR NGALWANA: General, was the person who</p> <p>6 was appointed as the operational commander for Operation</p> <p>7 Platinum a person who was trained or not trained in crowd</p> <p>8 management?</p> <p>9 MAJOR-GENERAL MPEMBE: Correct,</p> <p>10 Chairperson. Brigadier Calitz, the provincial head,</p> <p>11 operational responses.</p> <p>12 MR NGALWANA: Is he trained in crowd</p> <p>13 management?</p> <p>14 MAJOR-GENERAL MPEMBE: Correct,</p> <p>15 Chairperson. He has got extensive experience in crowd</p> <p>16 management.</p> <p>17 MR NGALWANA: On the 16th – well, in</p> <p>18 relation to the 16th of August, the preparation of the plan,</p> <p>19 did the police anticipate that the crowd or the protesters</p> <p>20 or the strikers would attack the police upon placing of</p> <p>21 barbed wire?</p> <p>22 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>23 MR NGALWANA: In your experience have you</p> <p>24 used barbed wire before and just explain to the</p> <p>25 Chairperson, I mean to the Commission what the result of</p>
<p style="text-align: right;">Page 11573</p> <p>1 have a debriefing in the full sense and a review. It's</p> <p>2 conceded that the Potchefstroom process was different.</p> <p>3 Whether it's appropriate or inappropriate is a matter that</p> <p>4 we're not busy with at the moment. It was different from</p> <p>5 what's envisaged in the standing order and there were</p> <p>6 reasons given as to why there was a departure. We're not</p> <p>7 busy with that either. The only point is, you talk about</p> <p>8 the practice of the police in situations of this kind and</p> <p>9 I'm asking him whether a situation of this kind had ever</p> <p>10 arisen before. Has there ever been a process such as the</p> <p>11 Potchefstroom process which differed from the process set</p> <p>12 out in the standing order? That's the question. If there</p> <p>13 hadn't been, then it's not possible to say what the</p> <p>14 police's practice is normally in a situation like that if</p> <p>15 there never had been a situation like that before. Anyway,</p> <p>16 that's the question, what's the answer?</p> <p>17 [12:22] MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>18 because this was the first one.</p> <p>19 CHAIRPERSON: It's a subject, it could</p> <p>20 well be a subject for debate whether it was appropriate but</p> <p>21 that's not what we're busy with at the moment. The fact</p> <p>22 is, it was a unique process and the police would say as a</p> <p>23 result of the fact that this was a unique occurrence but we</p> <p>24 don't have to debate that at the moment. It was a unique</p> <p>25 occurrence, wasn't it, having a process like the</p>	<p style="text-align: right;">Page 11575</p> <p>1 the use of barbed wire was?</p> <p>2 MAJOR-GENERAL MPEMBE: Correct,</p> <p>3 Chairperson.</p> <p>4 MR NGALWANA: Can you give an example of</p> <p>5 an incident where you used barbed wire and explain what the</p> <p>6 result was in that instance?</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, in</p> <p>8 2010 I had a very unusual, a very crowd management</p> <p>9 situation in Ventersdorp where Mr Eugene Terreblanche was</p> <p>10 killed. When the court, when different members of the</p> <p>11 community attended the court proceedings I had, on the</p> <p>12 other hand the AWB members and on the other hand I had also</p> <p>13 the ANC Youth League and the community. Chairperson, I did</p> <p>14 use the barbed wire to separate the police, the different</p> <p>15 groups that I've mentioned with the barbed wire and there</p> <p>16 was no attack.</p> <p>17 MR NGALWANA: General, having apprised of</p> <p>18 all the evidence that's been given thus far, having seen</p> <p>19 the exhibits and the various statements, having reflected,</p> <p>20 what would you say explains – if one can use that term</p> <p>21 advisedly – the tragedy of the 16th and the 13th of August</p> <p>22 2012?</p> <p>23 CHAIRPERSON: The question relates to</p> <p>24 both the 13th and the 16th, perhaps it might be sensible to</p> <p>25 break it up into two because there may be a different</p>

<p style="text-align: right;">Page 11576</p> <p>1 explanation for the 13th as opposed to the 16th. Are you 2 able to proffer an explanation for the tragedy of the 13th, 3 if one can so describe – I take it one can so describe the 4 events of the 13th as a tragedy, it certainly resulted in 5 the tragic deaths of a number of people. Are you able to 6 give us an explanation based on your understanding of what 7 happened?</p> <p>8 MAJOR-GENERAL MPEMBE: On the 13th the 9 tragedy, if I have to put it in my own words because I was 10 there, it is when the police were charged at and they 11 defended themselves or defended their colleagues. 12 Chairperson, on the 16th I was not on the scene but the 13 first scene – because the second scene I might not be in a 14 position to say on – the first scene, when I looked at the 15 video I saw that there was a group charging at the police. 16 Chairperson, that also I could attribute it to private or 17 self-defence but what happened, what is now known as scene 18 2, I am not in a position to comment.</p> <p>19 MR NGALWANA: Thank you, Chairperson, 20 those are the questions for the witness.</p> <p>21 CHAIRPERSON: Thank you, Mr Ngalwana. Mr 22 Madlanga</p> <p>23 CROSS-EXAMINATION BY MR MADLANGA SC: 24 General, let me start first by suggesting a theory to you 25 and that theory is that of all the SAPS members, you were</p>	<p style="text-align: right;">Page 11578</p> <p>1 would obviously be circumstantial and not direct evidence, 2 there is nothing wrong with it.</p> <p>3 MR NGALWANA: Sorry Chair, sorry to 4 interrupt. I don't want to be dilatory but I just wanted 5 some certainty so that I know going forward what the 6 position is. My understanding, and the Chairperson will 7 correct me if I'm wrong, was that if the Commission is in 8 as good a position as counsel to make an assessment, then 9 counsel shouldn't do that. I need to know what the 10 parameters are –</p> <p>11 CHAIRPERSON: Relating to witnesses, the 12 witness – rulings were given on the basis you can't ask a 13 witness for his or her opinion on a matter which the 14 Commission is well able to form an opinion on. It doesn't 15 prevent counsel from arguing what the opinion is to which 16 the Commission should come. It doesn't prevent counsel, if 17 some kind of value judgment is required, in asserting the 18 reasons upon which the suggested value judgment is based. 19 That I think is in accordance with the rulings I've given 20 from time to time and that's the correct approach. You 21 will also of course be able when, I understand, when you 22 cross-examine witnesses, you and your people from your 23 side, to do the same. So I think the questioning is in 24 order.</p> <p>25 MR MADLANGA SC: But the testimony that</p>
<p style="text-align: right;">Page 11577</p> <p>1 one that actually foresaw loss of life and that foresight 2 manifested itself both on 13 and 15 August 2012, 13th of 3 August and 5.</p> <p>4 CHAIRPERSON: The question is, the 13th 5 the Monday and the 15th, the Wednesday?</p> <p>6 MR MADLANGA SC: Yes. I want you to 7 comment right at the end because from the testimony that 8 you've given I would imagine that you will not agree with 9 me with regard to the 15th. And had your story, your 10 testimony been along those lines, you would have come out 11 as one of the SAPS members who conducted themselves 12 relatively well with regard to the Marikana events.</p> <p>13 MR NGALWANA: Chair, isn't that an 14 assessment that the Commission can make, not for counsel?</p> <p>15 CHAIRPERSON: No, counsel – no, no, Mr 16 Ngalwana, counsel presumably will give the reasons. He 17 said he's going to give a number of factors first before 18 the witness answers. Counsel is entitled to put the 19 assessment which he will argue at the end of the evidence 20 and we will of course then be invited to decide whether 21 that assessment is correct or incorrect and your side may 22 well argue that that assessment is an incorrect one and 23 give your reasons, but I think if this is what counsel is 24 going to argue, provided he doesn't just put the bare 25 assessment but puts the facts on which it is based, which</p>	<p style="text-align: right;">Page 11579</p> <p>1 you have given in the end, and this we will argue and I 2 trust or at least hope that the basis for the argument will 3 come out of the cross-examination that will follow, the 4 testimony that you have given in the end paints you in a 5 rather bad light as opposed to the initial impressions that 6 one had and we will suggest that the reason for you giving 7 the evidence that you have given is not wanting to break 8 rank with the stance that SAPS has taken in presenting its 9 case before this Commission. Do you agree with what I've 10 just suggested to you?</p> <p>11 MR NGALWANA: Chair, I'm not sure which 12 proposition the witness is asked to agree with. There've 13 been a number of propositions that have been put. I've 14 recorded at least three, there may be more. The one is, he 15 foresaw loss of life –</p> <p>16 CHAIRPERSON: I think you're correct, I 17 think you're correct. Mr Madlanga, the objection raised is 18 you've put a number of propositions and you're now asking 19 him to comment. It's not clear which of the propositions 20 you're asking him to agree with. Perhaps you could attend 21 to that defect in the questioning and then we can proceed.</p> <p>22 MR MADLANGA SC: Do you agree that you 23 foresaw loss of life both on the 13th and 15th of August?</p> <p>24 MAJOR-GENERAL MPEMBE: Chairperson, the 25 loss of life that I was talking about is also very clear on</p>

