

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 67 26 MARCH 2013 PAGES 7103 TO 7228

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 7103</p> <p>1 [PROCEEDINGS ON 26 MARCH 2013] 2 [09:43] CHAIRPERSON: The National Commissioner 3 was delayed in the traffic, which is why we're starting 4 late. Mr Malindi, I was going to call on you to say 5 something this morning. 6 MR MALINDI: Thank you, Chairperson. 7 Chairperson, I'm unable to deal with that matter 8 immediately. May I be permitted to deal with it as soon as 9 I'm able to during the course of the day? 10 CHAIRPERSON: Yes, certainly. 11 MR MALINDI: Thank you, sir. 12 CHAIRPERSON: National Commissioner, 13 you're still under oath. Mr Madlanga, I think you're still 14 cross-examining. 15 MANGWASHI VICTORIA PHIYEGA: s.u.o. 16 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.): 17 Yes, Mr Chairman, thank you. Commissioner, yesterday I 18 took you through what I said is material or matter that may 19 be gleaned from material received from SAPS. Now I want to 20 make certain propositions to you regarding that, the matter 21 that I say is gleaned from the SAPS material. General, 22 would you say that in a situation where some of the 23 protesters may have been killed when some SAPS members 24 might have been firing in response to "friendly fire" by 25 other SAPS members, would you say that such a scenario</p>	<p style="text-align: right;">Page 7105</p> <p>1 GENERAL PHIYEGA: I presume those are 2 part of what was happening there but I want to underscore 3 this more that my statement had nothing to do with those, 4 with the killings. 5 MR MADLANGA SC: Is it not so that the 6 protesters who were killed on 16 August 2012 were killed as 7 part of the police crowd management on the 16th, if I were 8 to just stay focused on the 16th for now? 9 GENERAL PHIYEGA: Yes, they were but I 10 requested when I led my evidence that the whole statement 11 be played because to cull out that alone and not read my 12 statement in context, narrows the engagement. 13 MR MADLANGA SC: To be sure I understand 14 you, so you say you made that statement saying you did very 15 well in the crowd management at Marikana on the 16th of 16 August but excise from what I'm saying the killings that 17 you committed? Do I understand you correctly, is that what 18 you are – is that the answer you are giving? 19 GENERAL PHIYEGA: No, you do not 20 understand me well. 21 MR MADLANGA SC: What are you saying 22 then? Make me understand. 23 GENERAL PHIYEGA: I have replied to say 24 the statement that you mentioned did not make reference to 25 the deaths. It made reference to the processes, to the</p>
<p style="text-align: right;">Page 7104</p> <p>1 represents the best of responsible policing? 2 GENERAL PHIYEGA: My first response would 3 be that I'll give you the context of that statement because 4 I made it. The police, in my opinion, followed the 5 prescripts, the protocols of what they were supposed to 6 follow and that statement had nothing to do with the 7 deaths. 8 MR MADLANGA SC: What did that statement 9 deal with or what was it concerned with? 10 GENERAL PHIYEGA: It meant that the 11 police did their work according to police plans, according 12 to their protocols, according to their prescripts, it did 13 not make reference to the deaths. 14 MR MADLANGA SC: What work were you 15 referring to? 16 GENERAL PHIYEGA: The policing of the 17 public order and the processes that were followed 18 throughout. I mean I needed to talk to them about that. 19 MR MADLANGA SC: Policing of – you say of 20 the public order. Are you referring to the crowd 21 management at Marikana? 22 GENERAL PHIYEGA: My talk was related to 23 all the work that they'd been doing in Marikana. 24 MR MADLANGA SC: Including all of the 25 killings before and up to 16 August 2012?</p>	<p style="text-align: right;">Page 7106</p> <p>1 prescripts, to the standard operating procedures that the 2 police followed in doing their work. I have also said that 3 it, the request to play this statement in its totality when 4 I led my evidence was important, so that the total context 5 be taken into account. 6 MR MADLANGA SC: Commissioner, let us not 7 run around in circles. You say – 8 CHAIRPERSON: Sorry, Mr Madlanga – just 9 on a housekeeping basis to interrupt you before you proceed 10 with the point you're making. We have on our tables, on 11 our table, and I take it others have as well, a three page 12 document which is headed "General Phiyega, alright, good 13 morning, good morning." Am I correct in assuming that 14 that's a transcript of the video clip which was shown to us 15 when the National Commissioner gave evidence-in-chief, 16 which is WW6? Is that correct? As far as I'm aware, this 17 transcript has not got an exhibit number, so if I'm wrong 18 on that I'd be pleased to be corrected. If I'm not, I 19 think we should give it an exhibit number because I take it 20 it's going to be referred to in what follows in your cross- 21 examination. 22 MR MADLANGA SC: Yes. Yes, Mr Chairman, 23 you are quite correct. It's a transcript of WW6. 24 CHAIRPERSON: Of WW6? 25 MR MADLANGA SC: Yes.</p>

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1 CHAIRPERSON: Shall we make – if Ms
 2 Pillay will permit us, may we mark it FFF12?
 3 MS PILLAY: That's correct, Chair, it is
 4 FFF12.
 5 CHAIRPERSON: The other suggestion is we
 6 make it WW6.1, which would be better?
 7 MS PILLAY: We haven't marked any of the
 8 other transcripts in sequence in accordance with the video
 9 also. If precedent is to be followed it would be FFF12.
 10 CHAIRPERSON: I've marked it accordingly.
 11 MR MADLANGA SC: May I –
 12 CHAIRPERSON: I interrupted you, you were
 13 busy with a question. You've got to start – neither I nor
 14 the National Commissioner, I'm sure, can remember what, how
 15 the question began.
 16 MR MADLANGA SC: As part of the
 17 housekeeping, Mr Chairman, may I refer to – let me see,
 18 roughly about halfway through the page –
 19 CHAIRPERSON: Well, first of all let's
 20 make sure that the National Commissioner has a copy of the
 21 document.
 22 GENERAL PHIYEGA: I do, Judge.
 23 MR MADLANGA SC: This is, this transcript
 24 was given to the evidence leaders by SAPS. Let me just
 25 place that on record. There's a line roughly about halfway

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1 through the page that starts, "I come before you to
 2 actually say" and it goes on to say, "Trying as it may be,
 3 mourning as we are, let us take note of the fact that
 4 whatever happened represents the best of responsible
 5 policing." You will notice, Commissioners, that I've
 6 skipped the word "we" that appears between "happened" and
 7 "represents" and I've also inserted the "s" at the end of
 8 "represent." Those are corrections that the evidence
 9 leaders agreed to with Mr Semenya for SAPS. General, I was
 10 at the point where I was saying let us not move around in
 11 circles. If you say that what you were referring to was
 12 the crowd management at Marikana and all that the police
 13 did in terms of following prescripts and so on and all of
 14 the other things that you mentioned, by implication that
 15 must include the killings because the killings were part of
 16 that crowd management. It just must include that by
 17 implication, do you not agree?
 18 GENERAL PHIYEGA: Let me say I don't
 19 agree with the way you put it because that middle sentence,
 20 if you read it from the beginning it will tell you certain
 21 things. It says, "I come before you" actually to say
 22 "trying as it may be, mourning as we are" and I'm not
 23 talking about making that statement now. I made that
 24 statement that day. I have said "trying as we are,
 25 mourning as we – let us take note" and there I was then

