

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 109 20 JUNE 2013 PAGES 11633 TO 11736



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1 [PROCEEDINGS ON 20 JUNE 2013]
 2 [10:04] CHAIRPERSON: Morning, the Commission
 3 resumes. I'm sorry we're starting late, but we had a
 4 number of matters to consider in chambers before we came in
 5 this morning. The Commission resumes. Major-General,
 6 you're still under oath.
 7 WILLIAM MPEMBE: s.u.o.
 8 CHAIRPERSON: Mr Madlanga, I take it
 9 you've got further cross-examination.
 10 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 11 Yes, Mr Chairman. Thank you. General, I'm still on my
 12 first theme, which is suggesting that there was lack of
 13 consistency in protecting informal settlements. In your
 14 evidence-in-chief you were asked by my learned friend Mr
 15 Ngalwana where according to the police plans the protesters
 16 were expected to disperse to. That's correct, not so?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR MADLANGA SC: And in responding to
 20 that question you were shown and relied on exhibit HHH11
 21 and you said they were expected to disperse to the west.
 22 Is that correct as well?
 23 MAJOR-GENERAL MPEMBE: To the western,
 24 yes, to the west.
 25 MR MADLANGA SC: General, is the true

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1 position not that the protesters were expected to disperse
 2 westwards only when the barbed wire Nyalas were to have
 3 been positioned in accordance with what is depicted in
 4 slides 148 and 149 of exhibit L? Do you have exhibit L?
 5 Slides 148 and 149. Or perhaps let me take it step by
 6 step, General. Do you see the red little cars, six in
 7 number? You see them?
 8 CHAIRPERSON: Yes, Major-General, you
 9 wanted to say something?
 10 MAJOR-GENERAL MPEMBE: Chairperson, I
 11 don't have exhibit L with me now and I'm not able to answer
 12 the question.
 13 MR MADLANGA SC: No, it is exactly, 148
 14 is what is showing on the screen up there, General.
 15 CHAIRPERSON: I could give you mine but
 16 my offer has been spurned and you've been given someone
 17 else's, so it's alright.
 18 MR MADLANGA SC: There they are; 1, 2, 3,
 19 4, up to 6, reddish in colour. Do you see them now?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 MR MADLANGA SC: And do you see the pink
 23 or orange line that on both ends curves inwards towards the
 24 koppie like that?
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 MR MADLANGA SC: And those red cars are
 3 on that line. Do you see that as well?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR MADLANGA SC: And is it correct that
 7 that line represents where the barbed wire would be
 8 ultimately? Correct?
 9 MAJOR-GENERAL MPEMBE: The yellow line.
 10 MR MADLANGA SC: The yellow line, I see a
 11 double yellow line like that, closed off at the two ends,
 12 closed off there and here. I'm referring to this orange or
 13 pink line. Do you see the single line, not the double
 14 yellow? Are you suggesting that I'm mistaken when I
 15 suggest to you that the barbed wire was to have gone right
 16 up to there? Do you see where the orange line ends and
 17 would have started against the power station here where
 18 this Nyala is?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 MR MADLANGA SC: And my first there is
 22 the north-western, or rather the western end, the western
 23 end of the curving line, and the power station is to the
 24 south of the koppie. You see that as well?
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 MR MADLANGA SC: And the first Nyala is
 3 right close to, if not against the power station. You see
 4 that, General?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR MADLANGA SC: Did I understand you
 8 finally to accept that the orange or pink curving line
 9 represents where the barbed wire would be?
 10 MAJOR-GENERAL MPEMBE: Chairperson, I
 11 just wanted to check maybe to say the, there was a group
 12 that was also taken into consideration by the barbed wire.
 13 So maybe in terms of what, I just want to check that group,
 14 where was it, because remember when I demonstrated with
 15 exhibit - what is it? It's exhibit L, slide 181, with
 16 those pointing, so that's the one that I just wanted to
 17 check because the barbed wire was, also took into account
 18 the group that was somewhere, and also the other group.
 19 MR MADLANGA SC: General, slide 181 and
 20 exhibit HHH11 are one and the same thing, except that you
 21 put in A, B, C, D on HHH11. Am I correct?
 22 MAJOR-GENERAL MPEMBE: They are correct
 23 except - they are the same, except there was a point where
 24 we indicated that when we disperse, we disperse all the
 25 people, but there were also two distinct group which also

<p style="text-align: right;">Page 11638</p> <p>1 we located it in the dispersal.</p> <p>2 MR MADLANGA SC: General, sometimes your</p> <p>3 long answers confuse me. This is a simple question. Are</p> <p>4 you suggesting that except for your addition of A, B, C, D</p> <p>5 on HHH11, HHH11 and L181 are not one and the same thing?</p> <p>6 MAJOR-GENERAL MPEMBE: That is not what</p> <p>7 I'm suggestion, but what I'm saying is in slide 181 there</p> <p>8 was an indication to say the other group, that's the one</p> <p>9 that I wanted, maybe if you can point it out here where</p> <p>10 there was another distinct group. You remember the group</p> <p>11 that we also talk about?</p> <p>12 MR MADLANGA SC: Are they one and the</p> <p>13 same thing except for your addition of A, B, C, D, General?</p> <p>14 MAJOR-GENERAL MPEMBE: It's correct,</p> <p>15 Chairperson.</p> <p>16 MR MADLANGA SC: Now General, I will be</p> <p>17 coming to L181 and HHH11. What I am trying to get from you</p> <p>18 is your understanding – leave aside where the groups of</p> <p>19 people – I'm talking about Nyalas, barbed wire Nyalas and</p> <p>20 an orange line. Leave aside where groups of people would</p> <p>21 have been. The question I'm asking you is, is that yellow,</p> <p>22 or rather that orange or pink line not depicting where the</p> <p>23 barbed wire would have been?</p> <p>24 MAJOR-GENERAL MPEMBE: Correct,</p> <p>25 Chairperson.</p>	<p style="text-align: right;">Page 11640</p> <p>1 that because of the curves that I earlier referred to, that</p> <p>2 indeed protesters would not have had much room to go in to</p> <p>3 Nkaneng; they would have been forced, that is those who</p> <p>4 chose to disperse, they would have been forced to go</p> <p>5 westwards, as you suggested when you were asked in chief?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>7 say that they will have a chance of going to Nkaneng, but</p> <p>8 not direct with the police line. They could have gone to</p> <p>9 Nkaneng even though they have gone to the westerly. Just</p> <p>10 it will take them about kilometres, they can go to Nkaneng.</p> <p>11 MR MADLANGA SC: General, I was not</p> <p>12 suggesting that forever from the 16th up to today they would</p> <p>13 never have been able to go to Nkaneng. All that I'm</p> <p>14 saying, and this I base on what you said in chief, being</p> <p>15 asked by your counsel, that the police plan was for the</p> <p>16 people to disperse westwards. Do you remember that you</p> <p>17 actually said that is what the plan was?</p> <p>18 MAJOR-GENERAL MPEMBE: Correct,</p> <p>19 Chairperson.</p> <p>20 MR MADLANGA SC: And now my last question</p> <p>21 was, that makes sense because of how the barbed wire curves</p> <p>22 inwards towards the koppie. It doesn't leave the</p> <p>23 protesters much room to go that way. It sort of forces</p> <p>24 them to go westwards. That actually ties in with what you</p> <p>25 yourself are saying. Is that correct?</p>
<p style="text-align: right;">Page 11639</p> <p>1 MR MADLANGA SC: Now have a look at slide</p> <p>2 149. You agree that it too roughly indicates the same</p> <p>3 position as 148?</p> <p>4 MAJOR-GENERAL MPEMBE: Correct,</p> <p>5 Chairperson.</p> <p>6 MR MADLANGA SC: And perhaps for</p> <p>7 completeness, because this is something that I will deal</p> <p>8 with when I go to the two exhibits you referred to, HHH11</p> <p>9 and slide 181. Is it so that because the Nyalas would have</p> <p>10 been moving, the first one against the power station would</p> <p>11 move to the second one, laying the barbed wire behind it,</p> <p>12 and the second one to the third one and so on and so on?</p> <p>13 Is it so that that last one there would have moved right up</p> <p>14 to where the orange or pink line ends?</p> <p>15 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>16 CHAIRPERSON: In other words the barbed</p> <p>17 would have ended in what one can call the bottom left-hand</p> <p>18 corner of the square B2?</p> <p>19 MR MADLANGA SC: There's the B that the</p> <p>20 Chairman is referring to and there's the 2, there's the</p> <p>21 second square where it ends. Do you see that?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct,</p> <p>23 Chairperson.</p> <p>24 MR MADLANGA SC: And perhaps for a better</p> <p>25 perspective, can we go back to slide 148, and do you see</p>	<p style="text-align: right;">Page 11641</p> <p>1 MAJOR-GENERAL MPEMBE: I said they could</p> <p>2 go, but not direct with the barbed wire. They could walk</p> <p>3 certain, let's say kilometres or metres, they could get to</p> <p>4 Nkaneng. I do say that they were supposed to be dispersed</p> <p>5 in a westerly direction.</p> <p>6 MR MADLANGA SC: I'll just proceed from</p> <p>7 the answer you have given a few times, including when my</p> <p>8 learned friend was leading you in chief, which is that the</p> <p>9 plan was for them to disperse westwards, and with that in</p> <p>10 mind I will take you to slide 193, but first ask you this</p> <p>11 question; is it not so, though, that ultimately, ultimately</p> <p>12 the barbed wire was not laid in this manner? That is in</p> <p>13 accordance with slides 148 and 149. Is that not correct?</p> <p>14 MAJOR-GENERAL MPEMBE: Correct,</p> <p>15 Chairperson, I was so informed.</p> <p>16 MR MADLANGA SC: Now have a look at</p> <p>17 exhibit 193. I'm sorry, I'm sorry. Slide 193 of exhibit</p> <p>18 L. It seems to me, General, that here the barbed wire is</p> <p>19 in the process of being laid. Do you agree?</p> <p>20 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>21 just want maybe to say these slides, they were not part of</p> <p>22 the, my preparations. Maybe I need to be given chance to</p> <p>23 look at it.</p> <p>24 MR MADLANGA SC: General, may I ask for</p> <p>25 pardon to the Commissioners, to the General, and to my</p>

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1 learned friends. The thing is as the witness testifies
 2 what happens it's sort of a moving target and one has to
 3 find ways to counter what the witness is saying. So it
 4 sometimes is not possible for one to forewarn the witness
 5 of all the documentary material that's going to be used.
 6 [10:24] CHAIRPERSON: His main thing of course is
 7 that he saw the plan as it was in the earlier form. I
 8 think it's 149. There was a change in the course of the
 9 day, I take it either when he was in the JOC or in the
 10 helicopter; he wasn't aware of the change. That's
 11 essentially what he's saying, which is obviously correct.
 12 MR MADLANGA SC: Yes, but I'll try to
 13 take him step by step, Mr Chairman, on the slide as is.
 14 CHAIRPERSON: He very correctly said that
 15 that's what he was informed subsequently was the case. So
 16 he's not quarrelling with you; he's just saying that he
 17 doesn't know it from his own knowledge, he only heard it
 18 later. So I think you can proceed on the basis of what
 19 he's accepted to be correct.
 20 MR NGALWANA: And also, Chair, in
 21 fairness to the witness, he was given a list of slides to
 22 which he'll be referred during cross-examination, and this
 23 wasn't one of them. So it makes sense that he'd want to –
 24 CHAIRPERSON: No, I know, but I didn't
 25 understand him really to be objecting. He's simply saying

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1 quite correctly that he hadn't seen that on the slide but
 2 he was told that afterwards and accepted it as correct. So
 3 we don't have to spend anymore time on it.
 4 MR MADLANGA SC: I take my learned
 5 friend's point, and as I said initially, I apologise.
 6 General, you remember that the first Nyala, slides 148,
 7 149, and if I'm not mistaken, even exhibit HHH11 and slide
 8 181, indicate the first Nyala in that position. You accept
 9 that?
 10 MAJOR-GENERAL MPEMBE: I only see five
 11 Nyalas. I don't see the sixth Nyala, because I think this
 12 was the time when deployment was there, which is outside my
 13 knowledge, but I was talking to how I envisaged the plan.
 14 MR MADLANGA SC: Let me first show you
 15 the six Nyalas, General. There's the first one, two,
 16 three, four, five, and six. Do you now see them?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR MADLANGA SC: And do you see that the
 20 writing at the bottom here says "Police deploying barbed
 21 wire," so it is being laid?
 22 MAJOR-GENERAL MPEMBE: I see the writing,
 23 correct, Chairperson.
 24 MR MADLANGA SC: Not only the writing.
 25 That first Nyala now is right behind the second Nyala. Do

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1 you see that as well? So it has actually moved from its
 2 starting point.
 3 MAJOR-GENERAL MPEMBE: I can see,
 4 Chairperson.
 5 MR MADLANGA SC: In fact one could even
 6 say that the broken yellow line there indicates where the
 7 barbed wire is. Correct? Broken yellow line behind the
 8 first Nyala.
 9 MAJOR-GENERAL MPEMBE: I can see that
 10 yellow line, but in the writing it's not indicated as the
 11 barbed wire, so I might not confirm it because remember, I
 12 was not there, but if it's indicated as the barbed wire,
 13 yes I understand.
 14 MR MADLANGA SC: I can live with that,
 15 General. Now if Nyala 6 is now here, would you accept that
 16 obviously in laying its barbed wire it would go this way?
 17 Just for the record, this being – what is it? – an
 18 easterly direction or south-easterly? South-easterly
 19 direction. Do you accept that? Or to avoid – sorry,
 20 General. General, to avoid this south-easterly, north-
 21 easterly and so on, do you accept that it would have
 22 proceeded in the direction of the white arrow, but perhaps
 23 gone beyond that white arrow in laying its barbed wire? Do
 24 you accept that?
 25 MR NGALWANA: Chair, I'm not sure if this

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1 is a permissible line of questioning inasmuch as it asks
 2 the General to speculate about what would have happened.
 3 He's already testified he wasn't there, he can't answer
 4 that type of question. Chairperson, should I repeat the
 5 objection?
 6 CHAIRPERSON: I think you should.
 7 MR NGALWANA: My learned friend Mr
 8 Madlanga was asking the witness about whether the sixth
 9 Nyala next to the kraal, wasn't it obvious that it would
 10 deploy its barbed wire south-eastwards, and the objection
 11 is that calls for speculation, and the witness has already
 12 said he wasn't there, so he can't speculate about which
 13 direction the barbed wire would have been deployed by that
 14 sixth Nyala.
 15 MR MADLANGA SC: Mr Chairman,
 16 Commissioners, I am talking at the level of what the police
 17 expected according to their plans. I'm not at this stage
 18 talking about what the General knows to have actually
 19 happened on the ground on the day. Now these are –
 20 CHAIRPERSON: Sorry, you're talking then
 21 about the original plan before – it was obviously changed
 22 in the course of the afternoon as the situation developed.
 23 Are you talking about the original plan?
 24 MR MADLANGA SC: No, no, no, no, no, even
 25 the change itself, some planning went into that. It didn't