<p style="text-align: right;">Page 11580</p> <p>1 the OO4. It was what has happened since the 11th and then 2 currently and what might also happen in the future but not 3 necessarily what could have happened on the 16th. 4 CHAIRPERSON: Let's take it step by step. 5 As far as the 13th was concerned, you did not accept the 6 advice of the senior officers who were with you because you 7 took the view that if that advice that they were giving you 8 were implemented, you would have another Tatane kind of 9 incident, is that correct? 10 MAJOR-GENERAL MPEMBE: Correct, 11 Chairperson. 12 CHAIRPERSON: You were referring to the 13 incident at Ficksburg where there was loss of life when, in 14 the course of police action, is that right? 15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson. 17 CHAIRPERSON: On the 15th you said in I 18 think it's OO4, that if you were to implement the advice 19 given or accede to the request made to you by Mr Zokwana, 20 the president of NUM, to disarm the strikers, that there 21 would be bloodshed. Now that I think is the basis of the 22 question, am I correct, Mr Madlanga? 23 MR MADLANGA SC: Yes it is, Chair. 24 CHAIRPERSON: Perhaps you could take it 25 further from there.</p>	<p style="text-align: right;">Page 11582</p> <p>1 run counter the very thesis that I am advancing which will 2 lead to my last proposition to him, which is that he's now 3 changing in order to make his story to be in line with the 4 case that SAPS is putting forth before this Commission. So 5 that is why, in the proposition – so if he wants to put 6 that context, he should do that himself, Mr Chairman. 7 CHAIRPERSON: You say it should be done 8 in re-examination. Major-General, I take it when Mr 9 Madlanga questions you about what you said on the evening 10 of Wednesday the 15th, you're aware of the context in which 11 you spoke. 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson. 14 MR MADLANGA SC: Just to be clear on that 15 last answer, General, are you saying that – of course 16 during the evening of the 16th you probably, 15th rather, 17 you probably would not have been aware that the events of 18 the 16th would take place but what I want to establish from 19 you is whether you are suggesting that, whatever the date 20 of a dispersal or a stage 3, if it were ever to take place, 21 are you suggesting that you never foresaw that it might 22 lead to loss of life? 23 MAJOR-GENERAL MPEMBE: Chairperson, I 24 just want the question to be repeated in terms of is it now 25 in line with what I said to Mr Zokwana or is it another</p>
<p style="text-align: right;">Page 11581</p> <p>1 MR MADLANGA SC: Yes it is, Mr Chairman. 2 MR NGALWANA: Chair, perhaps my learned 3 friend can put it into context because the witness did 4 explain what he meant by "there will be bloodshed" – 5 CHAIRPERSON: No, no, I think you're 6 correct. Mr Ngalwana says that you should put that into 7 context in the light of the evidence that the witness has 8 given us where he claims that he was lying when he said 9 that. I think that's the context Mr Ngalwana is referring 10 to, am I right? 11 MR NGALWANA: No Chair, he didn't say he 12 was lying. He gave a context - 13 CHAIRPERSON: He said he was lying when 14 he said that to Zokwana, that was his evidence – 15 MR NGALWANA: No, no, I don't want to 16 testify from the bar but he talked about a strategic – 17 CHAIRPERSON: Yes, no, no – 18 MR NGALWANA: He never said he was lying. 19 CHAIRPERSON: I know the explanation he 20 gave, I'm just putting it in simple language but, Mr 21 Ngalwana, perhaps you could put the context – sorry Mr 22 Madlanga, perhaps you could put the context so that Mr 23 Ngalwana will be satisfied. 24 [12:41] MR MADLANGA SC: Mr Chairman, 25 Commissioners, I would rather not because then that would</p>	<p style="text-align: right;">Page 11583</p> <p>1 proposition? 2 MR MADLANGA SC: I am asking you about 3 the implementation of a dispersal process. Are you saying 4 that when you applied your mind to that happening, that is 5 a dispersal or the implementation of stage 3, you never 6 foresaw that it might lead to loss of life? Is that the 7 last answer we should take from you? 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR MADLANGA SC: Now lastly, on my 10 theory, do you agree – because I've been asked to deal with 11 these one by one – do you disagree that you have in fact 12 changed your story from one that actually had foresight of 13 loss of life starting as far back as the 13th of August, 14 you have changed your story so as not to break rank with 15 the story that SAPS is now putting forth before this 16 Commission? 17 MR NGALWANA: Chair, perhaps our learned 18 friend could direct us to the evidence of the police person 19 who testified to what my learned friend is putting to the 20 witness and saying the witness is changing that story. I'm 21 not aware of any such evidence. 22 CHAIRPERSON: Mr Madlanga, what Mr 23 Ngalwana is asking you to do is to explain to the witness, 24 just in case he doesn't understand, what the story is that 25 you say he's now changing. And he also wants to know what</p>

<p style="text-align: right;">Page 11584</p> <p>1 is the story that SAPS is putting forward, I think those 2 are his – 3 MR NGALWANA: To rephrase it, Chair – 4 CHAIRPERSON: Am I not understanding your 5 point correctly? Forgive me. 6 MR NGALWANA: Thank you, Chair. Firstly, 7 what is the story with which the General is or from which 8 the General is departing and secondly, who in the police 9 gave such a story in evidence under oath? 10 MR MADLANGA SC: May I ask to deal with 11 the last part? It doesn't have to have been a case put 12 forth under oath. I've just said the case put forth before 13 this Commission, that may be by way of opening addresses 14 and slides and so on and so on, so it doesn't necessarily 15 have to be a story given to or put forth before – 16 CHAIRPERSON: It just refers to evidence 17 that has been given previous – up to now. 18 MR MADLANGA SC: Yes, yes. 19 CHAIRPERSON: Effectively your point 20 relates, as I understand you, to the entire SAPS 21 presentation. 22 MR MADLANGA SC: Yes, yes, Mr Chairman. 23 CHAIRPERSON: Okay, which I take it the 24 witness is aware of. 25 MR MADLANGA SC: Yes, Chair.</p>	<p style="text-align: right;">Page 11586</p> <p>1 police attempted to disarm those armed, those heavily armed 2 people. That, I suggest to you, is the view that you held 3 throughout consistently and I now suggest to you and I say 4 indicate if you disagree with me, I suggest to you that you 5 are changing from that because you do not want to break 6 rank with the case that SAPS is advancing, which case is 7 not suggesting that they foresaw loss of life in 8 implementing stage 3 on the 16th. Do you agree with me or 9 don't you? 10 CHAIRPERSON: Mr Madlanga, perhaps it 11 would be better if you actually put the passages that you 12 have in mind. I suspect, you may have other passages in 13 mind but I suspect you're referring to exhibit – I think 14 it's GGG4 which is in the bundle, volume A that's been put 15 in as part of the witness's evidence against, it's under 16 tab 8 and it's – I think you're referring to, at least you 17 may be referring to other passages too, to 229 and 230, 229 18 being lines, well, it's 7 down to 12 and then on the 19 following page at the foot of 230, line 28 to the top of 20 page 231 line 2. Those are two passages that I think are 21 covered by what you put but you may have other passages as 22 well, I don't know but in fairness to the witness I think 23 he's entitled to know – 24 MR MADLANGA SC: Yes. 25 CHAIRPERSON: - what precisely you're</p>
<p style="text-align: right;">Page 11585</p> <p>1 CHAIRPERSON: So he's not put at a 2 disadvantage in answering the question. He's not at a 3 disadvantage therefore in answering the question. 4 MR MADLANGA SC: He should not be, he 5 should not be. Thank you, Mr Chairman. 6 CHAIRPERSON: The part related to what 7 statement he made which you say he's now changed, I think 8 that point is well taken, you must put that to the witness. 9 MR MADLANGA SC: What I say he is 10 departing from is – or what I say you are departing from, 11 General, is on the 13th there is a group of 100 to 200, 12 according to your estimation, gathered next to a railway 13 line and you take the view that if the police attempt to 14 disarm and disperse them, there will be another Tatane and 15 you decide that that should not be done. And then in the 16 evening of the 15th of August - of course we know you deny 17 that but that is exactly why I say you are changing your 18 story – on the 15th of August in the evening you say to Mr 19 Zokwana, how do we disarm that large group of people, how 20 do you disarm somebody who has in their possession a panga 21 and you have a firearm and the person tells you I'm not 22 giving you this firearm, what happens? In essence, in 23 essence what you say is that somebody will die. That is 24 the story that I am suggesting to you, you are now 25 changing. You had foresight that people might die if the</p>	<p style="text-align: right;">Page 11587</p> <p>1 referring to. 2 MR MADLANGA SC: Yes, yes. Thank you, 3 thank you Mr Chairman. 4 CHAIRPERSON: You have passage in front 5 of you but those in the auditorium haven't, so perhaps I 6 can just read the two passages shortly to you before you 7 answer. Page 229 the first passage reads, "I need to go to 8 the house because that's the only way, beating this 9 elephant bit by bit because me going there to the mountain 10 disarming people, it's going to be bloodshed, it's going to 11 be bloodshed, that one I can assure you. Those blankets 12 they have and those things I saw being cut by police 13 officers in front of me, they did that." There are other 14 passages which I won't read to you but you say at the foot 15 of 230, "I am calling upon the leadership, this is the help 16 they need but me" – I think it's probably "give me." "I 17 cannot go to the mountain, it's not, it has never been 18 strategically in my training. I'm not taught because I 19 must disarm somebody. How do I de-arm somebody with an axe 20 and I have a firearm? It will never work. There's no 21 training in the whole world to be like that." I think 22 those were the two. 23 MR MADLANGA SC: Do you disagree with me, 24 General? 25 MAJOR-GENERAL MPEMBE: Yes, I still say I</p>