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1 moving into the professional guidelines, according to the
 2 work that has been done because I had already addressed the
 3 deaths.
 4 MR MADLANGA SC: Open quote, "whatever
 5 happened," close quote. What are you referring to there?
 6 GENERAL PHIYEGA: I mean the work they
 7 have done and it's precisely what I'm talking about to say
 8 the prescripts, the processes, that's what I'm saying.
 9 MR MADLANGA SC: Commissioner, prescripts
 10 don't do anything, prescripts prescribe, prescripts tell
 11 you what you may do. The people who actually do something
 12 will be operational people, so what were you referring to
 13 if you were not referring to that which the police
 14 themselves did in terms of prescripts? What were you
 15 referring to?
 16 CHAIRPERSON: Mr Semenya has an
 17 objection. Yes, Mr Semenya?
 18 MR SEMENYA SC: Yes, Chair. This is
 19 argumentative. The witness has explained more than thrice
 20 what she meant by it. I can understand if Mr Madlanga
 21 doesn't like the answer but we cannot be just argumentative
 22 like that around the same point.
 23 CHAIRPERSON: What do you say about that,
 24 Mr Madlanga?
 25 MR MADLANGA SC: Mr Chairman, I take

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1 strong exception to this, it's totally uncalled for. Mr
 2 Chairman, I do not just have to stop because Mr Semenya has
 3 heard enough on one question. This witness has not
 4 answered the question. I want to get to the bottom of what
 5 it is that she is talking about. What exactly was this,
 6 what exactly was this, was it, that represents the best of
 7 responsible policing?
 8 CHAIRPERSON: He's asked the question –
 9 MR MADLANGA SC: She has not answered -
 10 she keeps referring to prescripts and so on and so on and
 11 yet what I want to get to the bottom of is what the people
 12 did. Prescripts do not do anything.
 13 CHAIRPERSON: Right, I've heard you. Mr
 14 Semenya –
 15 MR SEMENYA SC: Chair, if the question is
 16 what did you mean by it, she says I meant the work they did
 17 according to the prescripts, that's an answer. It's the
 18 one Mr Madlanga doesn't like but we can't have the same
 19 question to give it a meaning that would suit Mr Madlanga.
 20 MR MADLANGA SC: I want that work, I want
 21 that work, what is that work? That is what I want to get
 22 to the bottom of.
 23 CHAIRPERSON: I'll allow the question as
 24 you've now phrased it.
 25 MR MADLANGA SC: Commissioner, I repeat,

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1 prescripts do not do anything, so if you say the police did
 2 work in terms of the prescripts, what is that work? What
 3 is it that they did in terms of the prescripts?
 4 GENERAL PHIYEGA: The work that we did on
 5 the 16th is well articulated in this Commission and it has
 6 been submitted through our presentation. It talks clearly
 7 about what we did on the 16th.
 8 CHAIRPERSON: I take it the work, that
 9 includes the killing of the 16 people on the first site and
 10 the others at the second site, would that be correct?
 11 GENERAL PHIYEGA: Judge, I did not
 12 celebrate the death of people by what I said. I had
 13 already said in my statement that mourning as we are –
 14 because that's where I was recognising the deaths and then
 15 I moved on to the work that has been done –
 16 CHAIRPERSON: You see – no, no -
 17 GENERAL PHIYEGA: - the crowds that have
 18 been there, the people that have been there, all the
 19 formation, the plan that we have shared with you, that's
 20 the work I'm talking about.
 21 CHAIRPERSON: No, no, I understand that
 22 but what I want to know is, does that phrase "the work you
 23 did" include the shooting of the 34 people?
 24 GENERAL PHIYEGA: No, Judge.
 25 CHAIRPERSON: Thank you.

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1 MR MADLANGA SC: It includes the crowd
 2 management at Marikana on the 16th, you say.
 3 GENERAL PHIYEGA: Yes.
 4 MR MADLANGA SC: The people who were
 5 killed on the 16th at both scenes were killed during that
 6 crowd management, in the execution of that crowd
 7 management, not so?
 8 GENERAL PHIYEGA: That was the product.
 9 MR MADLANGA SC: We will submit – I will
 10 not argue this further, or rather I will not ask you
 11 further questions on this further, but we will submit at
 12 the end, Commissioner, that it was actually irresponsible
 13 of you and more so that you said during my cross-
 14 examination today or yesterday that you still stand by what
 15 you said here, we will submit that it was irresponsible of
 16 you to have made such a statement and to continue to make
 17 it. That is a statement that says whatever happened
 18 represents the best of responsible policing, in the face of
 19 an acceptance by SAPS itself that some protesters may have
 20 been killed when some SAPS members might have been firing
 21 in response to "friendly fire" by other SAPS members. It
 22 was irresponsible of you and it continues to be, if you say
 23 you stand by that even today.
 24 GENERAL PHIYEGA: I would plead with the
 25 Judge to note that I have answered to the best of my

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1 ability the questions that I've been given and I do not
 2 agree with the statement that has been given.
 3 CHAIRPERSON: What - counsel has said
 4 he's not going to ask you any more questions on this point,
 5 he's just telling you that he's going to advance certain
 6 submissions at the end of the hearing, so you can comment
 7 if you wish. You've made your comment, I think, so I think
 8 we can now move on.
 9 [10:03] MR MADLANGA SC: Just in case I might
 10 have given a wrong impression, Mr Chairman, Commissioners,
 11 I'm not as yet stepping off the subject of representing the
 12 best of responsible policing –
 13 CHAIRPERSON: I see, okay.
 14 MR MADLANGA SC: I'm only, no – no, I
 15 understand –
 16 CHAIRPERSON: You did say you were going
 17 to argue at the end of the -
 18 MR MADLANGA SC: Yes, yes.
 19 CHAIRPERSON: - at the end of the case.
 20 MR MADLANGA SC: Yes. I'm only stepping
 21 off it insofar as the firing in response to friendly fire
 22 is concerned.
 23 CHAIRPERSON: Yes, you've been concerned
 24 with that point up to now –
 25 MR MADLANGA SC: Yes, yes.

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1 CHAIRPERSON: And the Commissioner I
 2 think has given her answer. There's no point in repeating
 3 the point. If it's a good point when made already, it
 4 remains a good point. If it's a bad point so far it's not
 5 going to become a better point by repeating it.
 6 MR MADLANGA SC: If the SAPS analogue
 7 radio network on the 16th was of such a nature that it made
 8 it either impossible or near impossible for the overall
 9 commander to follow what was happening, to such an extent
 10 that as SAPS's own expert says, he was not in a position to
 11 make a very crucial call, that is a call to halt the
 12 operations, would you say such a problematic radio network
 13 that presents such problems represents the best of
 14 responsible policing?
 15 GENERAL PHIYEGA: I'll answer your
 16 question in two parts. The first one is that I've answered
 17 you on the radio issue to say I'm sure the commander would
 18 be able to address that when he leads his evidence and when
 19 he is questioned here. The second part is that if I take
 20 that statement in context and understanding the fact that
 21 the radio issues that you are raising are still to be
 22 answered, the statement I made on that day had no knowledge
 23 of these radio issues that you are referring to and at this
 24 point in time I'm sure when that answer is given by the
 25 commander, maybe one can be able to sit and say this