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1 just happen. Some planning went into that, Mr Chairman.
 2 So level of planning at the stage when there was this
 3 change, and I'm actually going to come to when that
 4 actually took place with the witness, and –
 5 CHAIRPERSON: Shouldn't you perhaps
 6 ascertain whether he was a party to that change of plan,
 7 whether it was discussed with him and he was aware of it,
 8 before you proceed? Because if it is something that he
 9 knows nothing about because he was either in the helicopter
 10 or in the JOC and he wasn't in touch with what was
 11 happening, then I'm not sure that he can answer your
 12 question without speculating, and we've heard what Mr
 13 Ngalwana says about that.
 14 COMMISSIONER HEMRAJ: Mr Madlanga, I seem
 15 to remember that there was some evidence about the reason
 16 for moving that sixth – yes, okay.
 17 MR MADLANGA SC: Thank you. May I just
 18 make one last point on this, with your permission, Mr
 19 Chairman?
 20 CHAIRPERSON: Yes.
 21 MR MADLANGA SC: I actually find the
 22 objection quite astounding because if one has a look at
 23 exhibit HHH11, which is an exhibit that my learned friend
 24 used in leading the General in chief, it actually portrays
 25 what I am now questioning the General on, and I would be

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1 surprised to learn that the General didn't know what he was
 2 testifying about when he testified on exhibit HHH11. I say
 3 that it actually depicts the same thing as what I'm asking
 4 the General about, because if one takes a look at the first
 5 five Nyalas, they are roughly in a straight line and then
 6 the sixth one, instead of curving inwards towards the
 7 koppie, as was the case in slides 148 and 149, it's
 8 actually turning in an obtuse angle towards the kraal.
 9 This witness was led on that. This witness never said "I
 10 know nothing about this." So I'm quite astounded and I
 11 would submit that the objection actually needs to be
 12 overruled.
 13 CHAIRPERSON: Mr Ngalwana, what do you
 14 say about Mr Madlanga's reply to your objection?
 15 MR NGALWANA: Chairperson –
 16 CHAIRPERSON: If it is correct that
 17 exhibit HHH11 reflects the plan as it, the revised plan as
 18 it was at the time when the commanders were briefed and
 19 updated, and if it is correct that you used this document
 20 in examination-in-chief, then Mr Madlanga says there can't
 21 be any objection to his cross-examining on it. Now what do
 22 you say about that?
 23 MR NGALWANA: Chairperson, the commanders
 24 may very well have been briefed on the movement here, but
 25 that's not to suggest that the Major-General as overall

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1 commander was party to that briefing. He can only testify
 2 to what he was party to, to what was within his knowledge.
 3 CHAIRPERSON: Well, perhaps Mr Madlanga
 4 can solve the problem by asking him directly that question,
 5 and then we then proceed from there.
 6 MR MADLANGA SC: General, do you have a
 7 copy of exhibit HHH11 with you there?
 8 MAJOR-GENERAL MPEMBE: Is it the same
 9 one?
 10 MR MADLANGA SC: Yes, it is, General. Do
 11 you see Nyalas 1, 2, 3, 4, 5?
 12 MAJOR-GENERAL MPEMBE: I just want to see
 13 where is 6.
 14 MR MADLANGA SC: No, no, no, no, no,
 15 General, I'm asking you about do you see this 1, 2, 3, 4,
 16 5?
 17 MAJOR-GENERAL MPEMBE: Correct, I can see
 18 them.
 19 MR MADLANGA SC: And do you accept that
 20 those five little figures that look like motor vehicles
 21 represent the barbed wire Nyalas?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MR MADLANGA SC: And do you accept that
 25 according to slides 148 and 149 Nyala 6 would have been

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1 somewhere in the direction of those 1, 2, 3, 4, four blue
 2 little cars, so as to complete what I earlier referred to
 3 as a curve? Do you agree with that?
 4 MAJOR-GENERAL MPEMBE: I agree.
 5 MR MADLANGA SC: Do you now see that the
 6 sixth Nyala, instead of being in the direction of those
 7 four blue cars, it is now in, it's actually in the opposite
 8 direction at an obtuse angle in relation to the other five
 9 Nyalas to the right? Do you see that?
 10 MAJOR-GENERAL MPEMBE: I can see that.
 11 MR MADLANGA SC: And do you see that
 12 slightly beyond it –
 13 MAJOR-GENERAL MPEMBE: Yes, I can see
 14 that.
 15 MR MADLANGA SC: In the hardcopy that I
 16 have, General, I can't quite see there but in the hardcopy
 17 that I have in front of me, beyond that sixth Nyala one can
 18 see the pink or orange line. That is beyond it, past it
 19 like that.
 20 MAJOR-GENERAL MPEMBE: I can see that.
 21 MR MADLANGA SC: You can see that, and
 22 seeing that you earlier accepted that that line represents
 23 where, or the place where the barbed wire would be, so do
 24 you accept that that's an indication, the fact that beyond
 25 that sixth Nyala one does see the orange or pink line,

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1 that's an indication that it would have gone further than
 2 where that sixth Nyala is?
 3 MAJOR-GENERAL MPEMBE: Advocate, the
 4 change that I spoke about is the movement of that sixth
 5 Nyala to go to another position, which I was not a party to
 6 that. That's the one that I was informed, and it happened
 7 at implementation stage, but the plan that I did give in my
 8 evidence-in-chief, it should have been there as you
 9 indicated in other slides, but the changes are the ones
 10 that were informed by me, correctly so, and when the plan
 11 is implemented I accept that the operational commanders on
 12 the ground can make the changes.
 13 MR MADLANGA SC: There's a bit of detail
 14 that wasn't quite relevant at this stage to my line of
 15 cross-examination, but for the record I should correct you,
 16 General; don't you accept that, because you say, you said
 17 implementation stage Nyala 6 moved in the manner that I
 18 suggested. I want to suggest to you that at
 19 implementation, that is not what happened. It was in fact
 20 Nyala 4 that moved all the way up to there. You would
 21 accept that, wouldn't you?
 22 MAJOR-GENERAL MPEMBE: Advocate, what I'm
 23 saying, the dark vehicle behind, in between those blue, it
 24 represents a Nyala, whether it's Nyala 4 or what, but there
 25 were changes that a certain Nyala had to move to another

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1 place, and that is what I was informed about.
 2 MR MADLANGA SC: So as not to waste time,
 3 General, according to what you were informed, were you not
 4 informed that once this Nyala was moved, number 6, from
 5 that direction to the direction where it is now, which we
 6 have debated and you've agreed, but according to what you
 7 were informed, was it not supposed to lay its barbed wire
 8 in the direction where you see the little orange or pink
 9 line, beyond it, that is beyond the sixth Nyala? Isn't
 10 that what you were informed?
 11 MAJOR-GENERAL MPEMBE: Advocate, that I
 12 was informed in terms of implementation, but remember the
 13 earlier slides that you showed me and which the Chairperson
 14 said that it will be B1, that could have now changed the
 15 envisaged plan, B2 position.
 16 MR MADLANGA SC: General, can you go to
 17 slide 160, please?
 18 [10:44] MAJOR-GENERAL MPEMBE: I got it,
 19 Advocate.
 20 MR MADLANGA SC: Yes, do you see that
 21 according to that slide, Nyala 6 was moved from where it
 22 was originally planned to be to the position that I
 23 indicated to you in slide 193? And the writing says,
 24 "Protesters are formed up near Nyala 6, which was moved
 25 back to avoid it being isolated," and the yellow arrow

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1 moving from the rectangle indicates where it was moved to.
 2 Do you see that?
 3 MAJOR-GENERAL MPEMBE: I can see,
 4 Advocate, that is now Nyala 6, not Nyala 4.
 5 MR MADLANGA SC: General, I've also been
 6 debating Nyala 6 with you, and I also mentioned Nyala 4
 7 when you were talking about implementation and I was
 8 correcting you and saying at implementation stage it is
 9 Nyala 4 that moved all the way right up to the kraal. That
 10 was my only mention of Nyala 4. Do you –
 11 MAJOR-GENERAL MPEMBE: Advocate, I agree
 12 –
 13 MR MADLANGA SC: May I ask you a
 14 question? Do you accept, General, that Nyala 6 was moved
 15 from where it was forming a curve, it was moved in a
 16 roughly easterly direction to be, to come closer to the
 17 kraal? Do you accept that?
 18 MAJOR-GENERAL MPEMBE: Correct, Advocate,
 19 I accept.
 20 MR MADLANGA SC: And do you accept that
 21 this is a decision that was taken at around 11 o'clock? In
 22 fact here it's indicated on slide 160, 10:56. Would you
 23 accept that as well?
 24 MAJOR-GENERAL MPEMBE: Correct, Advocate,
 25 so I was informed.

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1 MR MADLANGA SC: So from 11 in the
 2 morning up to the time the barbed wire was laid in the
 3 afternoon, the original plan of dispersing the people
 4 westwards in accordance with that curve was no longer the
 5 one and only plan.
 6 MAJOR-GENERAL MPEMBE: Yes, Advocate, as
 7 it was implemented.
 8 MR NGALWANA: Chair, perhaps our learned
 9 friend can tell us what other plan he is referring to?
 10 MR MADLANGA SC: I'll rephrase that. So
 11 General, do you accept that what you indicated as the plan,
 12 which was the positioning of the barbed wire Nyalas in a
 13 curving manner, was no longer the plan? Do you accept
 14 that?
 15 MAJOR-GENERAL MPEMBE: Chairperson, what
 16 I'm saying is that the plan, the Nyalas should have been
 17 there, but once the plan gets implemented, changes are made
 18 and some of the changes when are made, are made with regard
 19 to the situations on the ground, and that it's operational
 20 discretion, which I'm not against doing.
 21 MR MADLANGA SC: General, I'm not sure I
 22 understand that. It's a simple question; do you accept that
 23 from 11 o'clock in the morning when Nyala 6 was moved, the
 24 plan of the police was no longer the plan where the barbed
 25 wire Nyalas were to be positioned in the curving manner

<p style="text-align: right;">Page 11654</p> <p>1 which I earlier referred you to? Do you accept that? From 2 11 o'clock up to 15:42 when the barbed wire was in fact 3 laid, do you accept that that was no longer the plan? 4 MAJOR-GENERAL MPEMBE: The plan was 5 changed, correct. 6 MR MADLANGA SC: And it is as a result of 7 that change that it was now possible for protesters to 8 disperse towards and into Nkaneng. Is that not correct? 9 MAJOR-GENERAL MPEMBE: No, Chairperson. 10 MR MADLANGA SC: Are you saying "no" 11 because you are saying the protesters could not have been 12 able to disperse into Nkaneng if they wanted to? 13 MAJOR-GENERAL MPEMBE: The planned 14 dispersal process could have been in the westerly direction 15 and they could still have gone to Nkaneng, as I've 16 indicated earlier on, but not as a result of a Nyala being 17 removed. 18 MR MADLANGA SC: According to what you 19 said, they would only have been able to go to Nkaneng after 20 first proceeding in a westerly direction and then walking 21 kilometres and then going around and getting into Nkaneng. 22 That's what you said, not so? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR MADLANGA SC: Now are you suggesting</p>	<p style="text-align: right;">Page 11656</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, 2 correct. Individually could go there, unarmed. 3 MR MADLANGA SC: What would have happened 4 to their weapons? 5 MAJOR-GENERAL MPEMBE: The plan envisaged 6 that if the individual drops their weapon he could go to 7 Nkaneng, he could have still gone to Nkaneng, but the most 8 planned one was that those that still have got weapon and 9 they are in groups, they had to be dispersed to such an 10 extent that they move in the individual and they are being 11 asked to drop weapons, searched properly, then they could 12 go to Nkaneng. 13 MR MADLANGA SC: Can I have exhibit HHH11 14 up there, please? Now General, according to the plan as 15 revised, there's Nyala 6, and according to what you 16 accepted as being what you were informed, it would have 17 moved with its barbed wire beyond where it is now. Now is 18 it not so that the police, all the police would have been 19 behind that Nyala line? Is that not so? 20 MAJOR-GENERAL MPEMBE: Chairperson, it's 21 correct. I also indicated that the blue lines, they are 22 showing a dispersal process. 23 MR MADLANGA SC: But is it not so that 24 the dispersal process would follow after the barbed wire 25 would have been laid?</p>
<p style="text-align: right;">Page 11655</p> <p>1 that that is the only way they would have dispersed even 2 after Nyala 6 had been moved? They would only have been 3 able to disperse westwards, and then only come to Nkaneng 4 after going some distance, going round and round and then 5 coming to Nkaneng? Is that what you are suggesting? 6 MAJOR-GENERAL MPEMBE: Chairperson, it's 7 correct. That's how I'm suggesting it in line with the 8 operational overview of stage 3, the page that I quoted, 9 paginated page 133. 10 MR MADLANGA SC: Is that because there 11 would have been a physical impediment stopping them from 12 going from the koppie straight into Nkaneng? 13 MAJOR-GENERAL MPEMBE: Chairperson, there 14 was no physical impediment, but what I was talking about, 15 the plan was they were supposed to have been dispersed in a 16 very wide, open place; those that were carrying dangerous 17 weapons could have been properly searched, isolated, 18 disarmed, and arrested, and those that could have gone to 19 Nkaneng, they could still have gone to Nkaneng, but there 20 was no physical impediment that was placed. 21 MR MADLANGA SC: General, so those who 22 chose to could have moved right from the koppie straight 23 into Nkaneng. Can you please try to answer that directly? 24 Once Nyala 6 had been moved, those who chose to could have 25 moved straight or directly into Nkaneng. Is that not so?</p>	<p style="text-align: right;">Page 11657</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 MR MADLANGA SC: And prior to that 4 dispersal, is it not so that all the police, even including 5 the lines that you are referring to, as the barbed wire is 6 being laid, all of the police would be behind the barbed 7 wire line, not so? 8 CHAIRPERSON: I'm sorry, Mr Madlanga, I'm 9 not sure what you mean by "behind." Do you mean behind on 10 the koppie side of the barbed wire, or on the Nkaneng side 11 of the barbed wire? 12 MR MADLANGA SC: Nkaneng side of the 13 barbed wire, Mr Chairman. 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. 16 MR MADLANGA SC: And the people would be 17 warned, a warning would be made; those who want to leave, 18 or those who want to disperse must disperse to give those 19 who wanted to do so voluntarily a chance to do so, not so? 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson. 22 MR MADLANGA SC: Now have a look at slide 23 194. 24 MAJOR-GENERAL MPEMBE: I do have it, 25 Advocate.</p>

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1 MR MADLANGA SC: I take it that you did
 2 study exhibit L at some point, did you not?
 3 MAJOR-GENERAL MPEMBE: But not – I did
 4 study it, but not analysing for cross-examination.
 5 CHAIRPERSON: That's how Mr Madlanga
 6 studied it.
 7 MR MADLANGA SC: General, what is
 8 depicted in this slide is what the police have referred to
 9 as the breaches of the police line. Are you aware of that?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, so as I was informed.
 12 MR MADLANGA SC: And you must have been
 13 informed as well that this is something that happened as
 14 the barbed wire was being laid, not so?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR MADLANGA SC: Do you see that from
 18 where there's a concentration of people where the orange,
 19 the horseshoe-like orange arrow is – let me point at it;
 20 there it is. Do you see that here there's a large
 21 concentration of people?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MR MADLANGA SC: Do you accept that down
 25 here, that is next to the bigger kraal, down here is where