<p style="text-align: right;">Page 11588</p> <p>1 disagree but I also want to explain. In my evidence I did 2 indicate that I was making Mr Zokwana to understand the 3 seriousness of the matter of convincing the members to hand 4 firearms voluntarily – not firearms, sorry, weapons. I was 5 also saying to him I need information of those people that 6 we can say they are the convenors and those that he himself 7 informed me earlier on that they were taken by force to go 8 to the mountain, but earlier on I also said that the 9 context of the bloodshed it was today, tomorrow and – 10 because I was saying what was happening since the previous 11 time. I also said that I could not tell Mr Zokwana that 12 the police are still, are doing a plan or another plan 13 because the plan by that time it is, it was a confidential 14 matter.</p> <p>15 MR MADLANGA SC: General, I will deal 16 with these matters –</p> <p>17 MAJOR-GENERAL MPEMBE: I'm sorry, I'm 18 sorry, Chairperson, I still want just –</p> <p>19 CHAIRPERSON: If you've still got 20 something to say you must give him a chance to say it.</p> <p>21 MAJOR-GENERAL MPEMBE: I'm sorry, 22 Chairperson, I only explained on the 15th. Let me go back 23 to the 16th [inaudible] the 13th. Chairperson, when I speak 24 about the 13th at the intercession I was referring to both 25 participants and non-participants.</p>	<p style="text-align: right;">Page 11590</p> <p>1 while giving evidence, to receive support, now support 2 hasn't been defined, from his sons. I'm assured that these 3 are not the General's sons, they are in fact his 4 protestors, protectors.</p> <p>5 CHAIRPERSON: The only one here who has 6 protestors is Mr Mpofu. So these are his protectors. I 7 must say I didn't see any help being given to the witness. 8 I don't know whether Mr Madlanga can confirm that that is 9 so.</p> <p>10 MR MADLANGA SC: I did not notice any 11 assistance there, Mr Chairman.</p> <p>12 CHAIRPERSON: I take it it's now been 13 explained to the widows, they now understand the position. 14 The witness isn't allowed to receive any assistance of the 15 kind, or support, of the kind that was suggested and if it 16 were to happen I would immediately do something about it. 17 So they can rest assured that they don't have to fear 18 anything of that nature or anything untoward. Major- 19 General you're still under oath and you're still without 20 support. Mr Madlanga.</p> <p>21 MR MADLANGA SC: Thank you, Mr Chairman, 22 Commissioners. General, in your view is there or was there 23 consistency in the claim by the police -</p> <p>24 CHAIRPERSON: I'm sorry, Mr Madlanga, 25 before you move onto that point, there was an unfinished</p>
<p style="text-align: right;">Page 11589</p> <p>1 MR MADLANGA SC: Just for completeness, 2 the non-participants, who are you referring to?</p> <p>3 MAJOR-GENERAL MPEMBE: Chairperson, the 4 Commission will recall I spoke about the public road, I 5 spoke about the railway line and when we were looking at 6 the video, one of the videos, the train did pass in it. I 7 also spoke about there is a place just behind that where, 8 that those other non-participants that I talk, but also the 9 participants themselves.</p> <p>10 MR MADLANGA SC: General, at this stage I 11 do not propose dealing with the details of what you have 12 said in responding to my questions. I was just putting to 13 you a theory that I have. I will deal with those matters 14 in more detail later when I deal with the various subjects.</p> <p>15 CHAIRPERSON: Mr Madlanga, is this an 16 appropriate stage for us to take the lunch adjournment?</p> <p>17 MR MADLANGA SC: Yes, it is.</p> <p>18 CHAIRPERSON: We'll adjourn for lunch.</p> <p>19 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>20 [14:05] CHAIRPERSON: The Commission resumes. 21 Before I remind the Major-General he's still under oath, Mr 22 Ngalwana, I understand you wish to say something.</p> <p>23 MR NGALWANA: Yes thank you, Chair. 24 Chair, it's come to our attention that there is a complaint 25 by some of the widows that it is unfair for the General</p>	<p style="text-align: right;">Page 11591</p> <p>1 point from before lunch. The witness was talking about his 2 fear that there might be bloodshed on the 13th and he said 3 his fear was based on the position both of the non- 4 participants and he then explained who they were and also 5 the participants. And he didn't have an opportunity to 6 explain what that was, so I think before you move onto the 7 next point he is to be given a chance just to finish that 8 point.</p> <p>9 MR MADLANGA SC: Thank you, Mr Chairman.</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, with 11 participants I was referring to the protestors themselves 12 and I did also explain that if I really have that view and 13 belief I could also have briefed the police at 6 o'clock 14 and also at 13:30. I'm talking about the JOCOM.</p> <p>15 MR MADLANGA SC: Thank you, Mr Chairman. 16 I was asking, General, in your view is there or has there 17 been consistency in the claim by SAPS that they protected 18 or at least intended to protect informal settlements from 19 armed protestors?</p> <p>20 MAJOR-GENERAL MPEMBE: Chairperson, I 21 will answer the question. I just need to explain. I did 22 not say I protect the informal settlement inhabitants but 23 what I was saying is that the modus operandi is that when 24 the protestors were moving inside either the formal or 25 informal settlements or any other places we did not know</p>

<p style="text-align: right;">Page 11592</p> <p>1 where the people who were reporting on duty is staying. 2 And we did not know those that are working at Lonmin where 3 are they staying and in that view is it will be safe for us 4 to let them not move inside either of those settlements but 5 to move outside of them. But not necessarily the way and 6 then my answer it will be in the line in which I explained 7 now. 8 MR MADLANGA SC: You say you as an 9 individual did not intend to protect the informal 10 settlements. Was that your view as an individual or is 11 that a view that was shared by SAPS as an institution? 12 MAJOR-GENERAL MPEMBE: Chairperson, I 13 answer it in a way that as an overall commander I did 14 represent SAPS but if that is not my view - but I thought 15 that as an overall commander what I was thinking in terms 16 of what was happening as a result of the modus operandi, 17 that is a view of SAPS. 18 MR MADLANGA SC: But General, it is not 19 inconceivable that an overall commander may have a view 20 which may not be shared by the rest of SAPS as an 21 institution, do you accept that? 22 MAJOR-GENERAL MPEMBE: Chairperson, I 23 don't understand SAPS as an institution, maybe if that 24 could be explained to me or is it referring to those that 25 were reporting to me or as an institution? I just wondered</p>	<p style="text-align: right;">Page 11594</p> <p>1 Chairperson. Chairperson, SAPS did take into consideration 2 the informal settlement based on history and it also took 3 those decisions based on both - on negative attraction 4 points. In going through the informal settlement you could 5 have reached some of the negative points. 6 MR MADLANGA SC: Are you done, General? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR MADLANGA SC: My question before the 10 debate we've just heard now was or perhaps let me just make 11 sure that I still understand what your response was. Did 12 you say that what you were protecting was not the informal 13 settlements themselves, did you say so? 14 MAJOR-GENERAL MPEMBE: Chairperson, I did 15 say that informal settlement was taken into account. These 16 are the reasons that I've given. 17 MR MADLANGA SC: Were you protecting the 18 informal settlements, General? Or let me put it 19 differently, I'm sorry. Was the plan to protect informal 20 settlements? 21 MAJOR-GENERAL MPEMBE: Chairperson, I did 22 indicate that when the protestors they move in groups and 23 they enter the informal settlement, based on history, 24 normally there is a destruction of properties and where the 25 frustrations are being taken out. But when they enter</p>
<p style="text-align: right;">Page 11593</p> <p>1 if it can be clarified. 2 MR MADLANGA SC: Perhaps let me ask the 3 question differently, General. Was your view that what was 4 being protected were the people that you referred to and 5 not informal settlements? Was that view shared, to your 6 knowledge, by all the people that were involved at least in 7 the planning? 8 MAJOR-GENERAL MPEMBE: Chairperson, the 9 view of dispersal which I did also testify is that there 10 were some of the commanders, in particular to mention, 11 Lieutenant-Colonel Merafi that he put his view of we should 12 disperse at the intersection. But I don't know that in his 13 view was he also including the informal settlement. 14 MR MADLANGA SC: General, let me take you 15 out of the events of the 13th and try to steer you to 16 planning. I understand your evidence to be to the effect 17 that when planning SAPS took into account informal 18 settlements but you say what SAPS concern was, was more 19 people than informal settlements as such and you have 20 explained that. Am I correct in that view that is at the 21 level of planning, I'm not talking about the 13th, I'm not 22 talking about the 16th, you did not know beforehand that the 23 16th would happen when it did, at the level of planning. 24 Did SAPS - do you want to answer? 25 MAJOR-GENERAL MPEMBE: Correct,</p>	<p style="text-align: right;">Page 11595</p> <p>1 individually they normally think individually and they, 2 historically based, they disperse and based on those, yes 3 we also take into consideration the informal settlements. 4 MR MADLANGA SC: Now I'll go back to the 5 very first question I asked you this afternoon, after lunch 6 that is. And that question was in your view, General, is 7 there or was there consistency in the claim by SAPS that it 8 planned for the protection of informal settlements from 9 armed protestors? 10 MR NGALWANA: Perhaps my learned friend 11 can point to somewhere in the plan where we say we planned 12 to protect informal settlements, Chair, I'm not sure where 13 he gets it. 14 MR MADLANGA SC: Perhaps I should get it 15 from the General rather than me explaining to - my learned 16 friend seems to suggest that nowhere does SAPS suggest that 17 it planned for the protection of informal settlements. Do 18 you agree with my learned friend? 19 MR NGALWANA: Chair, with respect, my 20 learned friend put a proposition to the witness to say have 21 the witness - does he agree that there has been a 22 consistency in SAPS, that they wanted to protect people in 23 the informal settlement. Now he can't say he will get the 24 answer from the witness because that's a proposition he 25 puts to the witness and asks him to agree or disagree.</p>