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1 responsible policing in relation to prescripts, in relation
 2 to processes, did it add value or not add value.
 3 MR MADLANGA SC: General, I'm sure you
 4 remember that yesterday the Chairman quite correctly raised
 5 it with you whether you accept that what Mr de Rover says
 6 in his statement with regard to the radio network and all
 7 that happened in connection therewith, he received that
 8 information from SAPS members. Do you remember that being
 9 raised by the Chairman yesterday?
 10 GENERAL PHIYEGA: Yes, I do.
 11 MR MADLANGA SC: And do you agree that it
 12 must be so because there's nowhere else you would have
 13 gotten that from?
 14 GENERAL PHIYEGA: Yes, I do.
 15 MR MADLANGA SC: Coming to your response
 16 that it's more the relevant commander who should respond to
 17 the question that I am raising, General, I am not asking
 18 you about whether indeed this radio network was in the
 19 state that we are told it was in. What I'm asking you is,
 20 based on the facts that appear from what Mr de Rover says,
 21 which facts he must have received from SAPS members – based
 22 on those facts, do you continue to say that if that radio
 23 system was as has been described, do you continue to say
 24 that that represents the best of responsible policing?
 25 GENERAL PHIYEGA: I think I have given

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1 the best of my answer, trying any further would take away
 2 from what I believe in and what I think is the best
 3 response to your question .
 4 MR MADLANGA SC: Are you suggesting that
 5 you do not accept that Mr de Rover was given the correct
 6 facts perhaps?
 7 GENERAL PHIYEGA: I have answered you to
 8 say I am aware that he got the information from us and I've
 9 also agreed yesterday and today and you've asked me the
 10 question that you've asked me and I've given you my answer
 11 and I think that's the best answer I can give. Beyond this
 12 really I would be getting into a territory that is not
 13 giving you what I think is the best answer to give.
 14 MR MADLANGA SC: What territory is that?
 15 Is that a territory best left for the commander?
 16 MR SEMENYA SC: Chairperson, the witness
 17 requires protection, with respect.
 18 CHAIRPERSON: - about protection. He
 19 wants to know what kind of protection she means, I don't
 20 think there's anything wrong with that question but –
 21 sorry, I'm putting it wrongly. The question he was asking
 22 her was a follow-up on an answer she gave, he's tried to
 23 elucidate the meaning of it, as I understood the question.
 24 If I understood it correctly, it's in order. If I didn't
 25 understand it correctly, you'd better address me further.

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1 MR SEMENYA SC: Chair, the witness has
 2 said to this battery of questions, I am giving you the best
 3 answer I can on that subject. How far beyond that can a
 4 witness be pushed? We may not like what the answer is, we
 5 will argue on the strength of that if Mr Madlanga is so
 6 inclined but can a witness be pushed beyond saying, I've
 7 given you the best I have?
 8 CHAIRPERSON: Mr Madlanga, I –
 9 MR MADLANGA SC: This is my first
 10 experience –
 11 CHAIRPERSON: I thought you were – just
 12 stop – I was, my understanding was, the question you asked
 13 was intended to elicit from the witness further elucidation
 14 as to what she meant by what she was saying. Mr Madlanga –
 15 sorry, Mr Semenya puts a different emphasis on it. Perhaps
 16 you can rephrase your question and I can listen carefully
 17 this time and make sure I don't misunderstand it and then I
 18 will decide on –
 19 MR MADLANGA SC: Yes –
 20 CHAIRPERSON: - further argument, whether
 21 you may proceed.
 22 MR MADLANGA SC: Yes. Mr Chairman,
 23 speaking for myself I am in the dark, completely in the
 24 dark as to what territory the witness is referring to. She
 25 says that if she attempts to answer the question then she

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1 will stray into territory, I forget what territory she –
 2 and what I was doing was to try to understand what
 3 territory she's talking about. Perhaps my learned friend
 4 Mr Semenya knows what territory she's talking about, I
 5 don't and I'm seeking clarity on that and so far as I'm
 6 concerned, so far as I'm concerned this witness has still
 7 not answered the question but I will start by following up
 8 on the clarification that I'm seeking, Mr Chairman.
 9 CHAIRPERSON: I think to seek
 10 clarification on the answer that was given is in order and
 11 I allow that question, but there is force, of course, in
 12 what Mr Semenya says also and that is if the witness says
 13 something that you are going – which you say you will have
 14 to show by argument to be incorrect, there isn't much point
 15 in rehearsing the argument with her now. There are certain
 16 – sometimes a witness will give an answer and that's the
 17 answer. If the answer is wrong, it's a matter for argument
 18 later. There I – but having said that, I'll allow you to
 19 proceed with your question seeking elucidation as to what
 20 is meant.
 21 MR MADLANGA SC: Thank you, Mr Chairman.
 22 I don't mean to be disrespectful but I disagree with what
 23 you say. The rule about you stopping once you have been
 24 given a response, I know that to apply when one is cross-
 25 examining on matters that relate to credibility and that is

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1 not what I'm about here. If – may I continue, Mr Chairman?
 2 Cross-examination is exactly meant to try to dislodge a
 3 witness from a position that the cross-examiner believes
 4 the witness should be dislodged from and until and unless
 5 it shown why and how that attempt at dislodging the witness
 6 from that position, I see nothing wrong with – yes, of
 7 course one cannot, there are limits, one cannot do it ad
 8 nauseam and at this stage I was nowhere near doing it ad
 9 nauseam.
 10 CHAIRPERSON: Well, I have to give –
 11 MR MADLANGA SC: This was the first
 12 answer, this was the first answer to that question and the
 13 witness gave what I daresay was in fact an evasive response
 14 to my question.
 15 CHAIRPERSON: I haven't yet given a
 16 ruling adverse to you, so you don't have to get excited and
 17 address me further on the point. I've said I'll allow you
 18 to ask a question by way of elucidation. The only point I
 19 made was, a point is sometimes reached where further cross-
 20 examination on a particular point takes the matter no
 21 further and it can rather be left over for argument.
 22 Whether that stage has yet been reached is a matter upon
 23 which I've not yet given a decision and so I suggest you
 24 proceed until you are faced with an adverse ruling or an
 25 objection which would lead to an adverse ruling, in which

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1 case the matter can be dealt with fully. It may not – it
 2 may perhaps not be necessary for us to do that but please
 3 proceed with your cross-examination on the lines I've
 4 indicated.
 5 MR MADLANGA SC: General, you referred to
 6 some territory that you do not want to stray into. What
 7 territory is that?
 8 GENERAL PHIYEGA: I'll give you two parts
 9 of my question. I spoke about the radios and all those and
 10 I've said that's an area that I think the commander should
 11 come and ask and that's the territory I'm referring to in
 12 my second part of the answer.
 13 MR MADLANGA SC: And about the commander,
 14 are you talking about the commander coming here to address
 15 whether or not there was indeed a malfunction with the
 16 radio network or what exactly are we talking about in that
 17 regard?
 18 GENERAL PHIYEGA: Yes, because you were
 19 asking me a question in relation to that.
 20 MR MADLANGA SC: I'm not asking you about
 21 whether or not there was in fact a malfunction, I'm not
 22 asking you about that. Therefore your response about the
 23 commander being the person suited to address that does not
 24 come into the equation. This is what I'm asking you. Mr
 25 de Rover, possibly informed by that commander or by whoever

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1 else within SAPS, says that the analogue radio network of
 2 SAPS was in such a state that it made it impossible for the
 3 overall commander to make a crucial call which was to halt
 4 the operation after the killings at scene 1. Now, based on
 5 those facts that are stated – and not asking you to comment
 6 on them in the sense of was it so or not so, was the radio
 7 network indeed malfunctioning, I'm not asking you about
 8 that. I'm saying accepting what Mr de Rover says, based on
 9 what SAPS itself has told him, would you say that a radio
 10 network that malfunctioned in that serious manner in a huge
 11 operation of that manner, would you say that that
 12 represents the best of responsible policing?
 13 GENERAL PHIYEGA: I'm not able to give
 14 that judgment because, a) I have said the commander will
 15 talk about the radio and 2), de Rover doesn't listen to us
 16 and regurgitate what you are saying. He's an expert, he
 17 must come and talk for his facts. On that basis I still
 18 say the answer that I've given you is based on those issues
 19 because I cannot answer for those two people and making an
 20 inference and interpretation of that would be wrong of me.
 21 I would be very remiss of my responsibility.
 22 MR MADLANGA SC: I will take you back to
 23 paragraph 13, 1-3 of Lieutenant-Colonel Gaffley's statement
 24 which I read to you yesterday. That is FFF10,
 25 Commissioners. Again, National Commissioner, would you say