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1 Nkaneng begins? I would say – I hope I'm correct, Mr
 2 Chairman – roughly northeast of the big koppie. Do you
 3 accept that that's Nkaneng?
 4 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 5 I can accept that is Nkaneng.
 6 MR MADLANGA SC: And to the north of this
 7 big kraal do you see that there are many people that you
 8 can see there? You accept that? In fact, right from the
 9 concentration that I referred to earlier, all the way down
 10 to the north of this big kraal. Do you see that?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MR MADLANGA SC: It must stand to reason,
 14 General, that nothing at all would stop these people from
 15 entering Nkaneng.
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR MADLANGA SC: And in fact in the
 19 context of what is happening here, the inference that one
 20 can draw is that they must actually be moving into Nkaneng,
 21 those that are close to this point here just to the north
 22 of this kraal. They must actually be getting into Nkaneng.
 23 Would you dispute such an inference?
 24 MR NGALWANA: Chair, clearly we can
 25 expect the witness to draw inferences. In any event I

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1 wonder, Chair, perhaps let me wait for the Chair before I
 2 raise another point, or should I raise both first?
 3 Chairperson, I don't think it's permissible, it's my
 4 submission that it's not permissible to ask a witness to
 5 draw inferences, but the second point is it appears this
 6 witness is being asked to comment on what he actually sees
 7 on the slides. Now he's already testified that he knows
 8 nothing about the actual implementation. I'm wondering if
 9 the appropriate person to ask this line of questioning is
 10 not the operational commander and the persons who were in
 11 charge of deploying the barbed wire, instead of asking the
 12 overall commander who wasn't there and didn't participate
 13 in the decision as regards how this thing is implemented?
 14 [11:03] MR MADLANGA SC: Mr Chairman, perhaps we
 15 need to go back to where we started, or what it is that
 16 brought us to where we are now. I was asking the witness
 17 why it is that on the 16th of August 2012 the police saw it
 18 fit to protect the informal settlement abutting forward
 19 holding area 2, but did not on that same day see a need to
 20 protect Nkaneng, and the reference obviously being once the
 21 plan had been changed at 11 o'clock - implementation was
 22 only at 15:42 in the afternoon – at 11 o'clock there is the
 23 change, so the plan is no longer to disperse westwards.
 24 The plan now is such that people can move in exactly the
 25 manner I've just indicated to the witness, which the

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1 witness does accept.
 2 Now he did not suggest on Thursday that he had no
 3 idea how the police planned on dealing with the people. He
 4 did not suggest that. In fact, quite the opposite. He
 5 said that the police were to have approached the people,
 6 and if they were in groups of more than 10 they would have
 7 separated them, disarmed them, but if they were in groups
 8 of less than 10 they would have let them pass through. So
 9 he professes to know what was to have been done with regard
 10 to a possible entry into Nkaneng. That's his own evidence.
 11 Now all that I am doing is to test that how
 12 exactly in practical terms would that have panned out or
 13 unfolded; how would it have happened. There is a barbed
 14 wire line and as the barbed wire is being laid, all the
 15 police are there and the people are already moving. How do
 16 the police get there to stop people who happen to be in
 17 groups of more than 10? That is what I'm dealing with and
 18 it arises exactly from what the witness himself said and in
 19 which he did not profess not to have knowledge of how the
 20 police would deal with the people. This has nothing to do
 21 with what was happening at the time of implementation, does
 22 he know that, does he not know that. It's about planning,
 23 and he professed to know that part of the planning.
 24 Lastly may I refer the Commissioners to day 106
 25 of the transcript, page 11 463, from line 19, Mr Ngalwana

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1 says, "Now we will move to a slide that shows how that
 2 formation was going to be implemented in a dispersal
 3 action," and that takes us to slide 181 and we know that
 4 slide 181 is the one that actually has Nyala 6 having been
 5 moved from its initial position.

6 MR NGALWANA: Chair, in brief, the
 7 objection is to asking the witness to draw inferences. The
 8 second issue is our reference in evidence-in-chief to slide
 9 181 had nothing to do with the actual implementation of the
 10 plan; it had to do with the plan itself. The witness has
 11 already testified that he was informed afterwards about the
 12 change in the plan. He wasn't party to the change. So Mr
 13 Madlanga's line of cross-examination seems to be relating
 14 to the actual implementation of the plan, and that is what
 15 I'm objecting to.

16 MR MADLANGA SC: May I just have one last
 17 word before Mr Ngalwana speaks, Mr Chairman? Mr Chairman,
 18 I can rephrase –

19 CHAIRPERSON: Mr Mpofo has also turned
 20 his light on, but you talk first – I know what Mr Mpofo is
 21 going to say, but you speak first, Mr Madlanga.

22 MR MADLANGA SC: Yes, thank you, Mr
 23 Chairman. Mr Chairman, I can rephrase the question about
 24 the inference; I have no problem at all with that –

25 CHAIRPERSON: I was going to uphold the

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1 objection as far as inference was concerned, but not on the
 2 other point.

3 MR MADLANGA SC: I will rephrase the
 4 question; I have –

5 MR MPOFU: I'm sorry, Chairperson –

6 MR MADLANGA SC: I will rephrase the
 7 question; I have no problem at all with that, but regarding
 8 the issue of implementation, that I do not follow at all
 9 because my learned friend says now that what he was leading
 10 the General on was the actual planning and not
 11 implementation. When you plan, you plan for
 12 implementation. Now what I'm asking the witness about is
 13 not so much what did the people then do. What I'm saying
 14 is let us look at this slide and then according to the
 15 planning, which according to what my learned friend led you
 16 on, you must have known how did the police expect to get to
 17 those people there. That is what the context is. I will
 18 just avoid the one about inference –

19 CHAIRPERSON: Well, as I say, I was going
 20 to uphold the objection as far as the inference was
 21 concerned and dismiss the other objection, but before I do
 22 that, Mr Mpofo wants to say something.

23 MR MPOFU: Yes, Chair. Yes, Chairperson,
 24 two points. Well, the first one is that the people who
 25 presented us with these slides, namely SAPS, are the ones

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1 who are drawing inferences. Those arrows have directions
 2 which show where the people are supposedly going, (1).
 3 (2), it's not an inference, the fact that the people were
 4 going to – or rather, the basis for what Mr Madlanga is
 5 saying is not only based on inference; there is evidence of
 6 two witnesses that was led here which said directly that
 7 the people were moving from the koppies to Nkaneng.

8 COMMISSIONER HEMRAJ: Mr Madlanga, the
 9 question must surely relate to the movement of, or how the
 10 police would prevent the strikers from entering the
 11 informal settlement in that direction, but not according to
 12 this slide because this slide was not part of their plan.
 13 This movement was surely determined by what they called the
 14 breaches?

15 CHAIRPERSON: Just following on from that
 16 point, this slide illustrates the so-called disruption of
 17 the plan. You are concerned with the plan as it was before
 18 it was disrupted and at a time when this witness knew about
 19 it. So I'm not sure that this particular slide can help us
 20 very much, but I've got a problem I'd like to put to the
 21 witness, which may help to some extent. If you look at
 22 slide 148 and 149, it appears that what I can call the
 23 original plan envisaged the – have you got it? Well,
 24 you've got to have it first before I ask the question.
 25 148, 149, it's the same point visible on both. What we see

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1 on the screen is 148. Now the first Nyala appears on this
 2 slide to have been intended to begin from what one can call
 3 a projection – you see where the power station is? The
 4 power station is the area immediately above immediate
 5 response area 1, and if you look at the top of the power
 6 station as we see it from this slide, there is what appears
 7 to be a projection at the right-hand end of the top of the
 8 power station. Do you see that? And the Nyala number 1
 9 and the orange line begins at that projection. Now if you
 10 look at – we know that at some stage, round about 11
 11 o'clock I think, the sixth Nyala's position was moved for
 12 the reasons that have been dealt with. Now if one looks at
 13 slide 181 and also of course at exhibit HHH11, which is
 14 effectively the same picture, one sees that there was a
 15 change at some stage. The first Nyala no longer begins
 16 from that projection that I talked about. As one looks at
 17 the slide it's to the left. It starts from a point more or
 18 less in the middle of what one can describe as the power
 19 station fence. So all the Nyalas appear to have moved to
 20 the left, which appears to be the west, I would think,
 21 moved some distance to the west. Now that obviously was a
 22 change in the plan. I'm not quite sure why it was, but I'd
 23 like, perhaps you can help us on that and that then, this
 24 plan of course also shows the yellow line now, orange line
 25 really, I suppose, moving towards the kraal, in other words

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1 the last Nyala now moves to the kraal, and as Mr Madlanga
 2 has already pointed out, the orange line no longer moves
 3 towards the left on the slide. Now what I want to know
 4 from you is that decision to move the orange line to the
 5 west, so it no longer starts from the projection from the
 6 top of the power station, but from the point more or less
 7 in the middle of the top fence. What was the reason for
 8 that? Do you know? That appears to have happened at a
 9 time when you were still in the JOC and involved in the
 10 planning. Am I correct in saying that?
 11 MAJOR-GENERAL MPEMBE: Chairperson, I
 12 might not be in a position to know because this slide also
 13 it was used also to brief the commanders at 14:30.
 14 CHAIRPERSON: My understand is what
 15 happened was that it was decided not to give instructions
 16 to the commanders over the radio because one of the
 17 strikers had a radio and might well have been
 18 eavesdropping. So what then was done was that Brigadier
 19 Pretorius, I think it was, and Lieutenant-Colonel Scott
 20 were sent from the JOC to give the instructions, and I take
 21 it the instructions they gave must have been in accordance
 22 with the plan that was made and as it had been changed and
 23 as it was up to date at the time they left the JOC, because
 24 you couldn't, once they'd left the JOC you couldn't tell
 25 them, or no-one could tell them about any change because

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1 that would have had to be over the radio and the strikers
 2 on the koppie would have heard it. So when Brigadier
 3 Pretorius and Lieutenant-Colonel Scott left the JOC to go
 4 to speak to the commanders, the plan that they ultimately
 5 conveyed to them must already have been ready and in the
 6 form in which they conveyed it, and it looks from what we
 7 can see as if part of that plan involved moving the line of
 8 the Nyalas and therefore the barbed wire actually,
 9 somewhere towards the west. Now all I want to know from
 10 you is do you know why that was? Was it perhaps occasioned
 11 by the fact that the position of the sixth Nyala had been
 12 changed already from 11 o'clock, or is that not correct?
 13 MAJOR-GENERAL MPEMBE: Chairperson, I
 14 might not be in a position to say what was the reason, but
 15 in my understanding when they left the JOC that's what I
 16 referred to the Chairperson and then to the Commission on
 17 exhibit SS3, that's paginated page 133. My understanding
 18 was we are going to disperse on the westerly direction and
 19 thereafter when they are in an open space we have to ask
 20 them to drop weapons, but not having in mind that we've
 21 completely closed that they must go to Nkaneng. That was
 22 my understanding.
 23 CHAIRPERSON: Mr Madlanga, I see you want
 24 to say something before we take the tea adjournment, or is
 25 it –

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1 MR MADLANGA SC: Yes, I just wanted to
 2 warn –
 3 CHAIRPERSON: I mean is it sufficiently
 4 important to stand over till after the tea adjournment?
 5 MR MADLANGA SC: I want to quickly,
 6 quickly respond to the point that Commissioner Hemraj made
 7 and which you seemed to support, Mr Chairman, and I was not
 8 suggesting in showing the witness slide 194, I was not
 9 suggesting that the people that we see there had moved from
 10 wherever they had been in accordance with or in response to
 11 whatever might have been said in terms of the original
 12 plan. That is not what I'm suggesting. All I am
 13 suggesting to the witness is look, according to what I
 14 understand you to be now saying, General, this is where the
 15 barbed wire would be and all the police would be on the
 16 Nkaneng side of that barbed wire, and the people would be
 17 able, once the barbed wire was there and the police were
 18 that side of it, the people would, there would be nothing
 19 stopping the people from moving. My reference to the
 20 people that happened to be on slide 194 was merely to
 21 illustrate that, and even as you can see, regardless of
 22 what might have prompted them to move, even as you can see,
 23 there are people actually moving and at least by indication
 24 it seems they are getting into Nkaneng. That is all I was
 25 saying, but not suggesting that they were moving in terms

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1 of the original plan. That is not what I'm suggesting.
 2 CHAIRPERSON: Alright, the original plan
 3 of course had not yet been implemented, except for the
 4 uncoiling of the barbed wire. That was all. But that
 5 seems to be an appropriate note for us to take the tea
 6 adjournment.
 7 MR MPOFU: Chairperson –
 8 CHAIRPERSON: Mr Mpofu.
 9 MR MPOFU: Yes, sorry, Chairperson, I
 10 just wanted to remind you of my request for an extra five
 11 minutes and also for the legal representatives to remain
 12 for five minutes so that I can –
 13 CHAIRPERSON: Right, we will – yes, we
 14 will take the tea adjournment and we will resume a little
 15 bit later than we would normally have done, at quarter to
 16 12, and the legal representatives are asked to stay behind
 17 because Mr Mpofu wishes to discuss a matter with them.
 18 MR MPOFU: Yes.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [11:57] CHAIRPERSON: The Commission resumes.
 21 I'm sorry we didn't start at the time I indicated but there
 22 were matters we had to attend to in chambers which took up
 23 the time. You're still under oath, Major-General.
 24 WILLIAM MPEMBE: s.u.o.
 25 CHAIRPERSON: Do you have any further

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1 questions, Mr Madlanga?
 2 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 3 Certainly, Mr Chairman. General, before I go back to where
 4 I was, may I just establish this. Bearing in mind that you
 5 were the overall commander or the CJOC, I would like you to
 6 tell the Commission when exactly you got to know of the 11
 7 o'clock decision to move Nyala 6 in particular. Yes, of
 8 course the Chairman referred to the movement of the other
 9 Nyalas as well, but the move and changing Nyala 6 in a
 10 totally different direction, when did you get to know of
 11 that decision which was taken at 11 o'clock?
 12 MAJOR-GENERAL MPEMBE: Chairperson, I
 13 might not be exactly with the time, but I was informed in
 14 the very late stages, just before Mr Mathunjwa on the last
 15 talking, because when I asked to say I see there is a
 16 movement of Nyala, they said no they have been changed.
 17 But later on I was informed about the reason of the
 18 changing and not quite sure in terms of, but knowing that
 19 the changes could be made, that's what only I understand.
 20 MR MADLANGA SC: From your reference to
 21 Mr Mathunjwa's second address that should mean that as at
 22 the special JOCOM meeting of 13:30 which you attended, you
 23 were not yet aware of the change?
 24 MAJOR-GENERAL MPEMBE: Chairperson, may
 25 he please repeat the question?