<p style="text-align: right;">Page 11596</p> <p>1 MR MADLANGA SC: Mr Chairman, Mr 2 Chairman, I would submit that my learned friend can raise 3 the point, if he wants to suggest that what I am suggesting 4 is in fact not the position but if that is not what he is 5 suggesting then I do not see what the problem or how the 6 problem arises. 7 CHAIRPERSON: To some extent it's kind of 8 a double question. The question assumes something and he's 9 asked whether he agrees with that. Perhaps if you put the 10 first part separately, get the answer that you expect 11 you'll get then you can then move to the second part - 12 MR MADLANGA SC: I did not ask him 13 whether he agrees, it's a question, Mr Chairman. I did not 14 ask him for agreement, I'm asking for his view, whether he 15 says throughout when SAPS planned SAPS were consistent, 16 always consistent, we will protect informal settlements. 17 We will protect informal settlements, I'm asking whether 18 SAPS' approach to that was consistent. It's a simple 19 question. 20 [14:25] CHAIRPERSON: Mr Ngalwana, I think the 21 question so framed is unobjectionable. He's simply asking 22 for information, as I understand it, so he may proceed. 23 You may proceed, Mr Madlanga. 24 MR MADLANGA SC: Please answer, please 25 answer the question, General.</p>	<p style="text-align: right;">Page 11598</p> <p>1 hand entry in that picture which – there's a rectangle 2 there around the writing, pointing to a red figurine, do 3 you see that? Do you see that? 4 MAJOR-GENERAL MPEMBE: Chairperson, I'm 5 not quite sure that – are you referring to those that, the 6 two ones or maybe – 7 CHAIRPERSON: I think counsel is 8 referring to the red figures at the bottom left hand corner 9 of that slide. There's a quad, there's a rectangle above 10 an arrow which points to the first of those red figures and 11 in it are the words "FHA2 deployed to protect the informal 12 settlements." I think counsel is referring to both of the 13 red figures, is that correct? 14 MR MADLANGA SC: Yes. You see that, 15 General? 16 MAJOR-GENERAL MPEMBE: May I point, so 17 that we should – are you, is the counsel referring to this? 18 MR MADLANGA SC: Yes and then I was going 19 to refer you to the writing above within the rectangle. 20 The Chairman has already read it and you do see what it 21 says, "forward holding area 2 deployed to protect the 22 informal settlements." Do you see that? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR MADLANGA SC: And you see that the</p>
<p style="text-align: right;">Page 11597</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, the 2 answer that I did give, I said that when it comes to the 3 informal settlement which it is where those that are 4 targeted stay and we did not know. The second part is, the 5 informal settlement became also into our plan with regard 6 to the history based on what does happen when violence is 7 taking place. Thirdly, Chairperson, it is with regard to 8 the determination of negative points. 9 MR MADLANGA SC: General, if I understand 10 you correctly, that is telling us what it is that informed 11 the decision to protect informal settlement. It does not 12 answer my question which is, so informed, was SAPS then 13 consistent in planning for, was SAPS consistent in planning 14 for the protection of the informal settlement? 15 MAJOR-GENERAL MPEMBE: Chairperson, based 16 on those reasons that I've given, SAPS was consistent. 17 MR MADLANGA SC: Can I take you to slide 18 181? Perhaps it will also help deal with – in exhibit L, 19 slide 181 – that will perhaps to an extent also help deal 20 with part of the objection that was raised by my learned 21 friend Mr – 22 CHAIRPERSON: The objection has been 23 disposed of, so we don't have to worry about that. 24 MR MADLANGA SC: Thank you, thank you, Mr 25 Chairman. Can you have a look, General, at the bottom left</p>	<p style="text-align: right;">Page 11599</p> <p>1 date there is the 16th of August 2012? 2 MAJOR-GENERAL MPEMBE: I just want to 3 determine, is the date which you are referring to, this 4 one? 5 MR MADLANGA SC: Yes, yes, that is. 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson, I can see the date. 8 MR MADLANGA SC: And from memory, as I 9 understand, the red figures there represent the police who 10 were on the day at least, on previous days the leaders may 11 have been different but on the day they were led by Captain 12 Kidd, am I correct? 13 MAJOR-GENERAL MPEMBE: Chairperson, 14 Captain Kidd was in charge of the TRT but the forward 15 holding area 2, there was somebody who was in charge of 16 forward holding area 2. 17 CHAIRPERSON: According to slide 144 the 18 commander at forward holding area 2 on that day was 19 Lieutenant-Colonel Pitsi and the commander at forward 20 holding area was Major-General Naidoo. 21 MR MADLANGA SC: What I'm referring to, 22 thank you Mr Chairman, what I'm referring to, General, it's 23 not significant for the point I'm making but what I'm 24 referring to is the fact that on the day, even at the time 25 they actually moved, the person who was commanding them and</p>

<p style="text-align: right;">Page 11600</p> <p>1 actually telling them when to move, where to move, how to 2 move was Captain Kidd, not so?</p> <p>3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson. In my answer for forward holding area 2 the 5 words that were prescribed, it was referred to I should 6 read, it was talking about forward area 2. That's why I 7 said Lieutenant-Colonel Pitsi.</p> <p>8 MR MADLANGA SC: My focus for now, 9 General, is what is written in that rectangle, which is 10 that that forward holding area that is 2 was deployed there 11 to protect the informal settlement and this is something 12 that is planned for the 16th of August. Now would you be 13 surprised if I were to suggest to you, and I'm going to 14 demonstrate it, if I were to suggest to you that on the 15 same day whilst SAPS is planning for the protection of this 16 informal settlement, it in fact did not plan for the 17 protection of Nkaneng informal settlement. Do you dispute 18 that?</p> <p>19 MAJOR-GENERAL MPEMBE: Chairperson, the 20 protection that I spoke about it was based on the reasons 21 that I've given earlier on.</p> <p>22 MR MADLANGA SC: General, I'm dealing 23 with consistency, I'm not asking you about reasons. What 24 I'm suggesting to you is that on the 16th of August 2012 the 25 police purport to be protecting the informal settlement</p>	<p style="text-align: right;">Page 11602</p> <p>1 of documents to which the witness would be referred.</p> <p>2 MR MADLANGA SC: Do you now have it, 3 General?</p> <p>4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson.</p> <p>6 MR MADLANGA SC: General, right at the 7 bottom of page 83, at the foot of page 8346 – I remember 8 the Chairman once raised the issue of bottom with me – 9 against line 22 Mr Semenya was leading General Annandale in 10 chief and this is what he says, "In fact, when we look at 11 EEE14.1, what would you say is the positive attraction 12 there?" And then the General responds, "Chairperson, if we 13 look to the top," and do you have EEE14.1 there, General? 14 Do you have it? The photograph showing one of the wings of 15 a chopper propeller. General, it's up there now. SO 16 General Annandale says, "Chairperson, if we look to the 17 top, slightly to the right top corner of the picture, and 18 we take the whole line from the police, barbed wire and 19 Nyalas, that's the position that we see three of them, and 20 then we see another one that is at the first 21 and then we see another one that is at the first 22 smaller kraal, and you take that whole area to that corner, 23 but also to the right-hand side of the photo, Chairperson, 24 then you will see what I meant when I said you can just 25 move a couple of metres back towards the west and then you</p>
<p style="text-align: right;">Page 11601</p> <p>1 adjacent to forward holding area 2 but on that very same 2 day they in fact do not plan to protect – I will 3 demonstrate it to you – they do not plan to protect Nkaneng 4 informal settlement. Would it surprise you if I 5 demonstrate to you that that is what in fact happened?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, I was 7 not there but that's how the plan which I envisaged to 8 happen but if there was anything that has happened there, 9 maybe it will be given by those that were there actually 10 but the plan that I envisaged, it was like the way as it is 11 now.</p> <p>12 MR MADLANGA SC: General, let me refer 13 you to pages 8346 to 8349 of the transcript of the 14 Commission proceedings. I will read a portion of what 15 appears there to you. Do you have a copy?</p> <p>16 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>17 CHAIRPERSON: There is a copy of the 18 record, the transcript, I think there. Can you please show 19 it to the witness?</p> <p>20 MR MADLANGA SC: Ms Pillay advises me 21 that it's day 78, day 78. It's the testimony of General 22 Annandale and for the record, Mr Chairman, Commissioners, 23 if I may indicate that notice was given a good few days 24 back that this would be referred to.</p> <p>25 CHAIRPERSON: Yes, yes, I saw the notice</p>	<p style="text-align: right;">Page 11603</p> <p>1 can move to the right of the picture, which would be the 2 north area, and then you can enter that total area, because 3 as we can see the people standing around, there's also 4 roads and a number of roads that's leading into the area. 5 So if you needed to go to that specific, more to the 6 eastern side, then that was the way that you can still 7 access that area." Do you see that?</p> <p>8 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 9 I can see.</p> <p>10 MR MADLANGA SC: Do you see the tip of 11 the one blade of the propeller?</p> <p>12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson.</p> <p>14 MR MADLANGA SC: Now move from there 15 towards where the houses in the informal settlement are, 16 move towards the bottom. Don't go all the way to the 17 bottom or rather to the foot of the page, just towards the 18 line where the houses start, move it from the blade 19 downwards. Do you see that?</p> <p>20 MAJOR-GENERAL MPEMBE: No, Chairperson, I 21 will request that maybe if the counsel can do the pointer 22 so that I should understand it.</p> <p>23 MR MADLANGA SC: General, if you move 24 from here straight down and then do you see this, this 25 entire line and this whole area here, do you see that?</p>