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1 that in a situation where, according to Lieutenant-Colonel
 2 Gaffley, SAPS members who were firing shots from different
 3 directions could even have shot each other, would you say
 4 that such a situation represents the best of responsible
 5 policing?
 6 GENERAL PHIYEGA: I have answered you
 7 yesterday on the very same question, indicating that the
 8 statement of Gaffley does make reference to the fact that
 9 there were people who were shooting who he could not
 10 identify and that's where we discussed quite at length, the
 11 "may" answer that I gave you yesterday and I still find it,
 12 it's still the same facts. I'm not able to change my
 13 position. I'm still saying may, with "may" underscored
 14 because there are possibilities both ways.
 15 MR MADLANGA SC: Just to make sure I
 16 understand you, so to you it would still have represented
 17 responsible policing even if some of the SAPS members had,
 18 as a matter of fact, shot other SAPS members, injured and
 19 even possibly killed them. Would that still, according to
 20 you, have represented responsible policing?
 21 GENERAL PHIYEGA: Because it is a
 22 presupposition and particularly because of that "may," I'm
 23 not able to give you a definite answer on that one and I
 24 think it would be irresponsible of me to do so.
 25 MR MADLANGA SC: It's not a

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1 presupposition, it's based on a statement that has been
 2 furnished to this Commission by a member of SAPS, but I'll
 3 move on. We'll -
 4 CHAIRPERSON: - a presupposition because,
 5 as a fact, no policeman was shot by another policeman in
 6 the course of the operation. Your question was, if that
 7 had happened, would that have been the best professional
 8 policing? So it is a supposition because you say if that
 9 had happened, and so the answer – the short point is, it
 10 didn't happen. So it's really a very hypothetical point
 11 which doesn't take us any further so I suggest it's
 12 appropriate to move forward.
 13 [10:23] MR MADLANGA SC: Possibly – thank you.
 14 But do you accept a presupposition possibly purely because
 15 Mr Gaffley and the rest of his unit ran and hit behind
 16 their cars?
 17 GENERAL PHIYEGA: I don't understand that
 18 question.
 19 MR MADLANGA SC: It's quite plain but
 20 I'll move on. According to you, National Commissioner, was
 21 the operation at Marikana on 16 August 2012 a success?
 22 GENERAL PHIYEGA: Perhaps what would
 23 assist me is to understand what you define as success.
 24 MR MADLANGA SC: If you consider what the
 25 police set out to do, how they intended to go about doing

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1 it or executing it and also what was achieved in the end,
 2 both intended, unintended, in fact including all of the
 3 consequences, would you say it was a success?
 4 GENERAL PHIYEGA: I'm glad that you give
 5 me that explanation. One, you deal with issues of the
 6 plan. Okay, and then you move to the process and to the
 7 outcome. Okay, and I would say in terms of planning I do
 8 believe that the police did their work to plan accordingly.
 9 I also would say in terms of process there was a disruption
 10 of the plan and then the outcome I would say was
 11 unintended. I can therefore say from the plan point of
 12 view as you have articulated it, I do believe that it was a
 13 good plan. Post the plan, the disruption and the outcome,
 14 I am hoping that through this process we may be able to
 15 take, understand and maybe a position can be taken.
 16 MR MADLANGA SC: So you are not in a
 17 position to say it was a success or it was not a success.
 18 GENERAL PHIYEGA: Because of the
 19 multidimensional issues that you've raised, I've tried to
 20 qualify where I think things were good and I'm saying the
 21 plan was good and I'm also saying there was a disruption of
 22 the plan and the outcome was therefore different.
 23 MR MADLANGA SC: So as not to waste time,
 24 let me take you to paragraph 11. You – just a minute.
 25 Could the Commissioners please bear with me, I'm trying to

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1 –
 2 CHAIRPERSON: While we bear with you,
 3 perhaps you can tell us paragraph 11 of what, so that we
 4 can –
 5 MR MADLANGA SC: 11.3 of, 11.3A of
 6 standing order G262, exhibit SS2, Commissioners.
 7 CHAIRPERSON: Paragraph number 11,
 8 execution. This is page 408, I think, of the police
 9 documents which is – and it's, this particular part from
 10 401 onwards, is exhibit SS2 as you say.
 11 MR MADLANGA SC: Yes.
 12 MR MPOFU: Sorry, Chairperson, just
 13 apropos that page numbering, my page numbering corresponds
 14 with yours but I understand that we are both on a wrong –
 15 CHAIRPERSON: Thank you for –
 16 MR MPOFU: - on a wrong index, yes.
 17 CHAIRPERSON: Thank you for telling me.
 18 I'll tell you when I've solved the problem.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: Exhibit SS2 consists of 11
 21 pages.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: And at the foot of the page
 24 that I'm talking about appear the words, "page 8 of 11."
 25 MR MPOFU: 8 of 11, yes.

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1 CHAIRPERSON: So if that helps anyone,
 2 everybody to find the right page, we can then proceed.
 3 MR MPOFU: Thank you, thank you, Chair.
 4 Sorry Chairperson, just not to belabour the point, I think
 5 the broader point I'm making is if – I don't know whether
 6 SAPS has distributed the new index. Apparently there's a
 7 new index where these numbers have changed but maybe I'll
 8 sort that out with Ms Pillay.
 9 CHAIRPERSON: If we stick to the exhibit
 10 numbers we should be alright and then this page, the number
 11 I gave is printed at the foot of the document as part of
 12 the actual document. So everyone will be able to find it –
 13 MR MPOFU: For now.
 14 CHAIRPERSON: - using that information.
 15 MR MADLANGA SC: I am directing your
 16 attention to paragraph 11.3A, it's right at the foot of the
 17 page, National Commissioner. Do you see that?
 18 GENERAL PHIYEGA: Yes, I do.
 19 MR MADLANGA SC: Please just go through
 20 it.
 21 GENERAL PHIYEGA: "The purpose of
 22 offensive action are to de-escalate conflict with minimum
 23 force to accomplish the goal and therefore the success of
 24 the actions will be measured by the results of the
 25 operation in terms of the cost, damage to property,