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1 MR MADLANGA SC: At 13:30 when the
 2 special JOCOM meeting was held, were you not aware of the
 3 change?
 4 MAJOR-GENERAL MPEMBE: At 13:30 the plan
 5 that I was talking about, it was – no, no, at 13:30, that's
 6 the plan that I spoke about in terms of how they have to be
 7 dispersed and so on.
 8 MR MADLANGA SC: That you spoke about in
 9 your evidence-in-chief on Tuesday?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 MR MADLANGA SC: And which is in
 13 accordance with exhibit HHH11?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson, with the necessary changes.
 16 MR MADLANGA SC: So your short answer
 17 then should be that as at 13:30 you were already aware that
 18 Nyala 6 had been moved, because that is what exhibit HHH11
 19 shows. Do you accept that?
 20 MAJOR-GENERAL MPEMBE: Chairperson, if -
 21 I don't have it here, but it seems as if HHH that we are
 22 talking about it has got the time there on top and that's
 23 the time when that HHH was done in terms of the briefing
 24 the commanders, but not necessarily that is the one that
 25 was exactly - that's why I'm saying at 13:30 it happened

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1 with necessary changes.
 2 MR MADLANGA SC: General, let us not
 3 confuse the issues. What happens at 14:30, as reflected in
 4 exhibit HHH11, is the briefing of commanders, that's 14:30,
 5 briefing of commanders. What I'm asking you about is your
 6 own knowledge, in particular you being the overall
 7 commander, as at the special JOCOM meeting of 13:30, I
 8 understand you to be saying that you were aware that Nyala
 9 6, the position of Nyala 6 had been changed, and as the
 10 Chairman indicated the other Nyalas as well had been moved
 11 slightly westwards.
 12 MAJOR-GENERAL MPEMBE: Chairperson, it's
 13 correct. The, my understanding at 13:30 that Nyala which
 14 should have been there, it was there. Then the changes
 15 happened after 13:30. And I just also want to explain the
 16 blue lights, the blue lines -
 17 MR MADLANGA SC: General, just to avoid
 18 the confusion, can you indicate where you say Nyala 6 still
 19 was at 13:30?
 20 MAJOR-GENERAL MPEMBE: Chairperson, with
 21 all the other slides my understanding is that that Nyala,
 22 this Nyala should still have been there. I was informed
 23 later that it was removed there to go there. That's the
 24 one that I'm talking about, which of course at the 13:30
 25 briefing it was still presented that it's supposed to be

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1 there. That, those are the changes that I'm talking about
 2 and I was informed about them later.
 3 MR MADLANGA SC: Are you saying at 13:30
 4 according to how you understood the plan as at that stage,
 5 Nyala 6 was still to be in that curving position, curving
 6 in a north-westerly direction? Is that what you are
 7 saying?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson, as it was also indicated by the Advocate in
 10 other slides.
 11 MR MADLANGA SC: General, how can that be
 12 if according to slide 160 that Nyala had been moved as far
 13 back as 10:56? How can it be? Take a look at slide 160.
 14 I did take you to it before. Do you see that at 11 o'clock
 15 according to that slide that Nyala was moved?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR MADLANGA SC: How then can it be that
 19 at 13:30 the police could have been continuing to plan on
 20 the basis that that Nyala had not been moved, General, when
 21 it was moved at 11, around 11?
 22 MAJOR-GENERAL MPEMBE: Chairperson, I did
 23 indicate earlier on that at the JOC always Major-General
 24 Annandale was there and he was also acting, in my absence
 25 in the JOC he was also giving instructions.

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1 MR MADLANGA SC: I'm not asking about who
 2 was in charge of JOCOM meetings; I am testing the veracity
 3 of what you say about what took place at the special JOCOM
 4 meeting of 13:30. Are you telling this Commission that at
 5 13:30, despite the fact that Nyala 6 had been moved from
 6 its original position, at 13:30 the police were still
 7 planning on the basis that it was still at its original
 8 position? Is that what you are telling this Commission?
 9 MAJOR-GENERAL MPEMBE: Chairperson, what
 10 I'm saying is that at the 13:30 meeting I was not notified
 11 and it was not discussed in that 13:30 special meeting that
 12 the Nyala has been removed. But I don't deny the fact that
 13 it could have been removed with the full knowledge of the
 14 JOC and under the supervision of a senior officer.
 15 MR MADLANGA SC: General, you are
 16 avoiding the question. The question is about what was
 17 discussed at 13:30 about the position of Nyala 6. Did the
 18 police who at that JOCOM meeting at 13:30 addressed or were
 19 addressing themselves to the positioning of the Nyalas, did
 20 they address themselves to that subject on the basis that
 21 Nyala 6 was still at its original position? I'm asking
 22 about what happened in front of you at that meeting,
 23 General. Did they say that Nyala 6 is still at its
 24 original position?
 25 MAJOR-GENERAL MPEMBE: Chairperson, what

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1 I'm saying is the police, those that they had the knowledge
 2 by then, they could be operating with the knowledge that it
 3 was removed, but as an overall commander at that time it
 4 did not, it was not even said and discussed at the 13:30
 5 meeting. That's what I'm trying to tell the Commission.
 6 MR MADLANGA SC: Back to my earlier
 7 question then. When as overall commander, bearing in mind
 8 that the decision to move Nyala 6 had been taken at around
 9 11 o'clock, when as overall commander did you get to know
 10 that that Nyala had been moved?
 11 MR NGALWANA: Chairperson, that question
 12 has already been answered.
 13 MR MADLANGA SC: I'm not sure what the
 14 answer was because an answer was given and then something
 15 was said about slide HHH1 which I had referred to, only
 16 referring to commanders being briefed, and I got totally
 17 confused. I do not know what the answer is ultimately, Mr
 18 Chairman.
 19 CHAIRPERSON: - ask the question, and if
 20 the answer given is the same as the one before, well then
 21 that's a source of rejoicing on the one side; if it isn't,
 22 it's a source of rejoicing on the other.
 23 MR MADLANGA SC: Thank you, Mr Chair.
 24 MAJOR-GENERAL MPEMBE: Chairperson,
 25 earlier on I did indicate that I knew after the last

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1 address of Mr Mathunjwa when I asked about that and Major-
 2 General Annandale gave me then to why it was removed and
 3 that he knew about it.
 4 CHAIRPERSON: That doesn't coincide with
 5 my recollection.
 6 COMMISSIONER HEMRAJ: If you would just
 7 permit me - General, at that 13h30 meeting there was a
 8 slide show presentation of the plan by Lieutenant-Colonel
 9 Scott, wasn't there?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 COMMISSIONER HEMRAJ: And if you look at
 13 that exhibit EE, if you look at the second page of that
 14 minute, right at the top, the second line talks about the
 15 repositioning of the barbed wire. Do you say that did not
 16 include the repositioning of Nyala 6, that second page?
 17 MAJOR-GENERAL MPEMBE: Chairperson,
 18 repositioning is those six Nyalas that they will be
 19 positioned for the deployment, not that Nyala 6 will
 20 change.
 21 CHAIRPERSON: It says that repositioning,
 22 that's positioning again of the wire. Now obviously if
 23 Nyala 6 had changed then it would mean that the wire that
 24 was going to be uncoiled from Nyala 6 would have been
 25 repositioned, isn't that right? I think the fairest way of

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1 putting the question is how did you - do you remember that
 2 topic being dealt with in Lieutenant-Colonel Scott's
 3 presentation?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson, my understanding was the repositioning it will
 6 be saying that he will put the barbed wire to create a safe
 7 area for the police and the media.
 8 CHAIRPERSON: Sorry, I think what I said
 9 wasn't recorded. Is that repositioning or just
 10 positioning?
 11 MAJOR-GENERAL MPEMBE: Chairperson, as we
 12 discussed stage 2 of the 16th, we were talking about
 13 repositioning of the Nyalas, so I was also believing that
 14 we are talking about that time, that maybe we can look at
 15 stage 2 on the 16th.
 16 COMMISSIONER HEMRAJ: Except that exhibit
 17 EE at the bottom says it was the implementation of stage 3
 18 of the operation, not 2.
 19 [12:17] If you look at exhibit EE - I don't think you've
 20 got EE in front of you, General.
 21 MAJOR-GENERAL MPEMBE: I do have it,
 22 Chairperson.
 23 COMMISSIONER HEMRAJ: The slide show
 24 presentation I was referring to talks about the
 25 implementation of stage 3, not 2.

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR MADLANGA SC: General, let us go back
 4 to slide 194. If I understood you correctly, you did
 5 accept that if after the deployment of the barbed wire a
 6 warning had been given for protesters that wanted to
 7 disperse voluntarily, protesters would have been able to
 8 disperse and proceed in the direction of Nkaneng just below
 9 the big kraal that one sees on the picture. You did accept
 10 that, not so?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MR MADLANGA SC: Now let me go back to my
 14 original question that gave rise to this debate from
 15 Tuesday, and it was this; can you tell – I know it was not
 16 your decision that Nyala 6 be moved and to be in the
 17 position in which it was ultimately, but can you explain to
 18 the Commission why it is that the police planned such that
 19 they would have protected the informal settlement next to
 20 forward holding area 2, but between 11 in the morning and
 21 15:42 when stage 3 commenced, there was no similar
 22 protection for that part of Nkaneng to which the protesters
 23 would have been in a position to disperse to?
 24 MAJOR-GENERAL MPEMBE: Chairperson, I
 25 would like to refer the Commission to FFF18, Lieutenant-

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1 Colonel Scott's statement, page 15. Chairperson, according
 2 to FFF15, Colonel Scott's statement, on page 15, he said
 3 that "The reserve forces at forward holding area 2 –
 4 MR MADLANGA SC: Sorry, General, which
 5 paragraph? You say page 15, which paragraph?
 6 MAJOR-GENERAL MPEMBE: Advocate, the last
 7 bullet, he says, "The reserve forces at forward holding
 8 area 2 would proceed to the southwest of the dispersal area
 9 to protect the informal settlement in that location from
 10 possible attacks by dispersing protesters." That was the
 11 briefing that I did understand, but not necessarily the
 12 attack, what I have explained earlier on. Chairperson, I
 13 would also like to refer to SS3, paginated page 133.
 14 Chairperson, it says –
 15 CHAIRPERSON: Page 133 of your bundle of
 16 documents?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 CHAIRPERSON: Yes, it's actually page
 20 152, I think, of the exhibit itself.
 21 MAJOR-GENERAL MPEMBE: Chairperson, it is
 22 under operational overview of stage 3. To my bundle it
 23 says 133. Maybe to you it might say something else.
 24 CHAIRPERSON: It says 133 in your bundle.
 25 I'm just saying for those who haven't got the bundle it's

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1 page, it looks like page 152 of the exhibit SS3. But
 2 anyway, we're both on the same page literally and
 3 metaphorically.
 4 MAJOR-GENERAL MPEMBE: Chairperson, to
 5 make my answers more easier, it was said as under that
 6 operational – "If protesters have been dispersed into
 7 smaller groups they must be approached, isolated, and
 8 encircled, so all persons can be properly searched for
 9 dangerous weapons, and arrest to be effected."
 10 Chairperson, why we could not preposition at Nkaneng, it is
 11 the fact that in terms of a decision-making intervention
 12 principle of optimal utilisation of the available resources
 13 after dispersal, could still have done this work. To
 14 answer the Advocate is that when we put at forward holding
 15 area 2 we were saying when they were dispersing, so the
 16 resources that we had, we couldn't cover and run quicker
 17 there to check as to whether will the people also damage
 18 the properties. That was the reason. Chairperson, that's
 19 how I envisaged the plan to take place.
 20 MR MADLANGA SC: General, what you've
 21 read from SS3, does that not relate to those protesters who
 22 would not have left voluntarily?
 23 MAJOR-GENERAL MPEMBE: Chairperson, those
 24 who could have left voluntarily before the dispersal, it
 25 will be the discretionary powers of the operational

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1 commander to say if we disarm them, how could they have
 2 affected the group, because that could have been before
 3 dispersal.
 4 MR MADLANGA SC: General, the dispersion
 5 action, or dispersal action would not have taken place
 6 before the warning for those who wanted to leave,
 7 voluntarily to leave, not so?
 8 MAJOR-GENERAL MPEMBE: Not correct,
 9 Chairperson. The show of force they could have led that,
 10 and many other factors they could have left, could have led
 11 that people could leave voluntarily before the warning can
 12 take place.
 13 MR MADLANGA SC: General, you are quite
 14 correct. Some of the protesters might have chosen to leave
 15 even prior to the implementation of stage 3, but what I'm
 16 asking you about is the actual implementation of stage 3.
 17 Is it not so that upon the implementation of stage 3 there
 18 would have been a warning?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson, to those that they shall have been, still been
 21 there.
 22 MR MADLANGA SC: And the expectation in
 23 giving the warning would have been that some more
 24 protesters might also leave in response to that warning,
 25 leave voluntarily, not so?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR MADLANGA SC: The dispersal action
 4 would not commence prior to that warning and that possible
 5 dispersal, not so?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson, and also just to add to say maybe we need also
 8 to understand the definition of dispersal and the
 9 voluntariness of people leaving.
 10 MR MADLANGA SC: Perhaps before you
 11 explain, General, can I say the dispersal that I'm
 12 referring to is the dispersal you yourself referred to,
 13 which was the police then going in and breaking up those
 14 who shall have remained behind into smaller groups. That
 15 is the dispersal I'm referring to. So my question is, is
 16 it not so that that dispersal would only have taken place
 17 after the warning and the possible dispersal of those that
 18 wanted to disperse voluntarily? Is that not so?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson, first of all is the placement of a defensive
 21 mechanism, the barbed wire, followed by the warning. I was
 22 just agreeing but putting in that order.
 23 MR MADLANGA SC: And those that would
 24 leave voluntarily, possibly even to Nkaneng as you have
 25 accepted, might have left with their weapons, not so?

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1 MR NGALWANA: Sorry, Chair, is my learned
 2 friend asking about what actually happened, or what the
 3 plan intended?
 4 CHAIRPERSON: Perhaps he must answer your
 5 question himself. I can't.
 6 MR MADLANGA SC: General, based on the
 7 objective material that you are aware of, there are people
 8 who are on the koppie, they have weapons on them, and a
 9 possible dispersal direction, amongst others, is Nkaneng
 10 informal settlement. You have already admitted that there
 11 would have been no impediment to these people moving to
 12 Nkaneng or dispersing to Nkaneng. So my question is, would
 13 you accept that those people, bearing in mind that they
 14 were out there armed, those that chose to leave voluntarily
 15 might have left and dispersed into that portion of Nkaneng
 16 that we earlier referred to, with their weapons. That's
 17 the simple question I'm asking.
 18 CHAIRPERSON: You're not actually
 19 answering the objection. I take it that what you are
 20 saying relates to what was envisaged at the time the plan
 21 was drawn up. I mean what Mr Ngalwana wants to know was
 22 whether the question relates to what was part of the plan,
 23 or what actually happened. I take it, it's the former.
 24 MR MADLANGA SC: Yes, it is.
 25 CHAIRPERSON: His complaint was the

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1 question was unclear on that basis. Is that right, Mr
 2 Ngalwana?
 3 MR NGALWANA: Yes.
 4 CHAIRPERSON: So you haven't addressed
 5 that, but I think you have now. But anyway, perhaps you
 6 could reformulate it so that the point is clear beyond any
 7 doubt.
 8 MR MADLANGA SC: Thank you, Mr Chairman.
 9 General, looking at the plan as revised at 11 o'clock,
 10 which you accept would have presented no impediment to the
 11 protesters who wanted to leave voluntarily, doing so in the
 12 direction of Nkaneng and actually getting into Nkaneng, do
 13 you accept that it must have been within the contemplation
 14 of SAPS that those protesters leaving voluntarily might,
 15 and going into Nkaneng, might do so with their weapons?
 16 MAJOR-GENERAL MPEMBE: Chairperson, in
 17 answer to my question earlier on I did refer to FFF1, and I
 18 will refer to paginated page 150. Chairperson, in my
 19 answer earlier on I did say if the dispersal takes place
 20 before, if the people disperse and disperse with their
 21 dangerous weapons they can go to Nkaneng, the situational
 22 appropriateness, it's a principle of decision-making by a
 23 tactical commander on the ground. Chairperson, it's
 24 paginated page 150, paragraph 3.3.2. It does say, "The
 25 operational commander must consider the situation at that

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1 specific moment, and in that specific area in terms of the
 2 legal principles. It is the operational commander's
 3 responsibility to take into account the situational
 4 appropriateness." Then it also says, "To do this
 5 correctly, the operational commander needs to continuously
 6 and accurate information on the situation at all times."
 7 [12:37] Chairperson, in conclusion I will go to paragraph
 8 3.3.4. It says, "According to the principle of situational
 9 appropriateness, arresting people at the scene is not
 10 always viable as this could antagonise and aggravate the
 11 crowd even further. One can proceed to the necessity of
 12 making arrests at a later stage when the persons are
 13 isolated and away from the scene." Chairperson, in my
 14 answer to Advocate I will say that that could have been a
 15 decision taken by the operational commander at the time.
 16 MR MADLANGA SC: I'm not asking about a
 17 decision, General. What I'm asking you about is SAPS have
 18 changed the original plan in terms of which Nyala 6 was at
 19 the position that we debated and it has now been moved to
 20 another position, which we also debated, and in that
 21 scenario you accept that after the warning protesters would
 22 have been in a position to disperse – those who wanted to
 23 do so voluntarily, to disperse into Nkaneng. You've
 24 accepted that. Now my question is a simple one. Looking
 25 at those objective facts – perhaps let me leave out the

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1 contemplation of SAPS as a whole. Looking at those
 2 objective facts, as you are sitting there, General, do you
 3 see any impediment to the people who might have chosen to
 4 leave voluntarily after the warning? Would there have been
 5 any impediment to them leaving with the weapons that they
 6 were carrying, and getting into Nkaneng with them? That's
 7 the simple question I'm asking.