<p style="text-align: right;">Page 11604</p> <p>1 CHAIRPERSON: We're going to have to 2 describe that for the record. Those unfortunate people who 3 have to read the record in 50 years' time won't follow the 4 this's and thats, not to mention the unfortunate people who 5 have got to read the record in a couple of months' time 6 with argument - 7 [14:45] MR MADLANGA SC: Just below the blade 8 going roughly straight down, General, there is what appears 9 to be an electrical pole. I don't see it there, Mr 10 Chairman, I do see it on my picture. I'm a bit blind. 11 CHAIRPERSON: It is there. If you look 12 very carefully where I indicated - 13 MR MADLANGA SC: Perhaps the Chairperson 14 can explain for record purposes where "there" is. 15 CHAIRPERSON: Yes, I'll do so happily. 16 If one looks at the yellow marking at the end of the blade 17 of the helicopter and one goes to the extreme left hand 18 corner, left hand corner of that yellow section and one 19 goes straight down for - one crosses what appears to be a 20 road or a path and then just below that there is what 21 appears to be the electric pole to which counsel has 22 referred. 23 MR MADLANGA SC: And the shadow of the 24 pole is visible to the left at the base. Then General, you 25 move from that pole just slightly down, slightly down to</p>	<p style="text-align: right;">Page 11606</p> <p>1 people that are there, General? Do you see the many 2 people? 3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson. 5 MR MADLANGA SC: Now from the passage 6 that I read to you, would you agree that part of what 7 General Annandale says is to the effect that SAPS expected 8 or rather regarded this area, this area, as part of the 9 positive attraction area? Am I reading General Annandale 10 correctly? 11 MAJOR-GENERAL MPEMBE: Chairperson, 12 before I answer maybe I need to understand at what stage 13 was this photo being taken? It was after dispersal or 14 what, so that I should be able to know the time that has 15 happened. 16 MR MADLANGA SC: That is totally 17 irrelevant to the question, General. You can take the 18 picture as is or you can disregard the people altogether 19 and take it as totally blank with just the permanent 20 features. Is it not so that a correct reading of what 21 General Annandale says is that the police regarded this as 22 a positive attraction area? 23 MR NGALWANA: Chair, I hesitate to remind 24 my learned friend but at some stage we're going to have to 25 do a re-examination and for him to say this area here, it</p>
<p style="text-align: right;">Page 11605</p> <p>1 there. I will explain the "there" just now but you saw 2 where I pointed, not so? 3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson. 5 MR MADLANGA SC: There you get to what 6 appears to be an even wider path, if not a road. Do you 7 see it? 8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson. 10 MR MADLANGA SC: And for purposes of the 11 record if I may indicate that to the far left there is what 12 appears to be a barbed wire Nyala. It actually ahs the 13 trailer attached and the barbed wire seems to be in place 14 still. Do you see that as well? 15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson, I see it. 17 MR MADLANGA SC: But my interest is to 18 the right, General, there, along that path to the right. 19 Do you see that on the path before it and even beyond it 20 into the informal settlement itself, there are many people 21 there, do you see that? 22 MAJOR-GENERAL MPEMBE: Chairperson, I see 23 them not moving in groups but individuals. 24 MR MADLANGA SC: General, I'm not asking 25 you about groups or individuals. Do you see the many</p>	<p style="text-align: right;">Page 11607</p> <p>1 wouldn't quite help when we have to go through the record, 2 if he may please remember that. 3 MR MADLANGA SC: I'm indebted to my 4 learned friend. General, I was referring back to what I'd 5 said to you earlier when I first asked this question and I 6 had asked you whether you do see the people along that, 7 what I refer to as a wider path or even a road that has a 8 Nyala to the far left, the Nyala with the barbed wire 9 trailer. Remember I said to the right of that there are 10 many people, both before that path and beyond that path and 11 even on the path itself. Now my question, my question then 12 is - I think I should repeat it or perhaps just to put it 13 beyond question, General, do you agree that part of what 14 General Annandale says is that one sees many roads in the 15 area? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 MR MADLANGA SC: Would you not agree that 19 especially in the context of his reference to many people, 20 would you not agree, or people - what does he say, people - 21 would you not agree that he must be referring even to roads 22 like this one, that one, this one? Would you agree or 23 would you not? 24 MAJOR-GENERAL MPEMBE: Those pointed to, 25 correct, Chairperson.</p>

<p style="text-align: right;">Page 11608</p> <p>1 MR MADLANGA SC: Mr Mpofo is correctly 2 saying for the record I should describe those. These, for 3 the record, are roads that very roughly, very roughly are 4 running at 90 degrees to what I've referred to as a wide 5 path or road that, when running left, gets to where the 6 Nyala with the barbed wire trailer is. So these roads 7 proceed from this wide path into the informal settlement 8 roughly at 90 degrees. You've already answered, you've 9 already answered the question. Now I'm going to my next 10 question, General, which is would you not agree then that 11 what General Annandale in essence is saying is that amongst 12 others, the areas of positive attraction would have 13 included the informal settlement which is just below what 14 I've referred to as the wide path or road. Would you not 15 accept that?</p> <p>16 MAJOR-GENERAL MPEMBE: I agree, 17 Chairperson, and any agreement is also based on the reasons 18 that I have already given.</p> <p>19 MR MADLANGA SC: In short then, General, 20 on the 16th the police planned to protect the informal 21 settlement adjacent to forward holding area 2 but on that 22 same day they did not plan to protect the informal 23 settlement to the north-east of koppie 1, that is – or 24 rather that part of Nkaneng informal settlement which is to 25 the north-east of koppie 1. Do you accept that?</p>	<p style="text-align: right;">Page 11610</p> <p>1 which the crowd being managed would disperse to or towards. 2 Now Mr Semenya is asking General Annandale what in your 3 planning did you consider the positive attraction area to 4 be and this is exactly what General Annandale says he 5 refers – of course not just this area, as you can see that 6 passage it refers to a whole lot of areas but part of what 7 he says is a reference to this area.</p> <p>8 CHAIRPERSON: - he referred to exhibit, I 9 think it's EEE12 which is the photograph that we have at 10 the moment, is that right?</p> <p>11 MR MADLANGA SC: Yes, Mr Semenya in so 12 many words actually referred to EEE14.1, Mr Chairman, thank 13 you.</p> <p>14 CHAIRPERSON: EEE14, not EEE12.</p> <p>15 MR MADLANGA SC: May I just very quickly 16 refer to the transcript, Mr Chairman, Commissioners, page 17 2964 day 28. This is what Brigadier Mkhwanazi says 18 although, of course, we know that to an extent he appears 19 to have been disowned as an expert but this is what he 20 says, "With the positive attraction point, it's where we 21 look at the position if the participants in a certain 22 march, if they are going maybe to be pushed back or maybe 23 be disbursed. One has to look what can be the appropriate 24 direction where they can be taken to, where they will be 25 able to get to their vehicles," and so on and so on. So</p>
<p style="text-align: right;">Page 11609</p> <p>1 CHAIRPERSON: Sorry, Mr Madlanga, is it 2 not the north-west that you're talking about? If one looks 3 at page 150, slide 150 of exhibit L in the top right hand 4 corner you see where north is.</p> <p>5 MR MADLANGA SC: Just please –</p> <p>6 CHAIRPERSON: Slide 150 of exhibit L. 7 You see north is in the top right hand corner. Are you 8 talking about north-east or north-west?</p> <p>9 MR MADLANGA SC: Let me – thank you, 10 thank you Mr Chairman, let me cut out the reference to 11 north-east. I don't really need it for purposes of this 12 question. Please may the videographer please go back to 13 EEE14.1? I will rephrase the question, General. So in 14 short, SAPS planned to protect the informal settlement 15 adjacent to forward holding area 2 on the 16th of August 16 2012 but on that very same day planned not to protect that 17 part of Nkaneng which is just below what I earlier referred 18 to as a wide path or road.</p> <p>19 MR NGALWANA: Chair, perhaps our learned 20 friend can say what the basis for that conclusion is, so to 21 be fair to the witness.</p> <p>22 MR MADLANGA SC: Mr Chairman, 23 Commissioners, my understanding of what the experts say on 24 what positive attraction areas are, even including what 25 Brigadier Mkhwanazi said, is that it is those areas to</p>	<p style="text-align: right;">Page 11611</p> <p>1 surely that is exactly what General Annandale must have 2 been addressing himself to.</p> <p>3 MAJOR-GENERAL MPEMBE: Chairperson, I do 4 not see a contradiction for what General Annandale said as 5 well as Brigadier Mkhwanazi. The reasons that I have 6 given, we said that we wanted when the people enter into 7 the informal settlement, should not be in a group of 10, 8 should be running as individual as they are, not to – 9 because if, history based, is that if they go in the group 10 of 10, they do normally do the destruction of properties or 11 any other thing. Nkaneng itself, we never said we don't 12 want people must never go to Nkaneng. There were certain 13 points which we regarded as negative attraction if you come 14 earlier to Nkaneng but not necessarily the whole informal 15 settlement is a negative attraction, which I did explain 16 earlier on.</p> <p>17 MR MADLANGA SC: General, must I take 18 that to mean this, if you say you never said people should 19 not go into Nkaneng, conversely that must mean that you 20 were of the view that people should or the protesters 21 should not go to the informal settlement abutting forward 22 holding area 2?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, even 24 Nkaneng itself, we did indicate to say at this area point 25 they could not enter because they will be coming in groups,</p>