<p style="text-align: right;">Page 7127</p> <p>1 injuries to people and loss of lives.”</p> <p>2 MR MADLANGA SC: Success of the actions,</p> <p>3 that's an obvious reference to actions of SAPS, not so?</p> <p>4 GENERAL PHIYEGA: Yes.</p> <p>5 MR MADLANGA SC: And because this is</p> <p>6 about crowd management, this would be about the success of</p> <p>7 a crowd management operation, not so?</p> <p>8 GENERAL PHIYEGA: Yes.</p> <p>9 MR MADLANGA SC: And as this says, that</p> <p>10 success is measured to cost, damage to property, injuries</p> <p>11 to people and loss of life.</p> <p>12 GENERAL PHIYEGA: Yes.</p> <p>13 MR MADLANGA SC: On 16 August 2012 we do</p> <p>14 know that more than 70 people were injured, 34 were killed.</p> <p>15 I want you, based on what we have read here, to make a</p> <p>16 judgment and tell this Commission whether, based on SAPS's</p> <p>17 own test set out in this paragraph, you would say that the</p> <p>18 operation that resulted in more than 70 people being</p> <p>19 injured and 34 being killed, would you say the operation</p> <p>20 was a success?</p> <p>21 GENERAL PHIYEGA: I think I'd need to be</p> <p>22 responsible in answering you. If we look at the section</p> <p>23 you're referring to, it would help us to read the entire</p> <p>24 section on execution because I've already alluded to the</p> <p>25 fact that I think we had a good plan, the plan was</p>	<p style="text-align: right;">Page 7129</p> <p>1 definition of success. And as I say, the plan was good,</p> <p>2 the plan was disrupted and the outcome was unintended.</p> <p>3 CHAIRPERSON: National Commissioner,</p> <p>4 wouldn't it be perhaps appropriate to say that regard being</p> <p>5 had to the loss of life and the injuries and so on, it</p> <p>6 can't be said that the operation was a complete success but</p> <p>7 you would, of course, wish to add that insofar as it fell</p> <p>8 short of a success, this was due to factors which</p> <p>9 presumably you would say were beyond your, police, the</p> <p>10 control of the police or unforeseeable or something of that</p> <p>11 kind. Whether those points are correct would be a matter</p> <p>12 for us to decide but I think looking objectively, it's</p> <p>13 difficult to say the operation was a success but what would</p> <p>14 be important to look at is why it wasn't a success, can the</p> <p>15 police be blamed for the shortcomings as far as success</p> <p>16 were concerned and that's obviously a wider question which</p> <p>17 the Commission is concerned with. Would that not be a fair</p> <p>18 summary of the –</p> <p>19 GENERAL PHIYEGA: I think that's a fair</p> <p>20 summary, Judge, because that disruption bothers me because</p> <p>21 it really interferes with a definition of success.</p> <p>22 CHAIRPERSON: Mr Madlanga, may I ask you,</p> <p>23 have you finished with Colonel Gaffley's statement in</p> <p>24 relation to the question of – either the question of the</p> <p>25 best of responsible, professional policing or whatever the</p>
<p style="text-align: right;">Page 7128</p> <p>1 disrupted. And it is important therefore that when I</p> <p>2 answer 3A, I take all those issues into context because</p> <p>3 your pre-empted success is then disrupted. So it would be</p> <p>4 narrow of me to just look at that and use it to read into</p> <p>5 the outcome. The outcome was unintended because of the</p> <p>6 disruption.</p> <p>7 MR MADLANGA SC: Taking into account all</p> <p>8 of the other factors that you referred to and you say are</p> <p>9 also contained in paragraph, the rest of paragraph 11,</p> <p>10 taking all of those into account and not just focusing on</p> <p>11 clause 11.3A that I referred you to, I'm trying to make</p> <p>12 sure that we are on the same plane, P-L-A-I-N or P-L-A-N-E,</p> <p>13 I'm not sure.</p> <p>14 CHAIRPERSON: Both apply.</p> <p>15 MR MADLANGA SC: Thank you, Mr Chairman.</p> <p>16 Taking all of that into account and obviously you cannot</p> <p>17 disregard SAPS's own measure of success which is set out in</p> <p>18 clear terms, would you say that the operation was a</p> <p>19 success?</p> <p>20 GENERAL PHIYEGA: In keeping with what</p> <p>21 you explained as success, which included the plan, which</p> <p>22 included the process, which included the outcome, I will</p> <p>23 again say the plan was good, the plan was disrupted, the</p> <p>24 outcome was unintended and you cannot have a very clean,</p> <p>25 purified definition of success, it will be a relative</p>	<p style="text-align: right;">Page 7130</p> <p>1 phrase was, or this question as to success, because if you</p> <p>2 have finished with it there's a question I'd like to ask</p> <p>3 but I don't want to ask a question that you're intending to</p> <p>4 ask later.</p> <p>5 MR MADLANGA SC: In fact what I forgot,</p> <p>6 not only on the Gaffley issue but I was not going to ask a</p> <p>7 question focusing on it but what I had intended was to –</p> <p>8 and I forgot about it – was to indicate to her something</p> <p>9 that we will argue or what we will argue, based on – and I</p> <p>10 want to put it to her, I want to put it to her before I</p> <p>11 come back to the question of success.</p> <p>12 CHAIRPERSON: Yes, I was going to ask</p> <p>13 her, if you didn't, about paragraphs 14 and 15 in</p> <p>14 particular, the first part of 15. 14 and the first</p> <p>15 sentence really of 15 seem to me here relevant in the</p> <p>16 context with which you're busy but if you're going to ask</p> <p>17 those questions then I won't do so.</p> <p>18 MR MADLANGA SC: I was not going to ask</p> <p>19 them, Mr Chairman. May I just perhaps make the proposition</p> <p>20 I was going to make and then I'll leave it to the Chairman</p> <p>21 to raise the issue?</p> <p>22 CHAIRPERSON: Yes, do that.</p> <p>23 MR MADLANGA SC: Thank you. National</p> <p>24 Commissioner, my apologies for taking you back to the</p> <p>25 subject that I dealt with at the beginning of the day</p>

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1 today. I'm sure we still remember the issues that it took
 2 you through and at the end of each one, asking you whether
 3 you say that represents the best of responsible policing.
 4 What we will argue in the end is that all of those issues
 5 that I took you through in fact demonstrate that the
 6 operation was chaotic and cannot at all be said to
 7 represent the best of responsible policing. What is your
 8 comment?
 9 GENERAL PHUYEGA: I've given what I saw
 10 as, what I interpreted as, you know, as – as a response to
 11 the issues that you raised and I think I am not changing
 12 what I've said and I cannot give any better to what I've
 13 said already.
 14 MR MADLANGA SC: I heard the comment by
 15 the Chairman when I was asking you about the success of the
 16 operation of the 16th but I will nonetheless ask you about
 17 the success of the operation of the 13th. You –
 18 CHAIRPERSON: Before you go on to that,
 19 can I now ask the question I was going to ask? Colonel
 20 Gaffley's statement is FFF10 and paragraph 14 and the first
 21 paragraph of 15 read as follows. "I could see that some of
 22 the protesters were hit and members were still firing.
 23 This is when I started screaming the command 'cease fire'
 24 at the members shooting from behind us. The shooting
 25 started getting less and you could only hear individual

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1 shots every now and then." Now the question that I want to
 2 ask you is, if it's correct that when the order to cease
 3 fire was given, was screamed, the members did – and if it
 4 is correct that the members didn't start, they didn't
 5 respond to that immediately but the shooting went on,
 6 albeit it got less and there were individual shots, would
 7 one be able correctly to describe conduct of that kind as
 8 being the best of responsible policing?
 9 [10:43] GENERAL PHUYEGA: Judge, I think the 14
 10 is I could see some of the protestors were hit and members
 11 were still firing. This is when I started screaming the
 12 command cease fire at the members shooting from behind us.
 13 And let me go back to what we also read earlier in this
 14 statement where General Gaffley refers to -
 15 CHAIRPERSON: I don't whether you're
 16 promoting him in the field but he was actually a colonel
 17 but I'm sure he won't object.
 18 GENERAL PHUYEGA: I beg your pardon.
 19 CHAIRPERSON: You called Colonel Gaffley
 20 General. I said I don't know if you were promoting him in
 21 the field but I'm sure he won't object to being called a
 22 general.
 23 GENERAL PHUYEGA: No, I'm missing your
 24 point.
 25 CHAIRPERSON: It's alright it was a slip