8 MAJOR-GENERAL MPEMBE: Chairperson, I did
 9 answer in the positive to say yes, and I also said that for
 10 arresting that person it could have been the discretion of
 11 the operational commander.

12 MR MADLANGA SC: Now accepting that the
 13 people would have been in a position to get into Nkaneng
 14 with their weapons, let me – I'm hearing a murmur behind
 15 me, or perhaps the "yes" was a bit confusing. The "yes"
 16 was confusing. So you accept that there was no impediment
 17 to the people getting into Nkaneng with their weapons upon
 18 deciding to leave voluntarily after the warning?

19 MAJOR-GENERAL MPEMBE: Chairperson, I did
 20 say yes, the plan considered that they should be asked to
 21 drop weapons and so on, but if for example they left, to
 22 arrest or to let them drop the weapons before they go to
 23 Nkaneng could have been a discretion of the commander.

24 MR MADLANGA SC: And in practical terms
 25 how would this happen? The police are that side of the, to

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1 the east, or rather Nkaneng side of the barbed wire and the
 2 people are free to move, as you said they are free to do
 3 so. How does the operational commander stop them from
 4 getting into Nkaneng with their weapons?

5 MAJOR-GENERAL MPEMBE: Chairperson, I
 6 would like to say maybe we go back to the dispersal process
 7 and how they could have formed up. I did indicate that
 8 when the warning is being given, the commander is still on
 9 the other side, let's say the side that the Advocate
 10 referred of between the barbed wire of the Nkaneng, and
 11 after placing the barbed wire, giving the warning, I said
 12 that the POP line will be repositioned for a dispersal and
 13 the show of force, and I say the second warning will be
 14 given. Then I said after the second warning the
 15 operational commander will give the TRT and others to take
 16 a position 100 metres away from the POP for a dispersal
 17 process, and I did indicate the blue lines, they shall have
 18 moved in terms of taking the dispersal to the westerly
 19 direction. I would like maybe we repeat that. Then it
 20 will be a dispersal. When a dispersal takes place there is
 21 a follow-up in terms of breaking them in smaller groups.
 22 Then that's why I referred to the optimal utilisation of
 23 the resources, but with regard to the forward holding area
 24 2, we could not have been running fast because when you
 25 disperse, others are already moving. Hence, Advocate, I

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1 said the repositioning of forward holding area 2, that's
 2 why we considered it. On this side we didn't consider it
 3 because the resources could have been there to have done
 4 what I have said in paginated page SS3.

5 MR MADLANGA SC: And are you suggesting
 6 that those resources that you say would have been there
 7 would have been able to go and seek out the protesters that
 8 you accept would have been able to get into Nkaneng with
 9 their weapons? Are you saying those resources would have
 10 tried to seek them out within Nkaneng?

11 MAJOR-GENERAL MPEMBE: Chairperson, I
 12 said that according to the situational appropriateness,
 13 which is the discretion of the commander, he might well
 14 have left them to leave with the weapons and take photos
 15 and at a later stage follow them and arrest them. What I'm
 16 saying is that could have been a decision taken by the
 17 commander, realising that what will be the situation, but
 18 what I'm saying is when a dispersal takes place, yes, if
 19 they are in a bigger group they could have been followed up
 20 by Nyalas, teargas and so on, and others requested to
 21 disarm. That could have happened, taking into account the
 22 resources that we had there at the dispersal.

23 MR MADLANGA SC: One last question on
 24 this aspect, General. So according to what you admit, on
 25 the Nkaneng side the police do foresee that protesters upon

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1 being warned to depart may do so into Nkaneng with their
 2 weapons, and the police do not provide protection for
 3 Nkaneng. On the western side where Captain Kidd was,
 4 protection is provided for the other informal settlement.
 5 Are you saying that is what the position was?

6 MAJOR-GENERAL MPEMBE: No, Chairperson,
 7 that's not what I said.

8 MR MADLANGA SC: I will move on. In your
 9 evidence you mentioned on Tuesday that if the police saw
 10 groups of 10 or more they would break them up. That is
 11 groups, as I understood your evidence, proceeding towards
 12 Nkaneng. They would break them up into smaller groups so
 13 that they should disperse as individuals. Did I understand
 14 you correctly?

15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson, it's in line with a plan to break them in
 17 smaller groups, isolate those that have got arms, disarm,
 18 and arrest.

19 MR MADLANGA SC: Just before the
 20 adjournment on Tuesday the Chairman asked you about what
 21 you were referring to on the dispersal, and the Chairman
 22 asked you to show the Commission where that was on the
 23 plan. I'm going to ask a related question. Can you show
 24 the Commission where in the available plans reference is
 25 made to breaking up groups of 10 and above so that people

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1 could disperse as individuals? Where in the plans is that?
 2 CHAIRPERSON: Somewhere in SS3, which is
 3 the third document in volume A of the bundle handed in by
 4 the witness. Is that right?
 5 MR MADLANGA SC: I want the reference to
 6 the –
 7 CHAIRPERSON: No, but what you're
 8 referring to is somewhere in that document, it's there.
 9 MR MADLANGA SC: Yes, Mr Chairman, and if
 10 –
 11 CHAIRPERSON: I tried to get it there on
 12 Tuesday, without success.
 13 MR MADLANGA SC: Yes.
 14 CHAIRPERSON: But maybe, to be fair to
 15 the witness, maybe it is somewhere.
 16 MR MADLANGA SC: If the General thinks he
 17 can find it elsewhere other than there, he must show the
 18 Commission that as well.
 19 MAJOR-GENERAL MPEMBE: Chairperson, I
 20 refer the Advocate to paginated page on SS3, 131, the
 21 mission under stage 3.
 22 MR MADLANGA SC: Please read to the
 23 Commission the reference to breaking up of groups of 10 and
 24 above to individuals.
 25 MAJOR-GENERAL MPEMBE: Chairperson, I was

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1 explaining what are we intending to say to the mission in
 2 the light with what the protesters had, meaning the
 3 dangerous weapons. That's what envisaged. It says that
 4 the protesters at the koppie, they will be dispersed, the
 5 protesters at the koppie, towards the open ground to the
 6 west to disarm the smaller groups. That's where I refer to
 7 smaller groups in my understanding, and it says the smaller
 8 groups that would be handled by the police, and that's why
 9 I was thinking, making an example of groups of 10.
 10 Thereafter ensuring an orderly processing of arrested
 11 persons in order to restore stability. Chairperson, in
 12 reference to the individual I wanted to make it more easier
 13 also to make sure that the police could handle what, how
 14 many numbers of police could handle, disarm, and also to
 15 arrest them.
 16 MR MADLANGA SC: General, from your CV I
 17 understand that you are a career policeman, having gone to
 18 Police College and then risen through the ranks. Am I
 19 correct that as a career policeman you must have taken a
 20 number of statements?
 21 CHAIRPERSON: Are you moving on to
 22 another point now?
 23 MR MADLANGA SC: Yes, Mr Chair.
 24 CHAIRPERSON: Before you move on to
 25 another point, I'd like to ask you this question. As I

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1 understood the previous question, asked you to identify or
 2 point out where in the plan is this distinction between
 3 dealing with groups of 10 and more on the one hand, and
 4 dealing, or not dealing, with groups of less than 10 on the
 5 other. That's the distinction that you've made in your
 6 evidence, and the question was where do we find that
 7 distinction in the plan, and the passage you've shown us at
 8 page 131 of the bundle doesn't show that. Is there a
 9 passage anywhere else which does show that?
 10 Major-General, we're going to take the tea –
 11 sorry, we're going to take the lunch adjournment in a few
 12 minutes. You may wish to look over the lunch adjournment
 13 to see where there is such a passage. I don't want to
 14 hurry you, and before Mr Madlanga moves on to the next
 15 point he was going to deal with, there was a point that Mr
 16 Ngalwana come to see me about that he wants to raise. So
 17 perhaps it's appropriate for us to deal with that point
 18 before we take the lunch adjournment.
 19 MR NGALWANA: Thank you, Chairperson.
 20 It's come to the attention of the SAPS legal team that one
 21 of the persons who deposed to a statement, which statement
 22 was summarised in the course of last week Friday, was it?
 23 On Tuesday while General Mpeembe was under evidence-in-
 24 chief, has received email and SMS threats to his life, and
 25 this is extremely distressing because we know that there

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1 have been people who have been murdered and we would, it
 2 would be sad that such a person would suffer the same fate.
 3 The SAPS has no intention of calling the person as a
 4 witness, as we indicated on Tuesday, so we thought we
 5 should bring that to the attention of the Commission so
 6 that perhaps any person who may be inclined to harm the
 7 person concerned can think twice about doing such a thing,
 8 and the police have been asked to investigate these death
 9 threats.
 10 [12:56] CHAIRPERSON: It's very distressing to
 11 hear reports of that kind. We've already had a number of
 12 deaths in, not only before the 16th of August, on the 16th,
 13 but subsequently, and in relation to people who were either
 14 going to give evidence or who it was thought were going to
 15 give evidence. I understand from what you've said that you
 16 don't intend calling the witness. The purposes, I
 17 understood it further, of you putting in the statement was
 18 really to indicate a report which had been made to this
 19 witness as a result of which he did something. You don't
 20 intend proving the facts contained in the statement itself.
 21 Is that correct?
 22 MR NGALWANA: Unless they are under
 23 dispute, Chair, not at all.
 24 CHAIRPERSON: Speaking for myself and for
 25 my fellow Commissioners, we don't intend insisting that the

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1 person concerned should give oral evidence. As far as
 2 we're concerned the statement is evidential material before
 3 the Commission, and as far as I see it there's no realistic
 4 prospect of the person concerned giving evidence before the
 5 Commission. So if someone is minded to do something
 6 violent towards the person concerned in order to prevent
 7 them from giving evidence, that is a matter that doesn't
 8 arise because the person concerned is not going to give
 9 evidence before the Commission. I take it that's the point
 10 you wanted me to stress, Mr Ngalwana. Is that correct?
 11 MR NGALWANA: Yes, thank you, Chair.
 12 CHAIRPERSON: Of course I take it that
 13 anyone who is foolish or wicked enough to consider killing
 14 the person concerned either because of the statement he
 15 made or for fear that he'll come and give evidence here,
 16 and if anything of that kind happens the person concerned
 17 can expect the full weight of the law to be applied against
 18 him, and it's something obviously which should be
 19 investigated with all the energy and resources that the
 20 South African Police Service have at their disposal. Is
 21 there anything you wish to add, Mr Ngalwana, before I call
 22 upon Mr Madlanga to make such comments as he considers
 23 appropriate?
 24 MR NGALWANA: No, thank you, Chairperson.
 25 MR MADLANGA SC: Mr Chairman, perhaps

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1 just for emphasis, if it could be come clear to whoever
 2 might have issued or made the threats that the statement of
 3 the person concerned that served before this Commission
 4 does not implicate any specific individual, so the people,
 5 nobody should have any fear at all. It doesn't implicate
 6 any person whatsoever.
 7 CHAIRPERSON: We will now take the lunch
 8 adjournment.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [14:15] CHAIRPERSON: Once again matters in
 11 chambers delayed our return after the adjournment, for
 12 which I apologise. I was going to say something at the end
 13 of the sitting today but I may as well make it now. I
 14 understand that a number of family members who are present
 15 are leaving today to go home for the recess, so they won't
 16 be here tomorrow. We wish them a safe journey home and we
 17 look forward to seeing them again after we resume in the
 18 middle of July. We appreciate their attendance at our
 19 sittings. We understand it's very important for them and
 20 for the people generally that they should be here and they
 21 shall be able to see and hear the evidence, see the
 22 witnesses and hear the evidence, and it assists them to
 23 experience closure after the tragic events that happened
 24 which have brought them here. Major-General you're still
 25 under oath.

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1 WILLIAM MPEMBE: s.u.o.
 2 CHAIRPERSON: Mr Madlanga, I think you're
 3 still cross-examining.
 4 MR MADLANGA SC: Thank you, Mr Chairman.
 5 CHAIRPERSON: I'm reminded that when we
 6 adjourned a question had been asked of the witness and he
 7 hadn't yet replied and he was given an opportunity to
 8 consider the answer over the adjournment. Do you remember
 9 the question related to the plan to do the distinction
 10 between groups of 10 and more on the one hand and less than
 11 10 on the other, whether there was specific mention of that
 12 in the plan. Have you been able to find anything that
 13 assists us on that point?
 14 MAJOR-GENERAL MPEMBE: Chairperson, in me
 15 talking about a group of 10, in my evidence-in-chief I said
 16 10 or 20, I was giving an example of a smaller group. In
 17 my statement, GGG12 on page 10 I was talking in terms the
 18 groups that the police could manage to disarm, not
 19 specifically that it could be 10, and taking into account
 20 that one Nyala has eight to 10 members, so it should
 21 actually be a group that will be able to be managed by
 22 those that will have to disarm and arrest them.
 23 CHAIRPERSON: The question didn't refer
 24 to your statement; the question referred to the plan, which
 25 is exhibit SS3.