<p style="text-align: right;">Page 11612</p> <p>1 the same with forward area holding 2. The fact that they 2 were going to move to Karee, we didn't say they mustn't 3 enter at all but we need also to check that when they 4 enter, when they pass there they could not be able to do 5 any other destruction, neither we didn't know who is 6 staying there, who is well in the knowledge of the 7 protesters is now on duty or he is employed by Lonmin. 8 Hence we were talking of that protection but if they went 9 there in groups surely they could have been followed, they 10 could have been dispersed further so that they mustn't go 11 there in groups but putting the people there, it was to say 12 make sure that if they pass they do not also do the 13 destruction and that is the meaning of posting the people 14 there. 15 [15:04] MR MADLANGA SC: I find that very 16 confusing to me, General. 17 CHAIRPERSON: I'll take the tea 18 adjournment when it's convenient to you, Mr Madlanga. Tell 19 me when it's appropriate and we'll take the adjournment. 20 If you want to carry on with this point for a bit you can 21 do so, I'm in your hands. 22 MR MADLANGA SC: There may be a lot of 23 follow-up questions on it actually, Mr Chairman, I'm only 24 on my second question right from the beginning so it may 25 take a bit of time, so perhaps it is appropriate.</p>	<p style="text-align: right;">Page 11614</p> <p>1 two sentences of paragraph 8 and this is what he says, "The 2 basic line was to be formed when the barbed wire was being 3 deployed. It was our responsibility to protect the 4 settlement from attack by anyone and to disarm any armed 5 protesters going past the line and arrest them." Do you 6 see that? 7 CHAIRPERSON: The other important point 8 is paragraph 3 where he says that "At 10AM that morning 9 Lieutenant-Colonel Pitsi was redeployed by Brigadier Calitz 10 to the frontline, i.e. to the koppie. Lieutenant-Colonel 11 Pitsi left with 40 POP members and four Nyalas and one 12 Casspir, left me in command of the remaining units." So in 13 effect what he's saying is that from then on he was in 14 charge of forward holding area 2. 15 MR MADLANGA SC: Now General, what I do 16 not quite understand from the last answer you gave before 17 the tea adjournment is this, can you explain it to me and 18 to the Commission why it is that in respect of the informal 19 settlement abutting forward holding area 2, SAPS saw a need 20 to have police lined up there to protect that informal 21 settlement when they did not at the same time see a need to 22 have police lined up along that part of Nkaneng that I 23 earlier referred you to, to protect it as well. Can you 24 explain that to me in a way that makes sense? 25 MAJOR-GENERAL MPEMBE: Chairperson, I'm</p>
<p style="text-align: right;">Page 11613</p> <p>1 CHAIRPERSON: Very well, we'll take the 2 tea adjournment. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [15:26] CHAIRPERSON: The Commission resumes. 5 You're still under oath, Major-General. Mr Madlanga, 6 you're still cross-examining. 7 ZONDASI WILLIAM MPEMBE: (s.u.o.) 8 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD): 9 Thank you, Mr Chairman. General, if you want me to I will 10 just pass this through to you. It's a statement that I did 11 not refer to but as cross-examination progresses one thinks 12 of raising other matters as well and I apologise to the 13 Commission and to my learned friends. May I refer you to 14 the statement of Captain Wayne Peter Kidd, paragraph 8. 15 CHAIRPERSON: I think it's been handed 16 in. 17 MR MADLANGA SC: According to Ms Pillay, 18 not. 19 CHAIRPERSON: Well, if Ms Pillay says it 20 hasn't handed in we're prepared to accept what – HHH12. 21 MR MADLANGA SC: Yes. 22 CHAIRPERSON: The statement of Captain 23 Kidd. 24 MR MADLANGA SC: Yes, yes, Mr Chairman. 25 I will read to you the last two sentences at page 3, last</p>	<p style="text-align: right;">Page 11615</p> <p>1 requesting that maybe in my explanation also to indicate 2 from the slide so that the counsel can understand. 3 MR MADLANGA SC: Are you asking for 4 EEE14.1, General? 5 MAJOR-GENERAL MPEMBE: I'm asking 1.81 – 6 no, slide 181. 7 CHAIRPERSON: You want exhibit L, slide 8 181. 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 CHAIRPERSON: That's the amended one. 12 MAJOR-GENERAL MPEMBE: Yes and secondly, 13 Chairperson, the statement of Captain Kidd it was also not 14 included in the list of the documents – 15 CHAIRPERSON: Sorry, before we get to 16 Captain Kidd. You're really referring I think to exhibit 17 HHH11 which is the amended version of slide 181, is that 18 right? It's got the letters in it. 19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. 21 CHAIRPERSON: And then counsel did say 22 that – in fact he apologised for the fact that you hadn't 23 been referred beforehand to Captain Kidd's statement which 24 he's handed in but he did so, it would seem, to illustrate 25 two points, one that he had been in charge after</p>

<p style="text-align: right;">Page 11616</p> <p>1 Lieutenant-Colonel Pitsi had been redeployed, of forward 2 holding area 2, and also he read out that sentence about 3 the instructions. Is that – you only handed it in for 4 those two purposes, did you?</p> <p>5 MR MADLANGA SC: Yes, Mr Chairman, thank 6 you.</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, to 8 what Captain Kidd is actually saying is that if the people 9 came in groups at this informal settlement, that would 10 require that that group should be dispersed. The dispersal 11 could have moved in that direction as I indicated earlier, 12 which is the direction of the Karee hostel. Chairperson, I 13 will request the slide that the counsel did show me, the 14 one it's 14, so that I should also indicate –</p> <p>15 CHAIRPERSON: [Inaudible]</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, on 17 this slide what Major-General Annandale was saying is that 18 if a group of protesters, after it has been dispersed it 19 could come this way, that could be a negative attraction 20 but if they move they had to be, break up in smaller groups 21 to come this way. From groups dynamic, as long as they are 22 moving in groups they tend to destroy and this is what I'm 23 trying to explain but if they move individually they can 24 come to Nkaneng. Captain Kidd can explain but what I'm 25 saying now is that if in that forward holding area 2 in</p>	<p style="text-align: right;">Page 11618</p> <p>1 there, they are not moving in groups, he might have been 2 allowed to enter there because that person could be knowing 3 where is he going, where is he going to stay, but if they 4 could have come in groups surely Captain Kidd will suspect 5 that, one, they might be going to a certain place which 6 somebody is known staying there who is on duty or he is 7 employed but this is what I'm saying, it should have been 8 envisaged from the planning point of view.</p> <p>9 MR MADLANGA SC: Let's look at – oh, 10 sorry. Now General, let us look at the last sentence of 11 paragraph 8. It reads, "It was our responsibility to 12 protect the settlement from attack by anyone and to disarm 13 any armed protesters going past the line and arrest them." 14 You see that? Surely General, that must mean that even an 15 individual protester who was armed would have been stopped 16 by Captain Kidd's group and disarmed. That is what –</p> <p>17 CHAIRPERSON: And arrested.</p> <p>18 MR MADLANGA SC: And arrested. That is 19 what this means, not so?</p> <p>20 MAJOR-GENERAL MPEMBE: Chairperson, the 21 plan was saying those that they did not hand the weapons 22 and while still having them, not necessarily going to 23 Nkaneng, they could have been disarmed and arrested but 24 what I'm trying to explain between the Nkaneng and those 25 that are carrying weapons is that if the individual could</p>
<p style="text-align: right;">Page 11617</p> <p>1 that Nkaneng, if individuals were walking individually, I 2 don't say that they prevented them but they could have let 3 them go because they will understand that they are going to 4 the place that they know they are staying there, but if 5 they move in groups it could either mean that they know the 6 one that is reporting on duty is staying there, which they 7 might also cause damage or something else. But Captain 8 Kidd might also explain to say if the individuals were 9 coming to them to pass, they could allow them to pass but 10 they could not have allowed a group of individuals to have 11 passed because that might also cause what I'm talking about 12 now, but that is mostly referred to as group dynamics, 13 Chairperson.</p> <p>14 MR MADLANGA SC: General, you've said 15 quite a lot but I'll take you right to the beginning of 16 your answer. In your answer you suggested what Captain 17 Kidd is saying in these two sentences is that they would 18 prevent groups and that they would let through individuals. 19 Did I understand you correctly? And if you can, just to 20 avoid confusion can you answer that very briefly? Did I 21 understand you correctly or not?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, what 23 I'm saying is Captain Kidd might explain it properly what 24 happened there but what one envisages is that if the 25 individual, Captain Kidd could see that he is staying</p>	<p style="text-align: right;">Page 11619</p> <p>1 have gone to Nkaneng not armed, not in groups, he could 2 have been allowed to enter.</p> <p>3 MR MADLANGA SC: General, let us please 4 forget about Nkaneng. I'm not asking you about Nkaneng 5 right now. I am asking you about what Captain Kidd is 6 saying about the protection of the informal settlement 7 abutting or rather of the informal settlement – yes, 8 abutting forward holding area 2. That is what I'm asking 9 you about. Is it not so, here's the question, is it not so 10 that what Captain Kidd is saying is that his group would 11 have stopped, disarmed and arrested even individual 12 protesters?</p> <p>13 MAJOR-GENERAL MPEMBE: Chairperson, in 14 the context of if that individual is in possession of a 15 dangerous weapon, yes.</p> <p>16 MR MADLANGA SC: So it didn't matter that 17 the protesters would have been approaching Captain Kidd and 18 them, even in groups of less than 10, that did not matter. 19 What he understood his responsibility to be was to disarm 20 anybody approaching with a dangerous weapon, even if he was 21 just one individual. That is what he says his 22 responsibility was, do you accept that?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, any 24 protester who had a dangerous weapon should have, according 25 to that plan, been approached, disarmed and arrested.</p>