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1 of the tongue, you called Colonel Gaffley a general.
 2 GENERAL PHUYEGA: Oh I'm sorry.
 3 CHAIRPERSON: I was correcting you.
 4 GENERAL PHUYEGA: My apologies.
 5 CHAIRPERSON: No that's alright. I'm
 6 saying I don't think Colonel Gaffley would expect an
 7 apology but carry on.
 8 GENERAL PHUYEGA: It's been very
 9 difficult. I've lost my title. I was just going back to
 10 the fact that just in an earlier paragraph which is 14
 11 that's where he talks about firing from directions and my
 12 concern would then be was the firing that he is talking
 13 about that was kept on shots coming now and then coming
 14 from the back or would the people from the back have
 15 responded, that's what would concern me in terms of
 16 responsibility because when you say cease fire you expect
 17 members to stop. But not having been on the scene I would
 18 ask the question whether the shots that were still coming
 19 were they still part of the cross fire that he's talking
 20 about or part of the bush. So for that reason I wouldn't
 21 be able to say the commanders that he was talking to, he's
 22 very definite about the people that he sees at the back and
 23 I'm hoping that maybe those who stopped were the ones at
 24 the back and the ones that he wasn't seeing, the ones that
 25 were crossing from all over could be the ones who were shot

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1 could be coming around, I don't know.
 2 CHAIRPERSON: I understand you to be
 3 saying but if I'm saying it wrongly you'll correct me I'm
 4 sure, that we only have to wait until Colonel Gaffley
 5 comes. If Colonel Gaffley says that after I gave the order
 6 to cease fire there were still individuals with shots being
 7 fired by the people to whom I addressed the command, that
 8 would not be the best responsible policing but if he says
 9 something else which indicates that those are not the facts
 10 then the point wouldn't apply. Is that a fair summary of
 11 what you're saying? We don't know, if people from behind
 12 to whom a command was addressed didn't respond immediately
 13 and went on shooting that wouldn't be the best responsible
 14 policing but we don't whether those are the facts at this
 15 stage, so it's not appropriate to make a definite comment
 16 on that. Is that fair, is that clearly what you're saying?
 17 GENERAL PHUYEGA: Yes.
 18 CHAIRPERSON: Okay. Thank you. You see
 19 it's linked to a further point that on this video that we
 20 have seen over and over again of the - I think it's eight
 21 seconds of firing at scene one, one can also hear the
 22 command being shouted cease fire and shots are heard
 23 thereafter as well, a number of them. So again the facts
 24 aren't quite clear at this stage but obviously if in fact
 25 people went on firing after there was an order which they

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1 heard, the cease fire that obviously wouldn't be the best
 2 responsible policing either.
 3 GENERAL PHUYEGA: I would say probably
 4 the command - you see Judge I don't know what they shot,
 5 you know when they say cease fire it stops immediately or
 6 something still goes and I'm the wrong person to be asked
 7 that, I'm sure the commander can tell how it works whether
 8 you know this one that Gaffley is referring to is a normal
 9 process, dying down and hearing one or two and stopping, I
 10 can't talk to that.
 11 CHAIRPERSON: When Gaffley comes I'm sure
 12 we can ask him those questions. But I understand if
 13 Gaffley says it was the people to whom the command had been
 14 addressed who went on firing and they could have stopped
 15 firing you don't seek to contend that that was the best of
 16 responsible policing because obviously it wasn't. That's
 17 fair isn't it?
 18 GENERAL PHUYEGA: Yes. Sorry if I may
 19 just add this one to say if he could also say which ones
 20 because he refers to people he's not seen.
 21 MR SEMENYA SC: Chairperson, for the
 22 record we intend to call an expert De Rover to explain
 23 empirically how that happens in multiple shooting
 24 incidents. National Commissioner, on 13 the crowd
 25 management operation that was conducted on 13 August 2012

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1 there five people died, three of them presumably being
 2 protestors and two being members of the South African
 3 Police Service.
 4 CHAIRPERSON: I don't know that what
 5 you're saying necessarily applies to the third civilian, so
 6 it might be advisable, it's not vital for the point that
 7 you're making -
 8 MR MADLANGA SC: Say civilians, it's
 9 safer to just say civilians.
 10 CHAIRPERSON: There's doubt as I
 11 understand it as to whether the third civilian, he was
 12 found dead in front of the shack that we saw at inspection,
 13 was in fact one of the strikers.
 14 MR MADLANGA SC: Thank you for that, Mr
 15 Chairman, thank you for that.
 16 MR MPOFU: Chairperson, sorry I don't want to
 17 interrupt but that is a version of the police in terms of
 18 Exhibit L, that it was one of the protestors.
 19 CHAIRPERSON: No, but it was already - I
 20 think we mentioned the fact that there was doubt on that
 21 one.
 22 MR MPOFU: Thanks, Chair.
 23 CHAIRPERSON: I don't want to hold things
 24 up but I didn't want us to proceed on what might turn out
 25 to be a partially incorrect premise.

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1 MR MADLANGA SC: Thank you, thank you for
 2 the correction, Mr Chairman. Three of the people being
 3 civilians and two being members of SAPS, so a total of five
 4 people dead. Would you say that that operation was a
 5 success?
 6 GENERAL PHUYENGA: Again I would request
 7 to assist me in your definition of success.
 8 MR MADLANGA SC: The same as before,
 9 General, this is ground that we traversed for quite a while
 10 around the operation on 16 August 2012 and indeed success
 11 as defined in the paragraph that I referred you to of
 12 Standing Order General 262.
 13 GENERAL PHUYEGA: If it is the same
 14 answer, it's the same to say I do believe that the police
 15 in terms of what they did, what they planned, how they
 16 engaged, how they negotiated, all those processes and how
 17 they tried to assist those members to move towards the
 18 koppie, that was well done.
 19 MR MADLANGA SC: Again, you refer to a
 20 plan, were you told that there was a plan or that a plan
 21 had been put together for the operation of the 13th?
 22 GENERAL PHUYEGA: Just a sentence ago you
 23 referred to 262, I'm taking 262 into account to say - how
 24 police do their work in such circumstances. If I look at
 25 that execution they would have negotiated, maybe I should

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1 go through it. They would have negotiated, they would have
 2 spoken and the video does show that, that they were
 3 engaging with people who were meeting, who wanted to move,
 4 who were armed, who even refused to lay down their arms but
 5 they still continued to walk them towards where they were
 6 supposed to go. And I'm sure those who are going to talk,
 7 having been on the ground would explain that better because
 8 I think somewhere there's a disruption and the outcome is
 9 also unintended. It is almost like the one of the 16th.
 10 And therefore the definition of success becomes very
 11 relative and difficult to make.
 12 MR MADLANGA SC: General, that long
 13 response does not answer my question. In response or your
 14 response that preceded this last one that you've just given
 15 made reference to a plan on the day, that is 13 August
 16 2012. What my question is were you told that a plan had
 17 been put together for the crowd management of operation of
 18 13 August 2012? Were you told that a plan had been put
 19 together for that operation?
 20 GENERAL PHUYEGA: No.
 21 MR MADLANGA SC: So are you simply making
 22 an assumption that there must have been a plan?
 23 GENERAL PHUYEGA: I'm making no
 24 assumption. I have said to you that standing order 262 as
 25 you had talked the execution and I listened to what you're