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1 MAJOR-GENERAL MPEMBE: Chairperson, I was
 2 explaining the mission of stage 3, which refers to a
 3 smaller group, then I gave an example of how do I see is
 4 meant by a smaller group. Then my statement actually
 5 explains this smaller group in the plan.
 6 CHAIRPERSON: Thank you, General. Mr
 7 Madlanga now you can recommence your cross-examination.
 8 MR MADLANGA SC: Thank you, Mr Chairman.
 9 COMMISSIONER HEMRAJ: Mr Madlanga, are
 10 you moving away from the dispersal and the groups?
 11 MR MADLANGA SC: Yes, yes, I am, but -
 12 COMMISSIONER HEMRAJ: May I just ask one
 13 question before you do. General, is there any
 14 predictability either from learning or from experience
 15 about how these dispersals take place in crowd management?
 16 Is there any learning about it or does your experience tell
 17 you?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson, the experience that I do have in such
 20 dispersal groups is that normally when barbed wire has been
 21 a defensive measure, let me not speak specifically about
 22 the barbed wire, you should put a defensive measure, and
 23 after putting a defensive measure, warn the pedestrians in
 24 the language that they do understand. My experience is
 25 that when you are still encouraging them to disperse, other

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1 protestors will disperse. Then when some few they are
 2 still there, others they are still leaving, to encourage
 3 the dispersal normally what does happen, a commander will
 4 now tell them what action will the police take and pre-
 5 position the members for the protestors to say, "Look, if
 6 you don't listen now to the second warning, this is what
 7 the police," - we'll only pre-position them and then pre-
 8 positioning them, then give them another second warning.
 9 Chairperson, in my experience is that once the majority of
 10 the people realise that there is a show of force and that
 11 they will disperse voluntarily even before you start
 12 actually with the dispersal process, and it does happen
 13 that you'll only remain with a small group that you'll have
 14 to disperse. Then the relative number of the police that
 15 will be there available will be able to disperse them.
 16 Chairperson, in my experience and in the doctrine of the
 17 police those dispersals that have happened in such a way,
 18 it is a spontaneous one, but those that they do well in
 19 terms of our - in the purpose of Standing Order 262, is
 20 when what we call a golden meeting has taken place. That
 21 one is also easily manageable, golden triangle meeting.
 22 CHAIRPERSON: Please forgive my
 23 ignorance, but what is a golden triangle meeting?
 24 MAJOR-GENERAL MPEMBE: Chairperson, we do
 25 have different types of crowd management. The one is where

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1 a notice has been served, and where a notice has been
 2 served the convenor will approach either an authorised
 3 officer at a police station or approach a responsible
 4 officer at a municipality. Upon receipt of this notice, a
 5 responsible officer will communicate with an authorised
 6 officer and call the convenors and have a meeting of how to
 7 plan for a march, and in that meeting we call it a golden
 8 triangle because it will be an authorised official,
 9 responsible officer who chairs the meeting, plus the
 10 convenor. What I was saying too, Chairperson, is that in
 11 that case the dispersal, the handling of the march, it
 12 becomes extremely well, but in the case of the spontaneous
 13 one is the one that I explained you'll relatively remain
 14 with a small group that you actually have to disperse.
 15 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 16 General, as a career policeman who has risen through the
 17 ranks, I take it that you've taken countless statements.
 18 Is that so?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 MR MADLANGA SC: Do you also agree that
 22 the proper way when taking a statement is not to leave out
 23 that which is central to what the statement is about?
 24 Would you agree with that?
 25 MAJOR-GENERAL MPEMBE: Chairperson, maybe

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1 if the question can be explained; what is central?
 2 MR MADLANGA SC: What is crucial, what is
 3 important, what the crux – ja, something important or
 4 crucial to whatever the narrative is about.
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson, if central defines the element of a crime or
 7 certain issues, yes, they had to be in the statement.
 8 MR MADLANGA SC: Let us say the statement
 9 is about an event that took place and that but for X
 10 happening, that event would never have taken place, would
 11 you not agree with me that the happening of X would be
 12 central to a narrative about the event that actually took
 13 place?
 14 MAJOR-GENERAL MPEMBE: Chairperson, if
 15 maybe it could be explained because maybe I don't know
 16 whether is Advocate speaking about a causal link -
 17 MR MADLANGA SC: General, I think I've
 18 seen it somewhere that your first language is isiZulu. Is
 19 that correct?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I
 21 need – I will, my answer will be yes.
 22 MR MADLANGA SC: No, no, no I'm not – oh,
 23 yes, let me listen, yes. I just wanted to say this is not
 24 intended to sound like a put-down, not at all, General, not
 25 at all.

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1 MAJOR-GENERAL MPEMBE: I'm saying,
 2 Chairperson, the answer will be yes, but unfortunately with
 3 the background that I have is that my father lived long
 4 time in Natal, I find myself in Free State going to a South
 5 Sotho and so many different languages that I can learn, and
 6 now I end up not - actually not talking a proper Zulu or
 7 Sotho. Hence also I give my evidence in English.
 8 CHAIRPERSON: We're grateful that you're
 9 giving your evidence in English because it slow the
 10 proceedings down if you didn't, but can I ask you this
 11 question? What language do you think and dream in? Is
 12 there a particular language that you think and dream in?
 13 You see Major Annandale gave evidence in Afrikaans,
 14 although his English I must say is very good, but I said he
 15 was fully entitled to use Afrikaans which is his mother
 16 tongue and he explained that he thinks and dreams in
 17 Afrikaans, that's why he preferred to give evidence in
 18 Afrikaans. Now what I'm asking you is what language do you
 19 think and dream in?
 20 MAJOR-GENERAL MPEMBE: Chairperson,
 21 that's the reason why I chose English because I did not do
 22 isiZulu at school, which meant General Annandale did
 23 Afrikaans at school and in the past only official languages
 24 in the police it was English and Afrikaans, and that's why,
 25 Chairperson, I will rather prefer and talk in English. I

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1 try to explain in English rather than even when I, maybe I
 2 have to talk about contemporaneous notes, I will not know
 3 how to say it in either Sesotho or Zulu.
 4 CHAIRPERSON: Yes, no I understand that.
 5 I want to put on record that I think your English is very
 6 good indeed. There's no question of your proficiency in
 7 English being in any way questioned or challenged. I want
 8 to make that clear to you. I think because you asked what,
 9 I think the phrase was central, what the central issue was,
 10 I think Mr Madlanga was trying to help you by giving it to
 11 you in Zulu. Although he's a Xhosa speaker so I'm not
 12 quite sure how good his Zulu is, but anyway, but if you
 13 think it'll help you must answer the question that he put
 14 to you. If he gave you a translation into either Zulu or
 15 Xhosa or perhaps Sotho, then if that'll help you then I'm
 16 sure he will provide it and if you don't want it then he'll
 17 have to carry in the Queen's English.
 18 MR MADLANGA SC: Thank you, Mr Chairman.
 19 General, if there's any put-down at all it's one on me
 20 because what I wanted to suggest to you - and I referred to
 21 Zulu because I see your CV says home language Zulu. I
 22 wanted to state this in - well I'm not Zulu-speaking but I
 23 understand it, but I want to explain it in isiXhosa but
 24 I'll try not use the "X, X," - or at least not too much of
 25 that so that you should understand it, and then you can

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1 respond in English. May I have a go General?
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 CHAIRPERSON: As long as the interpreter
 5 interprets into English what you say in Xhosa, Mr Madlanga.
 6 [14:35] MR MADLANGA SC: Thank you, Mr Chairman.
 7 General, let me say there is somebody is coming to you to
 8 make a statement and you're a police officer; what he is
 9 telling you about, there is something else that happened.
 10 If that thing hasn't happened, this whole incident couldn't
 11 have happened. Do you understand that, General?
 12 MAJOR-GENERAL MPEMBE: Yes, Sir.
 13 MR MADLANGA SC: Now General, this
 14 central that I'm talking about, it's the incident, the
 15 original one that happened, that if this didn't happen, the
 16 whole one couldn't have happened. Can you get that central
 17 I'm talking about? I said the first event that is the sine
 18 qua non for the second event is what I'm referring to as a
 19 central event to that one happening.
 20 CHAIRPERSON: I think I will have to
 21 interpret from the Latin. Sine qua non means "without
 22 which not."
 23 MR MAHLANGU: I understand, Sir,
 24 condictio sine qua non, a conduct with which a particular
 25 thing would not have taken place.

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1 CHAIRPERSON: Causa sine qua non or
 2 condictio sine qua non, ja that can happen, I mean it's bad
 3 enough with English, Zulu and Xhosa. If we introduce
 4 Latin, which is not even an official language, we really
 5 get into difficulty. It should be an official language,
 6 but it isn't.
 7 MR MADLANGA SC: You follow me?
 8 MAJOR-GENERAL MPEMBE: Ewe, Ntathe.
 9 MR MADLANGA SC: Now back to English,
 10 having explained central in that way, would you agree then,
 11 General, that when you take a statement you would not leave
 12 out something central to whatever the event, the statement
 13 is dealing with.
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MR MADLANGA SC: And to my mind that
 17 should be so even if you are trying to summarise the events
 18 that took place; you cannot leave out that central event
 19 that actually led to the event that the narrative is about,
 20 not so?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MR MADLANGA SC: Now General, I gave
 24 notice that in cross-examination I would be using your
 25 handwritten statement, which is dated 15 August 2012. Do

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1 you have a copy of it in front of you? No, I'm sorry, I'm
 2 sorry, you signed it on the 13th of August 2012. 13 August
 3 2012.
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR MADLANGA SC: Mr Chairman,
 7 Commissioners, this has not been marked as an exhibit yet.
 8 CHAIRPERSON: Ms Pillay, what do we call
 9 it?
 10 MS PILLAY: Chair, it will be HHH13.
 11 CHAIRPERSON: HHH13 is a manuscript
 12 statement by Major-General Mpembe dated the 13th of August
 13 2012.
 14 MR MADLANGA SC: Before I take you
 15 through that statement, General, let me just ask one
 16 question. The impression that I get from your evidence is
 17 that but for the sudden change of direction by the
 18 protesters after they had left - I'm on the 13th of August
 19 2012. But for the sudden change of direction of the
 20 protesters after they had left the railway line, but for
 21 their change of direction without warning, and heading
 22 towards the informal settlement, as you put it in your
 23 evidence, the killings of the 13th would either not have
 24 taken place, or at least not taken place in the manner in
 25 which they took place. Is that correct?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR MADLANGA SC: So based on the debate
 4 we had around but for central and so on, you agree that
 5 that sudden change of direction and heading towards the
 6 informal settlement, that was central to what happened on
 7 the day, not so?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson, based on my earlier briefing to the
 10 commanders.
 11 MR MADLANGA SC: Now let's read paragraph
 12 4 of this statement. It reads, "The community members who
 13 were sitting, they became agitated and they stood up and
 14 forced their way. I instructed the police to walk behind
 15 them to avoid confrontation and bloodshed. While they were
 16 walking someone threw the teargas and they attacked the
 17 police." Do you see that?
 18 MAJOR-GENERAL MPEMBE: I agree,
 19 Chairperson.
 20 MR MADLANGA SC: Do you see that this
 21 paragraph says nothing about the protesters having changed
 22 direction before the teargas was thrown?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson.
 25 MR MADLANGA SC: Do you also see that it

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1 does not say that the reason for the throwing of the
 2 teargas was to protect the nearby informal settlement?
 3 MAJOR-GENERAL MPEMBE: Chairperson, in my
 4 evidence I said that we did not want the protesters to go
 5 through the informal settlement.
 6 CHAIRPERSON: Counsel is not asking you
 7 about that. Counsel says that fact that you didn't want
 8 them to go through the informal settlement, and that's what
 9 you told the members of the force, isn't in the statement
 10 which you made that very day. That's his point. Is that
 11 correct? And he asks, he says, he suggests to you that
 12 that's a central issue; it's something that's covered by
 13 the words he used in Xhosa as well and he says in the light
 14 of what you said that when you do a statement for somebody
 15 else you put in the central facts. He's asking you why
 16 this was not put in the statement. Am I understanding
 17 correctly what the thrust of the cross-examination is?
 18 MR MADLANGA SC: That is so, Mr Chairman,
 19 except that I chose not to ask the why. I'm just thus far
 20 asking, do you accept, General, that paragraph 4 does not
 21 say that the reason for the throwing of teargas was to
 22 protect the nearby informal settlement? Do you accept that
 23 paragraph 4 does not say that?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, it's not in the statement.

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1 MR MADLANGA SC: So you accept that not
 2 just in paragraph 4, but in fact in the entire statement
 3 the trigger event, as we understand it from you, is not
 4 there at all in the entire statement?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR MADLANGA SC: Now I want to take you
 8 to paragraph 10 of Lieutenant-Colonel McIntosh's statement.
 9 That one too, Commissioners, is not an exhibit yet.
 10 CHAIRPERSON: McIntosh, that's behind tab
 11 8 in your file?
 12 MR MADLANGA SC: Yes, Mr Chairman, thank
 13 you.
 14 CHAIRPERSON: Alright, that will be
 15 HHH14. That is the statement you're referring to?
 16 MR MADLANGA SC: Yes. You see that - or
 17 perhaps I should start here. Lieutenant-Colonel McIntosh
 18 was the police negotiator with the protesters or strikers
 19 at the koppie, correct?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 MR MADLANGA SC: And he was at the koppie
 23 both on the 14th and 15th of August, correct?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, he arrived on the 14th.

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1 MR MADLANGA SC: Now look at what he says
 2 in paragraph 10. He says, "At approximately 20 past 6 in
 3 the evening the man with the green blanket gave feedback to
 4 the group and they started to disperse. We withdrew and
 5 went back to our base on the mine premises." You see that?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson, I can see it.
 8 MR MADLANGA SC: And because we know that
 9 the protesters gathered at the koppie were armed, when they
 10 dispersed at the time mentioned by Lieutenant-Colonel
 11 McIntosh they must have dispersed with their weapons.
 12 Stands to reason, not so?
 13 MR NGALWANA: Chairperson, there's no way
 14 the General would know that. Only Colonel McIntosh can
 15 testify to this.
 16 CHAIRPERSON: He can express a view which
 17 is necessary for the build-up of the cross-examination on
 18 the likelihood of their leaving their weapons behind when
 19 they went, when they dispersed, but perhaps you could ask
 20 the question that way and Mr Ngalwana's objection will fall
 21 away?
 22 MR MADLANGA SC: General - Mr Chairman,
 23 ultimately we are going to be arguing on the basis of the
 24 drawing of inferences, and the Commission has more than
 25 once indicated that it may be fair to a witness who is in

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1 the know, in this sense it is in the know about the
 2 objective facts that he's aware of. There are people on
 3 the koppie, they are armed; they disperse in the evening,
 4 and the police are left behind, at least according to what
 5 Lieutenant-Colonel McIntosh says, and they do not remain
 6 behind finding a whole lot of weapons scattered which they
 7 then pick up before they themselves also withdraw. So
 8 there is no problem at all, I would submit, with this
 9 witness commenting on whether or not those people when they
 10 dispersed, they must have dispersed with their weapons.
 11 That is something based purely on the objective facts that
 12 this witness is aware of. If he wishes to draw a different
 13 – or he wants to suggest otherwise, then let him do so and
 14 let's deal with that response.
 15 MR NGALWANA: Chair, I persist in my
 16 objection. You can't call for this witness to speculate,
 17 who wasn't there. Lieutenant-Colonel McIntosh or someone
 18 who was actually there can testify to this, then he
 19 wouldn't be called upon to draw inferences.
 20 CHAIRPERSON: Yes, but I would imagine
 21 that it's permissible for a cross-examiner to put facts to
 22 a witness, to say what the facts are and then ask him, and
 23 then take the matter further. I notice that in paragraph 9
 24 of the statement Lieutenant-Colonel McIntosh discusses the
 25 negotiations that took place between him and his colleagues