<p style="text-align: right;">Page 11620</p> <p>1 MR MADLANGA SC: And that applied to even 2 people approaching Captain Kidd, even if it was just one 3 person. It didn't have to be groups of 10 and above, even 4 one person. I would like you to please answer that 5 question directly, General. 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 MR MADLANGA SC: Now I will go back to an 9 earlier question which – is it correct that no provision 10 was made for similar protection for that part of Nkaneng 11 that I earlier referred to, which I said is just below what 12 I referred to as a wide path or road. Do you accept that 13 no similar provision for protection was made for that part 14 of Nkaneng? 15 MAJOR-GENERAL MPEMBE: Chairperson, I 16 said that the dispersal in the westerly direction at that 17 point could have allowed that one who had a dangerous 18 weapon, he could still have been pursued and disarmed. 19 Secondly, anyone who could have moved inside Nkaneng at 20 that point, he could not have been allowed to move in a 21 group but individually. But protection as the counsel is 22 referring to, it's not actually protection but it was a 23 visibility to look in terms of what I'm talking about now. 24 In this case, in this one, those that were dispersing 25 there, they could still have followed them, they could</p>	<p style="text-align: right;">Page 11622</p> <p>1 in practice? As I understand it, the plan was that once 2 the barbed wire was uncoiled and in position, the people on 3 the other side of the wire, the protesters, strikers, were 4 to be told that they must lay down their arms and go and 5 the idea was that it was thought that some of them would do 6 that but others would remain. And apparently what was then 7 going to happen, I think the plan makes that clear, those 8 who stayed who didn't lay down their arms, then there was 9 going to be an advance into the area and they were going to 10 be dispersed into smaller groups and then disarmed. But as 11 I understand the evidence, unless I've missed something, 12 there was no idea of dealing with people who left. In 13 other words there were 3 000 people on the koppie, there 14 were I think about 400 were the group in the front and I 15 think the evidence was from General Annandale that it was 16 thought that probably about, that some of the 400, that all 17 the people on the koppie would go. The people in the front 18 of the 400, some of them would go and the remainder would 19 have to be dealt with. Now he didn't suggest that those 20 who left at that early warning, taking their arms with 21 them, would be pursued and disarmed. The idea was to deal 22 with those who remain because those were regarded, I think, 23 as the hard core of people who had to be dealt with. Now 24 if I'm correct in saying that, then it follows that those 25 people who left on the initial warning, carrying their</p>
<p style="text-align: right;">Page 11621</p> <p>1 still have done what I'm talking about now. 2 [15:46] MR MADLANGA SC: General, that doesn't 3 answer my question. Perhaps let me approach this from 4 another angle. Slide 181 in exhibit L shows us that police 5 were prepositioned in forward holding area 2 to protect the 6 informal settlement abutting that forward holding area, is 7 that not so? You've said yes, so the answer should be 8 quite quick, yes. 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 MR MADLANGA SC: The operative word here, 12 General, is "prepositioned." Now, not a follow up during 13 the dispersal, prepositioned. Now my question is, why is 14 it that SAPS did not make provision by prepositioning 15 police that would have protected that area of Nkaneng? 16 CHAIRPERSON: By that area you're 17 referring again to the one near the wide path that – 18 MR MADLANGA SC: Yes, the one I've been 19 referring to a good few times. Thank you, Mr Chairman. 20 MAJOR-GENERAL MPEMBE: Chairperson, my 21 answer remains the same, that those that could have done 22 the dispersal could have still followed the protesters, 23 disarmed, isolate them, disarm them and arrest them. Hence 24 there was no prepositioning. 25 CHAIRPERSON: How was that going to work</p>	<p style="text-align: right;">Page 11623</p> <p>1 weapons with them, would be able to get to – certainly 2 Nkaneng. They might have had difficulty, they would 3 clearly have had difficulty in getting to the other 4 informal settlement because Captain Kidd's people would 5 have been able to deal with them in terms of what we've 6 heard but if those who had gone round to Nkaneng, got into 7 Nkaneng via that wide path that Mr Madlanga referred to, 8 still carrying their arms, how would they have been 9 disarmed if the main force is still in front of the barbed 10 wire waiting to deal with the remainder – it was 11 anticipated there would be about 170 or slightly more than 12 that, perhaps 300. If I've misstated the evidence I'll be 13 corrected but if I've stated it correctly then I'm afraid I 14 don't understand what you're saying in relation to people 15 who left carrying their dangerous weapons with them and who 16 went to Nkaneng via the route which Mr Madlanga has 17 referred to. 18 MAJOR-GENERAL MPEMBE: Chairperson, the 19 plan states to say those who will not heed to the warning 20 that they should lay down their weapons and they will be 21 followed and they will be requested to drop their weapons, 22 disarm them and arrest them, but in this case – 23 Chairperson, in this case in my indication, these could not 24 have been done before the dispersal because the plan 25 envisaged that the dispersal will first take place and if</p>

<p style="text-align: right;">Page 11624</p> <p>1 there was anyone, as the Chairperson suggested, that he 2 could have left with a dangerous weapon, the earlier 3 testimony showed that how they could have been positioned 4 in terms of the dispersal and before the dispersal. You 5 remember when I indicated 100 metres away and also the POP 6 line which of course they had been reinforced by Mere and – 7 Mere reinforced – so they could still have been followed 8 and asked to drop their weapons or be arrested by those 9 that they could have been there. But those that they could 10 have gone to that side of Nkaneng, they were from here to 11 go that side, it could not have been easy because that's 12 why then there was the prepositioning. Chairperson, I'm 13 talking about the area, forward area holding 2. It's 14 somewhere when you go to the Karee mine on the other side. 15 Chairperson, you'll remember when I indicated with slide 16 181 to say that before the dispersal could take place the 17 POP could have been positioned for dispersal and those that 18 could have been placed for a show of force, surely they 19 could – the POP and those had been placed for a show of 20 force, if they see anyone moving, because they were there 21 because first of all we said that we could not disperse or 22 see anyone moving. We were in a position to see anyone who 23 is moving there with dangerous weapons, surely we could 24 have followed the individual, request or order the 25 individual either to drop the weapon or to follow him and</p>	<p style="text-align: right;">Page 11626</p> <p>1 CHAIRPERSON: If there's an objection you 2 can – but then it goes on, this is the important point, 3 "After the voluntary departure, those refusing to leave 4 will be searched and the whole area would be swept for 5 dangerous weapons." And it goes on, "If the protesters 6 refuse to put their weapons down and leave the koppies, 7 stage 3 would be implemented." In other words, the plan 8 does not appear to have made provision for pursuing people 9 who left voluntarily, taking their dangerous weapons with 10 them. Is that correct or do I understand the plan 11 incorrectly? If I understand it incorrectly, can you refer 12 me to something in one of the documents setting out the 13 plan where it appears that I'm incorrect – I'm incorrect, 14 it's really whether my impression is incorrect obviously. 15 If you can persuade me to the contrary, well then that'll 16 be acceptable -</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, the 18 plan has also been referring to those that will still be in 19 possession of dangerous weapons, they will also be, they 20 will also be disarmed and arrested. Maybe we can also look 21 under the mission of the plan.</p> <p>22 CHAIRPERSON: If one gets that – you see 23 I know what phase 3 of stage 3 said, that if the protesters 24 were to disperse into smaller groups they had to be 25 circled, isolated, etcetera, but that doesn't deal with the</p>
<p style="text-align: right;">Page 11625</p> <p>1 to arrest that individual.</p> <p>2 CHAIRPERSON: But was that the plan? If 3 you look at slide 175 of exhibit L you'll see that what is 4 said there is this, "Major-General Annandale informed the 5 meeting" – this is the special JOC COM meeting, 1:30 – "the 6 approach would be as follows. Communicate with the group 7 on the koppie to try to resume negotiations for the 8 protesters to disarm and leave the koppie. Protesters had 9 to be asked to leave their dangerous weapons on the koppie 10 as they voluntarily dispersed. After the voluntary 11 departure, those refusing to leave would be searched and 12 the whole area would be swept for dangerous weapons. If 13 the protesters refused to put their weapons down and leave 14 the koppies, stage 3 of the" – that should be koppie I 15 think – "stage 3 of the operation will be implemented as a 16 last resort." Now General Annandale was asked about people 17 who left carrying their weapons with them and, as I 18 recollect his evidence, he suggested they would be allowed 19 to go.</p> <p>20 MR MADLANGA SC: May I be of assistance 21 there, Mr Chairman, and refer – and just in support of the 22 point that the Chairperson is making –</p> <p>23 CHAIRPERSON: Alright, well, then if I'm 24 right, I'm right. We don't need to –</p> <p>25 MR MADLANGA SC: Thank you –</p>	<p style="text-align: right;">Page 11627</p> <p>1 point that I'm putting to you now, but if there's something 2 in the plan that I've overlooked I'd be grateful if you'd 3 draw it to my attention.</p> <p>4 MR MADLANGA SC: Might I try to be of 5 some assistance, Chair?</p> <p>6 CHAIRPERSON: You're not in the witness 7 box at the moment, Mr - I'm sorry, I called you something 8 else, I beg your pardon. If there's a document that 9 specifically makes the point, obviously you can draw it to 10 my attention, not to give evidence at this stage. If 11 there's a document that specifically makes the point then 12 I'll allow you to draw it to my attention although, 13 strictly speaking, the witness is giving evidence. We're 14 here to get the truth and if you can help me I'd be 15 grateful.</p> <p>16 MR MADLANGA SC: Let me see if I 17 understand, the Chairperson's enquiry is whether there is 18 anything in the plan that deals with whether people could 19 be allowed through the police line carrying their weapons 20 as individuals.</p> <p>21 CHAIRPERSON: I didn't say through the 22 police line, I said leave the – voluntarily leave the area 23 and what I said was based upon my understanding of General 24 Annandale's evidence. General Annandale didn't suggest 25 anything else, but that's why I said to the witness if</p>