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1 saying about the 13th, if I look at that I would say there
 2 would have been a process or some way of dealing with all
 3 those issues that are raised there and I am also saying to
 4 you that the person who did that will be able to answer you
 5 more specifically on the details and nitty gritty of that.
 6 And all I was saying was that you know the success as you
 7 say you were using the old definition that you've given me,
 8 I was saying that's what was done there and I think there
 9 were negotiations. We saw people talking to each other, we
 10 saw them walking people, we saw them, something else then
 11 happened and the outcome is something very different.
 12 MR MADLANGA SC: You keep - in response
 13 to my question around the plan you keep referring to what
 14 Standing Order General 262 says. Are you suggesting that
 15 you would have expected the police to act in accordance
 16 with Standing Order 262? I'm just trying to understand
 17 you, I don't.
 18 GENERAL PHIYEGA: Let me start off by
 19 saying the events of the 13th we've all seen on the screen.
 20 The same events are there in our presentation. My response
 21 to you is when you asked me whether it was a success, I was
 22 not at that scene, the response I'm giving you is based on
 23 my observation on what is on our report, on what we've all
 24 seen on the screen. You further assisted me by saying I
 25 have defined success to you to mean what I have said when

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1 we were dealing with the 16th. Based on what I've said you
 2 know in terms of what we've seen on TV, what we have seen
 3 in our report I am saying there were processes that there
 4 were negotiations, people talking to each other, people who
 5 refused to put their arms down, people who were walked away
 6 and I've said from a process point of view something
 7 happened and I said also like the previous question the
 8 outcome was unintended and therefore it is difficult for
 9 one to say in categorical terms that you are asking whether
 10 it was a success or not. It remains relative.
 11 MR MADLANGA SC: As I understand you did
 12 attend at Marikana on 13th August 2012, correct?
 13 GENERAL PHIYEGA: Yes I was here in
 14 Marikana on the 13th in the evening.
 15 MR MADLANGA SC: Let me just briefly
 16 define the unfortunate scene on the day, the 13th August
 17 2012.
 18 CHAIRPERSON: Mr Madlanga, forgive my
 19 interrupting you, you say you're going to do it briefly but
 20 I'm not sure, to be fair, knowing a little bit of what
 21 happened on the 13th on the evidence we've had so far that
 22 it's being done with the kind of brevity that one would
 23 desire at 11 o'clock but if you can do it with the
 24 appropriate brevity please proceed, if you can't then maybe
 25 we must take the adjournment at this stage. Tell me if

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1 it's appropriate.
 2 MR MADLANGA SC: Perhaps let's take the
 3 adjournment, Chair.
 4 CHAIRPERSON: We'll take the adjournment
 5 at this stage.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [11:31] CHAIRPERSON: The commission resumes.
 8 You're still under, National Commissioner. Are we now
 9 going to get the brief summary on what happened on the 13th?
 10 MR MADLANGA SC: Thank you yes, yes Mr
 11 Chairman. National Commissioner, I'm just going to refer
 12 to what I want to call the skirmish and that is what I want
 13 to give a brief description of. We have observed video
 14 footage of what happened on the 13th and part of what we
 15 see in that footage is a stage where you see smoke which I
 16 assume is tear smoke and you also notice what appears to be
 17 something dropping on the ground. I do not want to venture
 18 and suggest what that is but it may well be a stun grenade
 19 or two and after that you then see people moving in all
 20 directions, some even running and there's a lot of smoke
 21 and thereafter you then see some of the people that died on
 22 the day. So what I'm referring to as the skirmish is that
 23 scenario that I've just described. Were you told when you
 24 received your briefing on 13 August 2012 what it is exactly
 25 that triggered that skirmish?

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1 GENERAL PHIYEGA: You refer to a skirmish
 2 and I would not be in a position to talk about - I know I
 3 saw people sitting, people being spoken to and that's what
 4 I saw on the video and that is also what I've been briefed
 5 on to say. They came, they squatted, they was that
 6 engagement, there was negotiation for them to put things
 7 down. They needed to move, they were being moved to the
 8 mountain. The skirmish and all those issues I really
 9 cannot attest to talk to, I think I would be interpreting
 10 things that I don't understand.
 11 MR MADLANGA SC: I put it in that fashion
 12 because I proceeded on the assumption that you would have
 13 seen this on the footage as well but let me phrase the
 14 question differently General. Were you told during the
 15 briefing of 13 August 2012 what it is exactly that
 16 triggered the events that resulted in five people being
 17 killed? What it is exactly, at the exact point that the
 18 events commenced resulting in the death of the five people,
 19 were you told exactly what it is that triggered that?
 20 GENERAL PHIYEGA: What I've been told is
 21 that there was a group of armed protestors. The requests
 22 were that they put their arms down, it appears there was an
 23 agreement on that and I was reported - the report that was
 24 given to me was also that there were some extended
 25 negotiation around that. I also see those negotiations on

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1 TV and I also see continued movement by the protestors with
 2 their weapons which meant they did not agree to putting
 3 them down and what I was also informed was that they then
 4 agreed that they would walk them to the mountain. Then
 5 there was turnaround and police were killed and other
 6 members they were killed, that's the high level feedback
 7 that I was given.

8 MR MADLANGA SC: Please bear with me,
 9 Commissioners. So just immediately before, immediately
 10 before the movement this way and that, some people even
 11 running your briefing did not say what it is that triggered
 12 the movement of the people this way, immediately, just
 13 immediately before that commenced. You were not briefed or
 14 you were not told about that?

15 GENERAL PHIYEGA: As I've said, remember
 16 not being on the ground is a very different thing and I
 17 really would again say I would prefer those who were on the
 18 ground to talk about those nitty gritty. You know as I've
 19 explained to you what I understood happened on the 13th, it
 20 would be again remiss of me to try and deal with those
 21 granular specifics.

22 MR MADLANGA SC: And would it be correct
 23 to say - I've forgotten what your statement says now,
 24 pardon me, General. Would it be correct to say that
 25 because he was central to the operation of the 13th General

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1 Mpembe would have been one of the people that briefed you
 2 during the evening of the 13th?

3 GENERAL PHIYEGA: Yes.

4 MR MADLANGA SC: General, I am well aware
 5 that as at August 2012 you were about two months on the job
 6 and that therefore you would not be having the necessary
 7 operational experience. Is that a fair comment or
 8 statement to make?

9 GENERAL PHIYEGA: Yes you are right. I
 10 also articulated that very profoundly in my opening
 11 statement, in my statement.

12 MR MADLANGA SC: That is not withstanding
 13 is it also a fair comment to say that as the person who
 14 heads the South African Police Service the decision to take
 15 certain crucial or rather the responsibility to take
 16 certain crucial decisions would result in you? Would that
 17 be a fair comment to make?

18 GENERAL PHIYEGA: Yes.

19 MR MADLANGA SC: But is it correct that
 20 you would not have been suitably qualified to take any
 21 crucial decisions regarding operational matters on crowd
 22 management in Marikana during the period covered by the
 23 terms of reference of this Commission, not so?

24 GENERAL PHIYEGA: Maybe you want to ask
 25 this question again.

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1 MR MADLANGA SC: Do you consider yourself
 2 to have been suitably qualified to take crucial decisions
 3 on operational matters in the crowd management operation at
 4 Marikana during the period covered by the Commission's
 5 terms of reference?