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1 on the one hand and the man with the green blanket on the
 2 other, and the statement says the following, "The man with
 3 the green blanket requested us that we postpone the meeting
 4 to the next day at 9:00 to allow the group to discuss the
 5 process they wish to follow. The request was transmitted
 6 to the JOC. We then informed them we will continue with
 7 negotiation the following day. The group was also informed
 8 we do not wish to negotiate with weapons but would rather
 9 have a trust relationship and they should not bring weapons
 10 of any nature the following day. We assured them that
 11 their request for the mine management to talk to them will
 12 be given through again to the top structure." Now in the
 13 circumstances did you understand – I take it Lieutenant-
 14 Colonel McIntosh told you about this?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 CHAIRPERSON: Did you understand him to
 18 suggest for one moment that these people before they
 19 dispersed left their weapons behind them on the koppie and
 20 went their way without their weapons, with the weapons all
 21 scattered all over the koppie where they'd been? Did you
 22 understand him to say that, or to be suggesting that?
 23 [14:54] Perhaps I could go one further; if they had left
 24 the weapons there, would you have expected Lieutenant-
 25 Colonel McIntosh and his colleagues to have allowed the

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1 weapons to stay there overnight?
 2 MAJOR-GENERAL MPEMBE: Chairperson, if
 3 Colonel McIntosh did indicate it to me, surely we could
 4 have gone there and checked whether they're processed for
 5 any other evidence.
 6 MR MADLANGA SC: So you are saying nobody
 7 ever suggested that weapons had been left there when the
 8 people left after 6PM on the 14th?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR MADLANGA SC: Now let me take you to
 12 paragraph 21 of that same statement. The first paragraph I
 13 referred you to, that is paragraph 10, was dealing with the
 14 14th, General. Now paragraph 21 is dealing with the 15th,
 15 one five, and look at the third sentence which starts at
 16 the third line, "At about 18:40 they finished talking to
 17 the crowd [that is NUM representatives] and the crowd
 18 started to withdraw from the koppie. Later that evening at
 19 about 10PM we also withdrew and went back to base." You
 20 see that? I'm sorry, AMCU, AMCU representative, AMCU –
 21 SPEAKER: Yes, I just wanted to correct
 22 that point, Chair. It was AMCU representative that spoke
 23 to the crowd –
 24 CHAIRPERSON: Yes, it was wrongly read
 25 out, yes. We don't want AMCU to miss any credit for

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1 anything. Yes, read it correctly so that the AMCU
 2 representatives won't be offended.
 3 MR MADLANGA SC: Thank you, Mr Chairman.
 4 "At about 18:40 they finished talking to the crowd," and if
 5 you look at the sentence just before this one, the "they"
 6 must be AMCU, the AMCU representative, "they finished
 7 talking to the crowd and the crowd started to withdraw from
 8 the koppie. Later that evening at about 22h00 we also
 9 withdrew and went back to base." Do you see that?
 10 MAJOR-GENERAL MPEMBE: I can see,
 11 Chairperson.
 12 MR MADLANGA SC: And Lieutenant-Colonel
 13 McIntosh never said that during the intervening period,
 14 that is between 18h40 and 22h00 when they, the police,
 15 eventually left they were left there on the koppie with
 16 countless weapons lying down on the ground. He never said
 17 so, not so?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson, that's what Colonel McIntosh has written.
 20 MR MADLANGA SC: And you are aware, are
 21 you not, that some of the protesters stayed at informal
 22 settlements?
 23 MAJOR-GENERAL MPEMBE: We were made aware
 24 by – yes, Chairperson.
 25 MR MADLANGA SC: It stands to reason then

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1 that some of the protesters upon dispersing would have
 2 dispersed to the informal settlements, correct?
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.
 5 MR MADLANGA SC: On both the 14th and 15th
 6 of August 2012 the police never saw a need to protect the
 7 informal settlements to which those protesters would have
 8 dispersed to, correct?
 9 MAJOR-GENERAL MPEMBE: Not correct,
 10 Chairperson.
 11 MR MADLANGA SC: Did they protect the
 12 informal settlements? If so, how?
 13 MAJOR-GENERAL MPEMBE: Chairperson, we
 14 did assert a policing approach from the 14th and we
 15 increased serious visibility, patrolling all the flashpoint
 16 areas, including the informal settlement.
 17 MR MADLANGA SC: General, in respect of
 18 forward holding area 2 you have police standing there and
 19 the purpose of being there, being to physically protect the
 20 informal settlement adjacent to forward holding area 2 from
 21 protesters approaching that informal settlement with
 22 weapons. Now my question with regard to – I won't ask you
 23 whether you agree, you've agreed several times. Now my
 24 question with regard to the 14th and 15th, is there similar
 25 protection or not?

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1 MAJOR-GENERAL MPEMBE: Chairperson, the
 2 protection was there on the 14th and the 15th, but the
 3 situation was not the same. Protection that I'm talking
 4 about is that there was a sector policing in that area, and
 5 we saturated the visibility with lot of vehicles, including
 6 the informal settlement. The protection that the Advocate
 7 speaks about on the 16th, it is when we were going to
 8 disperse the crowd, hence it was, hence that protection was
 9 placed.
 10 MR MADLANGA SC: What you refer to as
 11 protection on the 14th and 15th, did that stop the
 12 protesters from going into the informal settlements when
 13 they dispersed?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson, we were not preventing them, but what we were
 16 checking, those that they did have weapons, they were asked
 17 to drop their weapons, or their weapons, they could have
 18 been confiscated.
 19 CHAIRPERSON: Do you know whether anybody
 20 dropped his weapon, whether any weapons were confiscated?
 21 MAJOR-GENERAL MPEMBE: Chairperson, what
 22 I do know is that there were some of the people during the
 23 patrolling and the other places whom weapons were taken,
 24 and others they did drop weapons. Maybe then I might also
 25 go and check in the SAP13, I can give it to the Commission.

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1 MR MADLANGA SC: And so that your search
 2 is focussed, please try to find, if you will, see
 3 protesters that were dispersing into the informal
 4 settlements after 18:20 on the 14th and after 18:40 on the
 5 15th, whether there are any that were dispossessed of their
 6 weapons. Can you find such a record?
 7 MAJOR-GENERAL MPEMBE: Chairperson, I
 8 will do so in line with the plan from the 14th.
 9 CHAIRPERSON: That person who had a
 10 mobile phone on, please turn it off. If you don't turn it
 11 off I'll ask you to leave the room, and anyone else who's
 12 got a cell phone, or mobile phone that's on, please turn it
 13 off because if it goes off I'll ask the person concerned to
 14 leave.
 15 MR MADLANGA SC: General, I'll make a
 16 suggestion to you; I will make it on the basis for now that
 17 we do not have the proof. I may have to revisit this if
 18 you are able to show us the proof that the Chairman asked
 19 for. General, I suggest to you, based on the lack of
 20 consistency on the alleged protection of informal
 21 settlements and your failure to mention the trigger event
 22 for the killings of the 13th, this whole notion of
 23 protection of informal settlements is an afterthought.
 24 What do you say to that?
 25 MR NGALWANA: Chairperson, perhaps our

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1 learned friend should have regard to FFF25. I won't
 2 mention the exact items, because there are entries that
 3 clearly suggest that there was monitoring going on for the
 4 13th.
 5 CHAIRPERSON: I have FFF25 in my hand and
 6 I was looking at something. Is there an entry that you
 7 want to draw my attention to?
 8 MR NGALWANA: If the Chairperson has
 9 regard to entries beginning, entry number 60 going on to
 10 entry number 69, Chairperson will see reports about what
 11 the situation was in the informal settlements during those
 12 times.
 13 CHAIRPERSON: No, no, the question was –
 14 MR NGALWANA: There clearly was
 15 monitoring going on there. It may not be referring
 16 directly to arrests because there may not have been need to
 17 arrest people because everything was in order, but there is
 18 monitoring going on –
 19 CHAIRPERSON: Monitoring, yes, on that
 20 day, the 13th. Anything about the informal settlement?
 21 MR NGALWANA: Entry number 66,
 22 Chairperson.
 23 CHAIRPERSON: This says, "Everything in
 24 order around Marikana, Karee, and Wonderkop." It doesn't
 25 say anything about the informal settlement Nkaneng. It

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1 might cover it, but it's not clearly covered. So I think
 2 it's probably better for the witness to go and have a look
 3 and see if he can find something else. I don't think
 4 there's anything wrong with the question. Perhaps you can
 5 reformulate it just in a focussed way so that Mr Ngalwana
 6 doesn't consider it necessary to object again.
 7 MR MADLANGA SC: General, I have not seen
 8 any material except for what – I've not seen any – ag Mr
 9 Chairman, perhaps I would want to just revisit this if we –
 10 CHAIRPERSON: We're proposing to take tea
 11 in a few minutes.
 12 MR MADLANGA SC: Yes, yes.
 13 CHAIRPERSON: It might help you perhaps
 14 if you look through – there may be something in this
 15 occurrence book. I've read it several times, but I wasn't
 16 looking for this.
 17 MR MADLANGA SC: But it's not where my
 18 learned friend has referred to.
 19 CHAIRPERSON: No, no, the ones he's
 20 referred to don't help us, but then to be fair, there may
 21 be something somewhere that does. So we're hear to get the
 22 truth; we're not here to trip up witnesses. So if there's
 23 something which is as the witness said, it's only right
 24 that we should see it. So he can look, you can look and
 25 the rest of us will have tea. We'll take the tea

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1 adjournment.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [15:29] CHAIRPERSON: The Commission resumes.
 4 You're still under oath, Major-General.
 5 WILLIAM MPEMBE: s.u.o.
 6 CHAIRPERSON: Mr Madlanga, did you find
 7 anything during the adjournment while the rest of us were
 8 having tea?
 9 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 10 I hope so, Mr Chairman. General, when objecting to my
 11 question, my learned friend Mr Ngalwana referred to
 12 entries, I hope I captured them correctly, 60 to 69 in JOC
 13 OB444 - in the JOC OB, exhibit FFF25. Just have a look at
 14 those entries, General, and tell the Commission whether any
 15 of them indicate that armed protesters were prevented from
 16 entering the informal settlements with their weapons.
 17 MR NGALWANA: Chair, with respect, that
 18 was not the basis for my referring to these entries, and
 19 there are a lot more, by the way. It's not just 60 to 69.
 20 May I explain briefly, Chair, the basis for my referring to
 21 these entries?
 22 CHAIRPERSON: I think in the interest of
 23 fairness I should let you do so.
 24 MR NGALWANA: Thank you, Chair. The
 25 suggestion, it seems to me, was made that the informal

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1 settlements were basically left to their own devices,
 2 allowing people to go into the informal settlements without
 3 any monitoring, without any protection, as was done, or
 4 contrary to what was done on the 16th, where on the 16th
 5 there was a forward holding area 2 that was placed to
 6 protect one side of the informal settlements. The reason I
 7 refer to these is to say there were monitoring of the
 8 situation going on, even though people may have been
 9 allowed to go into the informal settlement as individuals,
 10 carrying weapons, but the situations were monitored by the
 11 police, and there are numerous reports in that regard. If
 12 the Chairperson wants to hear, or wants me to point to
 13 those entries, I will do so. There are myriads of them
 14 from the 13th to early 16th.
 15 CHAIRPERSON: There are entries that say
 16 things like situation in order at Eastern Platinum, number
 17 69. Now I take it that means that someone in a "vangwa"
 18 drove around Eastern Platinum and didn't see anything going
 19 on that was wrong. Does that –
 20 MR NGALWANA: Well, there's more than.
 21 CHAIRPERSON: Sorry?
 22 MR NGALWANA: There's more than that,
 23 Chair, in the other entries that I've looked at. They
 24 number probably between 15 and 20, and –
 25 CHAIRPERSON: Yes, well I suggest you

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1 deal with them in re-examination. Let's carry on, Mr
 2 Madlanga.
 3 MR MADLANGA SC: Thank you. Thank you,
 4 Mr Chairman. Can you look at those entries? Do they in
 5 any way suggest that protesters who were armed were ever
 6 prevented from entering the informal settlements with their
 7 weapons?
 8 MR NGALWANA: But Chair, with respect,
 9 this ignores my explanation. I mean the question can't be
 10 put like that as if that's the basis on which I referred to
 11 these entries.
 12 CHAIRPERSON: Adv Hemraj points out that
 13 the sensible way to do it, fair way to do it, would be to
 14 allow the witness to look at it overnight and then come
 15 back tomorrow, give us anything, if there is. Of course
 16 another point that occurs, if people who bought pangas,
 17 sort of hid them in their clothing before they left the
 18 shop, I would imagine someone walking down a street in an
 19 informal settlement seeing a "vangwa" coming in the
 20 distance, is likely to do the same. So I'm not quite sure
 21 how these entries help at all, but if the police want to
 22 put them before us and they want to persuade us that they
 23 show what they seem to think they show, then we can't stop
 24 them and they may well be able to persuade us that they do
 25 say what they say they say, but let's not waste any time on

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1 that now.

2 MR MADLANGA SC: Thank you, Mr Chairman,

3 I'll come back to the point tomorrow. Thank you.

4 MR BURGER SC: Chair, while learned

5 friend comes back to a point tomorrow, may I indicate, I'm

6 going to ask for guidance also tomorrow and it may be of

7 assistance if I tell you now. I don't know how long this

8 examination by my learned friend is going to last, and I

9 don't know who comes after him, and I don't know when and

10 if, whether I'm going to have a chance to ask the

11 questions. We met without you, Sir, as you might know –

12 CHAIRPERSON: Sorry, I'm going to

13 interrupt you by telling you something that may cut short

14 what you're going to say, alternatively if it doesn't, you

15 can then respond further. As you know, we are adjourning

16 tomorrow at lunchtime and continuing in three weeks' time.

17 The indications are that Mr Madlanga will not finish his

18 cross-examination by then, or certainly if he has, there

19 won't really be time for anybody else to cross-examine. As

20 a result of the meetings that were held, draft rules have

21 been compiled by the evidence leaders and circulated for

22 comment.

23 Yesterday the evidence leaders and I met from 11

24 o'clock until 6 o'clock. We compiled a provisional

25 schedule of all the witnesses who we think will be called

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1 to give evidence, or whose evidence will be presented to

2 the Commission. We've divided them into four categories,

3 long witnesses, medium, witnesses medium length, short

4 witnesses, and witnesses whose evidence can be put before

5 the Commission merely by affidavit. We've endeavoured to

6 allocate provisionally time in respect of each of the

7 witnesses who are to give evidence, during which time the

8 witness's evidence will be received, obviously flexible,

9 allowing for some deviation in appropriate circumstances.

10 That document is, I understand, going to be circulated to

11 all the parties. So it's a direct result of it provides

12 for a nominated cross-examiner to be appoint in the case of

13 each witness. It provides for other parties who are not

14 the nominated cross-examiner for that particular witness to

15 ask leave to ask questions, supplementary questions on

16 particular topics, from the Chairman in chambers.