<p style="text-align: right;">Page 11628</p> <p>1 there's something in the plan, not dealing with people 2 going through the police line – that's a different matter 3 and of course there are other aspects about that which we 4 can go into later – but whether the people who left, not 5 going through the police line, voluntarily, carrying their 6 dangerous weapons with them, what was going to happen to 7 them. It doesn't appear from the documents I've seen that 8 it was part of the plan to chase after them then and there. 9 As far as I could see, the idea was to concentrate on those 10 who stayed but if I've missing something and you can draw 11 my attention to it, I'll be grateful.</p> <p>12 MR MADLANGA SC: Chair, perhaps Chair, 13 perhaps the Chairperson might like to look at, at least 14 four slides in SS3 and consider whether that in the plan is 15 consistent with –</p> <p>16 CHAIRPERSON: Just give me the numbers? 17 MR MADLANGA SC: Yes. 18 CHAIRPERSON: SS3 is in volume A of the 19 bundle and behind tab 3 and the pages appear to be 20 numbered. 21 MR MADLANGA SC: Pagination 64, slide 53 22 under "Mission." The exercise, of course, is to test 23 whether that would be consistent with a suggestion – 24 CHAIRPERSON: I beg your pardon, under 25 "Mission?"</p>	<p style="text-align: right;">Page 11630</p> <p>1 [16:05] CHAIRPERSON: There may be something else 2 that you haven't drawn my attention to. I'm just telling 3 you my problem with what you've shown me. 4 MR MADLANGA SC: Well, can I give a 5 context, Chair? If you look at - the first slide to which 6 I referred the Chairperson falls under stage 1. If you 7 look 1, 2, 3, about five pages before that on page 60, that 8 specific plan starts at page 60 and that deals with stage 9 1. 10 CHAIRPERSON: That's not stage 1 as it 11 was referred to on the 16th. That's stage, that's the first 12 edition, as it were, of the plan as it existed on the 14th 13 of August. That's not stage 1 as that expression was used 14 in the context of what was going to happen on the 16th of 15 August. If I'm wrong on that you must correct me. 16 MR MADLANGA SC: No, you're quite correct 17 Chair, I understand that. I'm just going through the 18 stages. Then the second slide to which I referred relates 19 to stage 2 as at the 16th and you'll find that on page 88 20 but the relevant slide is, as I've indicated, page 92. 21 That slide relates to stage 2 discussion. 22 CHAIRPERSON: I don't think that's 23 correct because if you look at page 92 under "Operational 24 overview" you'll see what was envisaged and I think by 25 stage 2 they are referring to, on page 88 they are</p>
<p style="text-align: right;">Page 11629</p> <p>1 MR MADLANGA SC: Mission, the top slide 2 there, Chair. 3 CHAIRPERSON: Have you got anything 4 better than that? 5 MR MADLANGA SC: Yes, page 78 again the 6 similar slide under "Mission," the bottom slide. 7 CHAIRPERSON: Yes. 8 MR MADLANGA SC: Page 92, the top slide. 9 CHAIRPERSON: I see that. 10 MR MADLANGA SC: And page 112, the top 11 slide. 12 CHAIRPERSON: Yes, those are all relating 13 to the mission. Now the mission, does that only relate to 14 stage 3 or does that include stages 4, 5 and 6? 15 MR MADLANGA SC: Well, it's an overall 16 mission of the plan, Chair. 17 CHAIRPERSON: Well, the plan includes 18 stages 4, 5 and 6, so what we're concerned with now is what 19 was going to happen, as I understand it, at stage 3. I 20 know all about stage 4, 5 and 6 and presumably that'll be 21 dealt with more fully later but at the moment we're 22 concerned with stage 3. All you can show me is that the 23 mission as a whole, in other words the plan as a whole, 24 including all six stages, include that. 25 MR MADLANGA SC: Chair can I, maybe –</p>	<p style="text-align: right;">Page 11631</p> <p>1 referring to what one can call the second edition of the 2 plan at that stage. The word "stage" appears to be used in 3 some cases in the headings, indicating the edition of the 4 plan and elsewhere it's used to indicate a specific 5 operational portion, as it were, of the plan which one sees 6 if one looks at the page to which you've referred me, 92, 7 but not the mission slide but the one below it, the 8 operational overview. The point is that it does look – you 9 know, if I'm wrong you can correct me but it does look as 10 if when they talk about the mission every time they're 11 talking about the whole operation including all the stages 12 in the narrow sense, up to stage 6 which was, I think it 13 was one of the cordon and search operations. 14 MR MADLANGA SC: Perhaps this might be 15 more useful, Chair. If the Chairperson has a look at page 16 130, that deals with stage 3 and the mission is 17 specifically a stage 3 mission on page 131 at the bottom 18 slide. There's no talk there of stage 4, 5 and 6. That 19 specifically states 3 and it effectively repeats, though 20 not in exact terms, the same mission as in the other three 21 to which I've referred earlier. 22 CHAIRPERSON: Well, if you would turn to 23 132, the second slide, you get what's called "An 24 operational overview of stage 3. To disperse into smaller 25 groups, encircle and disarm the protesters" and from the</p>

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1 evidence it was clear that the idea was, the hope was to
2 encourage most of the strikers to leave and those who were
3 left were to be dispersed into smaller groups, encircled
4 and then disarmed, this is to say after the others who had
5 already gone had taken their arms with them insofar as they
6 had arms. That does seem to be the position but I see it's
7 now 10 past four. Perhaps you and I should cease this
8 debate for the moment, see if the witness has anything to
9 contribute and then we can continue with the cross-
10 examination on Thursday morning but let's see if the
11 witness has anything he wishes to add. Is there anything
12 you wish to add, Major-General?

13 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

14 CHAIRPERSON: You may be able to draw my
15 attention to something I've overlooked, which assists.

16 MAJOR-GENERAL MPEMBE: Chairperson, I
17 would like the esteemed Commission and Chairperson to go to
18 "Operational overview of stage 3" page, paginated page 133
19 and it's bullet number 3. It says, "If protesters have
20 dispersed into smaller groups, they must be approached,
21 isolated, encircled, so all persons can be properly
22 searched for dangerous weapons" –

23 CHAIRPERSON: I see that.

24 MAJOR-GENERAL MPEMBE: - "and arrests to
25 be effected."

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1 CHAIRPERSON: Yes, yes, I see that. I
2 take it, firstly in view of the time, it's inappropriate
3 for us to continue the debate but I suspect that there will
4 be some evidence about that and what that means. So it's
5 probably a good point at which we can conclude the evidence
6 for the day. I'm sure you must be very tired anyway,
7 having been giving evidence from the beginning and as I've
8 explained before, we will not be sitting tomorrow although
9 I shall be meeting with the evidence leaders to do a
10 provisional survey of the evidence to come and how long
11 it's likely to take and so on, which I'll later discuss
12 with the parties, if necessary. We'll resume the evidence
13 and your evidence at 9:30 on Thursday morning. We'll now
14 adjourn.

15 [COMMISSION ADJOURNED]

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