17 It deals with all sorts of things of that kind.

18 It's designed to shorten the proceedings. It's designed to

19 ensure that we're able to finish the whole of phase 1 by

20 the end of October, if not earlier. You will be receiving

21 that document very soon. The idea is that I hope to be

22 able to, if it's considered appropriate, to issue rules

23 dealing with these matters, which will be operative from

24 the end of this witness's evidence. As we see it, the

25 witness's evidence will obviously continue in the new

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1 period after the short recess, and it's obviously

2 inappropriate to make the rules apply to him in the middle

3 of his evidence and to those who are leading him, but the

4 idea is that every witness thereafter will be covered by

5 the rules, if it's considered appropriate to issue the

6 rules. The next witness, as I understand it, is likely to

7 be Lieutenant-Colonel Scott. Is that correct, Mr Madlanga?

8 MR MADLANGA SC: That is correct, Mr

9 Chairman.

10 CHAIRPERSON: But if there's anything

11 further you wish to say to me at this stage, please do so,

12 otherwise I suggest you can wait for this document, which

13 you should get very soon, consider it, and then you can

14 come back and deal with it as you consider appropriate.

15 MR BURGER SC: Chair, I'm greatly

16 indebted to you. It really puts me in a position where I

17 know what's going on now, and I don't, I didn't before.

18 Since two weeks ago I'm in the dark; I don't know what's

19 happening here. I don't know who's going to do what, when.

20 May I ask this, though, in order to understand better where

21 we go. We had an experience last time where all the people

22 around the table, excluding the Commission, sat and we

23 thought we had worked out a way ahead and it then came from

24 the evidence leaders and I thought we were on our way

25 there. Then a week later one of the parties, as you know,

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1 came around and said everything rejected, don't agree to

2 anything, we must start devising the wheel again. Your

3 request now to the parties to comment on the proposal from

4 the Chair, is that again an invitation to have a new debate

5 and to reach consensus, or what is the purpose of giving

6 this to the parties?

7 CHAIRPERSON: No, the idea – I understand

8 that the draft has been prepared by the evidence leaders,

9 has been circulated. We received responses from a number

10 of the parties. Some of them, as I understand it, were

11 more or less approved, others objected to certain aspects.

12 One particular party indicated complete opposition to the

13 whole proposal. Then letters were written, which we've

14 received, motivating the objections or the suggestions for

15 amendment, and these will be considered. If the

16 Commissioners are of the view that these rules should be

17 imposed with or without amendment in the light possibly of

18 the suggestions, even though some of the parties object, we

19 will in terms of Regulation 19 make those rules. Of

20 course, if we having read the letters - we haven't had a

21 chance to discuss them, consider them in depth - we

22 consider the objections are valid, well then we won't make

23 the rules. But the mere fact that some or other of the

24 parties object will not necessarily deter us from making

25 the rules if we consider them appropriate and necessary in

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1 order to address our Terms of Reference in the time
 2 allotted to us.
 3 MR BURGER SC: Thank you very much.
 4 MR MADLANGA SC: General, may we now
 5 proceed to the events of 13 August 2012. In your evidence
 6 you said that there was no briefing prior to the
 7 interception of the protesters as they were heading for the
 8 informal settlement. That's correct, not so?
 9 MR NGALWANA: That's not the evidence.
 10 MR MADLANGA SC: May I correct that? May
 11 I correct that, in the interest of time. Is it so,
 12 General, that the only briefing that took place was the
 13 briefing where next to the railway line you said to the
 14 commanders that you should rather escort the people back to
 15 the koppie, and there was no other briefing? Is that
 16 correct?
 17 MR NGALWANA: That is not the evidence,
 18 Chair.
 19 MR MADLANGA SC: Well, the witness can
 20 answer –
 21 CHAIRPERSON: He's asking - if it's not
 22 correct, the witness can say so. Carry on, Mr Madlanga.
 23 MR MADLANGA SC: Please answer the
 24 question, General.
 25 MR NGALWANA: But he's putting an

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1 inaccurate proposition to the witness, Chair.
 2 MR MADLANGA SC: The witness can say that
 3 it is incorrect if the witness thinks it is.
 4 CHAIRPERSON: The witness can be asked is
 5 it correct that it's raining, and the witness can say no,
 6 it's not raining if it isn't. Mr Madlanga, please
 7 continue.
 8 MR MADLANGA SC: Please answer the
 9 question, General.
 10 MAJOR-GENERAL MPEMBE: Chairperson, I did
 11 indicate that Lieutenant-Colonel Merafe did confirm with me
 12 to say that the members were briefed and they were
 13 orientated, but now, but because he is also going to work
 14 with them, the orientation will continue.
 15 MR MADLANGA SC: But is it not correct
 16 that that briefing was not specific to what took place in
 17 the vicinity of the railway line? That was a briefing that
 18 took place once the members of police had arrived at
 19 Marikana.
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 MR MADLANGA SC: Back to my earlier
 23 question then. So I am correct, or am I not, in suggesting
 24 to you that a briefing that took place is only the one
 25 where you briefed the commanders next to the railway line,

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1 that rather than trying to disarm the people next to the
 2 railway line, you should rather escort them back to the
 3 koppie? Is that correct or not?
 4 MAJOR-GENERAL MPEMBE: Chairperson, the
 5 briefing that Colonel Merafe spoke about is in line with a
 6 contingency plan of the 10th, which is correct to say that
 7 on the 13th that contingency plan could not be work, but
 8 what I was actually painting a picture, it was to say it is
 9 not only that interception that was taking place, but the
 10 violent nature of the place in the whole Marikana, that's
 11 the one that is important, not picking up each and every
 12 violent nature.
 13 MR MADLANGA SC: General, others may
 14 perhaps be understanding your response, but I just want to
 15 make sure that I do not confuse issues and that I
 16 understand you properly. So is your short answer to my
 17 question a yes, the question being that do you, or is it
 18 correct that on the 13th next to the railway line the only
 19 briefing that took place was at the stage where you were
 20 saying to the commanders – of course you engaged in a
 21 debate with them around that – where you were saying to the
 22 commanders "Let us not disarm the strikers here; let us
 23 rather escort them to the koppies?" Is that so?
 24 MAJOR-GENERAL MPEMBE: Chairperson, yes,
 25 in relation to the incident at the railway intersection.

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1 MR MADLANGA SC: And that briefing,
 2 General, am I correct, related only to not disarming the
 3 people there and rather escorting them? Is that all it
 4 related to?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson, with only changes of dispersing because it's a
 7 process, dispersing, because if, you can't disarm before
 8 you disperse.
 9 CHAIRPERSON: Do I understand you to say
 10 that you had a problem; people were marching off, you were
 11 counting to 10. Before you finished, they started marching
 12 off. They were bunched together. You couldn't in those
 13 circumstances disperse them, and because you couldn't
 14 disperse them, you couldn't disarm them? Is that not
 15 necessarily what you said, but was that your thought
 16 process at the time?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR MADLANGA SC: Is it correct also that
 20 there was no briefing whatsoever with regard to how the
 21 police were to prevent the protesters from entering the
 22 informal settlement close to the railway line? Is that
 23 correct or not?
 24 [15:49] MAJOR-GENERAL MPEMBE: Chairperson, in
 25 crowd management when you speak about an action mode

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1 channelling, it does specify how do you channel people.
 2 MR MADLANGA SC: But was there a
 3 briefing, General? Was there a briefing on how the people
 4 should be prevented from entering this informal settlement?
 5 Was there or wasn't there?
 6 MAJOR-GENERAL MPEMBE: Chairperson, it
 7 was there with regard to the channelling.
 8 MR MADLANGA SC: When did that take
 9 place?
 10 MAJOR-GENERAL MPEMBE: Chairperson, I did
 11 specify and also the Advocate did say, except myself, by
 12 the time when I was speaking to them to say let us not
 13 disperse here, can we channel them. So when you speak
 14 about channelling you also have to explain how it has to
 15 take place.
 16 MR MADLANGA SC: So are you suggesting
 17 that according to SAPS prescripts, if the action to be
 18 taken by the police is the channelling that you are
 19 referring to, there is no need for a briefing whatsoever?
 20 Do I understand you correctly?
 21 MAJOR-GENERAL MPEMBE: Chairperson, when
 22 you spoke about channelling, escorting, you still also have
 23 to say how and you have also to say you channel them from
 24 where and what are the reasons why they, you have to
 25 channel them in that, or escort them in that direction.

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1 MR MADLANGA SC: So if your answer to –
 2 CHAIRPERSON: Sorry, the impression I get
 3 is you didn't have much time to do much briefing, did you?
 4 People, you were counting, people started walking off. Is
 5 that right? And you and your men had to follow them.
 6 Isn't that so?
 7 MAJOR-GENERAL MPEMBE: No, Chairperson.
 8 CHAIRPERSON: No. How long did the
 9 briefing take?
 10 MAJOR-GENERAL MPEMBE: Chairperson, it
 11 didn't take long, but when I talk to –
 12 CHAIRPERSON: Okay, but answer the
 13 question about how long did it take before you carry on. I
 14 don't want to interrupt you unduly, but I did ask you how
 15 long did the briefing take. Answer that and then you can
 16 carry on and amplify as you wish.
 17 MAJOR-GENERAL MPEMBE: Not very long,
 18 Chairperson.
 19 CHAIRPERSON: A minute? Two minutes?
 20 MAJOR-GENERAL MPEMBE: It could have
 21 taken even two or three or four minutes.
 22 CHAIRPERSON: Thank you.
 23 MR MADLANGA SC: General, did I
 24 misunderstand your evidence? I understood your evidence to
 25 be that you negotiated and negotiated, and at some point

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1 you stopped, went to talk to the commanders, and that one
 2 actually does show you not addressing the protesters but
 3 standing somewhere there and at one point even having a
 4 phone to your ear and apparently, of course not when you
 5 have a phone to your ear, and apparently discussing with
 6 the people that were with you. That was in the middle of
 7 the negotiation process, not so?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MADLANGA SC: And at that stage the
 11 protesters were still seated or squatting or crouching
 12 where you had been addressing them, not so?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 MR MADLANGA SC: And it was only
 16 thereafter that you came back to them and after talking to
 17 them you then said, "Now I'm going to count," not so?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson, having informed the police what action to
 20 follow.
 21 MR MADLANGA SC: The action to follow
 22 being to escort them back to the koppies, not so?
 23 MAJOR-GENERAL MPEMBE: If, Chairperson,
 24 they refuse to lay down their weapons.
 25 MR MADLANGA SC: I understand the time

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1 constraints that you might have had, but I just want to
 2 establish the facts. During that briefing with the
 3 commanders prior to going back and saying "Now I'm going to
 4 count," I want to know as a fact whether the briefing that
 5 took place ever addressed the question of how the police
 6 intended to prevent the protesters from getting into the
 7 informal settlement.
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson, and I said we relied on our experience and I
 10 was talking to POP commanders who do understand action
 11 modes.
 12 CHAIRPERSON: Does that mean you didn't
 13 have to spell it out for them?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson.
 15 What I'm saying is that if there was anyone who couldn't
 16 understand what I was saying, he had a chance to ask.
 17 MR MADLANGA SC: Earlier in response to a
 18 question I understood you to say that there was no need for
 19 a briefing on the how, that is how to prevent the
 20 protesters from getting into the informal settlement,
 21 because what was to be done was the channelling. A
 22 question that I asked and to which I still do not have an
 23 answer is, are you suggesting that if what the police are
 24 to do is this channelling, the prescripts do not require
 25 that there be a briefing prior to the channelling?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I did
 2 answer that the briefing, the prescripts they do want a
 3 briefing and also I did brief the members with how to do
 4 it.
 5 MR MADLANGA SC: Last question, Mr
 6 Chairman, if of course the Commission will be inclined to
 7 adjourn. Last question, can you in full, not summary, in
 8 full state what that briefing was, the briefing on how the
 9 police planned on preventing the protesters from getting
 10 into the informal settlement, in full?
 11 MAJOR-GENERAL MPEMBE: Chairperson, there
 12 should be, we should escort them from the back, leaving a
 13 reasonable distance from us and the protesters. We need to
 14 check the flashpoints and informal settlement, it was one
 15 of them. There was also some sort of a melting, or any
 16 other place of the mine on the other side.
 17 CHAIRPERSON: You indicate with your left
 18 hand, in other words on the left side.
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: When you said "on the other
 22 side" you then extended your left hand, so that indicates
 23 by the other side you mean your left side?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, on the scene. Why I'm indicating left, I know

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1 that the Commission was at the scene; maybe they will also
 2 understand what I'm talking about, and then we used the
 3 Nyala to block the place where we don't want them to go,
 4 just, not to block them, but to channel them.
 5 CHAIRPERSON: How many Nyalas did you
 6 have?
 7 MAJOR-GENERAL MPEMBE: Chairperson, we
 8 had some quite number of Nyalas, even though I might not be
 9 precise, which I can provide with the exact number. We did
 10 have plus-minus six Nyalas. And Chairperson, if we do
 11 channel or we do escort, and if we realise that they are
 12 not following the way in which I did indicate to them to
 13 say in terms of section 9 of the Regulation of Gatherings
 14 Act, subsection 1(c), we are entitled to disperse them in
 15 the direction that they have to take.
 16 MR MADLANGA SC: Who was the driver of
 17 the Nyala?
 18 CHAIRPERSON: There were several Nyalas –
 19 MR MADLANGA SC: The one that he said, I
 20 thought he said they used a Nyala. He did –
 21 CHAIRPERSON: He said one, but then he
 22 said they had others as well. Okay, make your question
 23 clear.
 24 MR MADLANGA SC: General, did I
 25 understand you correctly that you used a Nyala to flank the

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1 protesters? Yes, I do understand you to say that at the
 2 scene there were several Nyalas, but did I understand you
 3 correctly that you used a Nyala to flank the protesters?
 4 MAJOR-GENERAL MPEMBE: Chairperson, when
 5 I was speaking, I was speaking to the commanders, that they
 6 do have different Nyalas, which of course they will post
 7 them in line with my briefing, but not to say this one
 8 should go there, because I was addressing a group of
 9 commanders.
 10 MR MADLANGA SC: And are you aware that
 11 any of your commanders briefed the several police who were
 12 there what they should do, or not?
 13 MAJOR-GENERAL MPEMBE: No, Chairperson,
 14 but what I do expect is that they could brief them.
 15 MR MADLANGA SC: Up to today have you
 16 since received any report that any of the commanders
 17 briefed any of the police who were at the scene?
 18 MAJOR-GENERAL MPEMBE: Chairperson, not
 19 the written report, but the actions that were taken there
 20 and also the others I would understand, but not exactly one
 21 commander confirming with me that I did brief.
 22 CHAIRPERSON: I'm sorry, that answer is a
 23 bit ambiguous. When you say, "One commander confirmed with
 24 me I did brief," does that mean he confirmed that you
 25 briefed or does it mean that he confirmed that he briefed

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1 the people subject to him, or did no commander at all
 2 confirm to you that he briefed the people under his
 3 command? You see the answer was ambiguous; if you could
 4 clarify it for me I'd be grateful.
 5 MAJOR-GENERAL MPEMBE: No confirmation of
 6 a commander telling me that he briefed his members,
 7 Chairperson.
 8 CHAIRPERSON: Would you like to take the
 9 adjournment now, Mr Madlanga?
 10 MR MADLANGA SC: Yes, Mr Chairman.
 11 CHAIRPERSON: Very well, we'll adjourn
 12 until 9:30 tomorrow morning.
 13 [COMMISSION ADJOURNED]
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