6 GENERAL PHIYEGA: I'm going to give you
 7 my answer in two parts. In my evidence I have indicated
 8 that as per the constitution the President appoints a man
 9 or a woman to control and manage police and that refers to
 10 the ability of that person to strategically manage the
 11 organisation. The Police Act continues to indicate that
 12 that person should set up divisions, units and structures
 13 that are staffed with people who are very capable and able
 14 to deal with those and it doesn't matter whether it is a
 15 CFO, somebody who is a CH manager of finances to a person
 16 who is the general who handles our technology and systems
 17 or to a general who is responsible for operational response
 18 and all those types of things. I strategically manage all
 19 those people. The second part of my answer is to say I
 20 could take the decisions that I took because I had very
 21 strategic experience and knowledgeable operational leaders
 22 that were in charge of operations here at Marikana and in
 23 charge of operations in SAPS. So finally I would say
 24 whether it was approving of a 63 billion budget or
 25 approving particular issues relating to operations I'm

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1 guided by very well experienced people. And I take
 2 strategic decisions, informed, fairly well informed by
 3 them. So based on that I am strategically well positioned
 4 to lead the organisation.

5 MR MADLANGA SC: General, I was not even
 6 there, that is there in the sense of suggesting that you
 7 are not strategically positioned to manage the
 8 organisation, not at all. I was not in the least
 9 suggesting that. My focus was just on one aspect of
 10 policing, the taking of crucial decisions on crowd
 11 management, that's all that I was focusing on and I
 12 apologise if you got the impression that I was suggesting
 13 that you cannot head the institution, I'm not suggesting
 14 that. So from the answer that you have given must I
 15 understand you to be saying that you were well positioned
 16 to take crucial decisions even on crowd management matters
 17 that related to the period covered by the terms of
 18 reference of this Commission because you had the support
 19 system that you have referred to, is that your answer?

20 GENERAL PHIYEGA: I am saying yes because
 21 the tactical end technically, the chief of operations, the
 22 people who are doing that were there and I could take
 23 informed decisions because I had the capacity, the hands
 24 and the feet to be able to do so.

25 MR MADLANGA SC: In your response before

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1 this last one you said that you were in a position to take
 2 the decisions that you took, so you were actually referring
 3 to decisions that you took and not so much the question of
 4 you being suited or not being suited to take decisions.
 5 What I would like you to tell the Commission is what
 6 decisions are you referring to? Just to be sure and you
 7 said, you said you had people in Marikana and it was in
 8 that context that you said and you took decision, it was in
 9 the context of what was happening in Marikana. So what
 10 decisions did you take in relation to what was happening in
 11 Marikana?
 12 GENERAL PHIYEGA: Remember I was
 13 responding to your question about decisions. I was just -
 14 you were talking about decisions in a generic perspective
 15 and I was responding to tell you about my role, how I take
 16 decisions, who I work with and what is happening and I
 17 didn't mention decisions before you mentioned it. You
 18 mentioned it and I was responding on the basis of that, so
 19 I wasn't talking of any particular decision.
 20 MR MADLANGA SC: Let me be direct then.
 21 Did you take any decisions in respect of the crowd
 22 management issues in Marikana starting from the time the
 23 protests commenced in Marikana?
 24 GENERAL PHIYEGA: Yes, there are.
 25 MR MADLANGA SC: Can you tell us what

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1 those are?
 2 GENERAL PHIYEGA: I think what I can
 3 remember, I mean the issue of capacity, I had to talk to
 4 the other leaders in SAPS to say police whatever capacity
 5 is required to assist the people in Marikana. That's a
 6 decision.
 7 [11:51] MR MADLANGA SC: Any other?
 8 GENERAL PHIYEGA: A decision to look at
 9 documents that we were producing, for instance the internal
 10 communications that we sent, the statement that I gave to
 11 the public, those are part of that.
 12 MR MADLANGA SC: Any other?
 13 GENERAL PHIYEGA: Resource mobilisation
 14 funds, why, to ensure that the people are receiving
 15 resources to be able to operate here because as you know
 16 it's not Marikana police that were doing that, it was a
 17 special joint -
 18 MR MADLANGA SC: To avoid me saying any
 19 other, can you just give us the comprehensive list of all
 20 the decisions you took, besides those you've already
 21 mentioned?
 22 GENERAL PHIYEGA: I gave you examples
 23 because really, I think I would be able to go sit down and
 24 actually say, when we say decisions, what else did I do,
 25 what else did I do, but ordinarily all strategic decisions

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1 that I'm supposed to do where it requires my decision
 2 making, I would do similar such.
 3 MR MADLANGA SC: Is it correct, and I'm
 4 basing this on my understanding, just tell me if it's not
 5 correct or if you do not know, is it correct that the
 6 experience or expertise of General Mbombo, the Provincial
 7 Commissioner, is in finance management or financial
 8 management?
 9 GENERAL PHIYEGA: General Mbombo is the
 10 Provincial Commissioner of North-West. Like me, she's a
 11 strategic general leader of a province such as North-West.
 12 What you see in the National Commissioner and what you see
 13 in a Provincial Commissioner is a microcosm of the macro
 14 roles that I play and she is a strategic leader of this
 15 province. And in spite of her being a police person, you
 16 need to have general management skills in addition to any
 17 other skills that you may be having, so that's the role she
 18 plays here. Even the powers that she has are related to
 19 that.
 20 MR MADLANGA SC: But is it so, is it so
 21 that within SAPS what she has done the most or what she has
 22 expertise or experience in, by and large, is in financial
 23 management. Is that so or not?
 24 GENERAL PHIYEGA: General -
 25 MR MADLANGA SC: By that I am by no means

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1 detracting from the other attributes that you have
 2 explained or described.
 3 GENERAL PHIYEGA: What I know is that
 4 General Mbombo is a police and she's a general manager.
 5 MR MADLANGA SC: Do you know her to have
 6 any expertise - I'm not asking about the support system
 7 that she may have in this regard - do you know her to have
 8 any expertise in crowd management?
 9 GENERAL PHIYEGA: I said she's a police.
 10 MR MADLANGA SC: General, there is the
 11 public order policing where I assume expertise in public or
 12 crowd management resorts and I take that to mean that it is
 13 not each and every police person who has expertise in crowd
 14 management. Now my question is, do you know General Mbombo
 15 to have any expertise in crowd management?
 16 GENERAL PHIYEGA: Maybe let me not do an
 17 injustice to her. Perhaps what we should call for is for
 18 her CV and also for her to talk about her own experience.
 19 CHAIRPERSON: I think the question is
 20 directed to what you know.
 21 GENERAL PHIYEGA: Mm.
 22 CHAIRPERSON: Whether you know whether
 23 she has that expertise. I understand if we are going to
 24 investigate the question whether, as a fact, she has such
 25 expertise, we'd have to do the kinds of things you suggest

<p style="text-align: right;">Page 7151</p> <p>1 and I don't know whether that's going to be necessary but 2 what Mr Madlanga wants to know, as I understand his 3 question, is whether, to your knowledge, General Mbombo has 4 that expertise in crowd management.</p> <p>5 GENERAL PHIYEGA: Judge, I'll start by 6 saying she's a police and saying she is a general manager 7 of this place. She would have some knowledge around public 8 order policing but to what extent, to what depth, I'm not – 9 I'm inarticulate in that. I would need her to be able to 10 tell you of her various, you know, professional experiences 11 but as a general manager and being a police, she would have 12 some knowledge on that. That's how far I can go.</p> <p>13 MR MADLANGA SC: From what you are 14 saying, must I infer that you, you as General Phiyega, do 15 not know whether General Mbombo has expertise – and I'm not 16 talking about some knowledge or any knowledge – expertise 17 in crowd management, you do not know.</p> <p>18 GENERAL PHIYEGA: I would not want to 19 answer this question in a straitjacketed fashion. I said 20 she is a police, she has led this environment as a general 21 manager and for the years that she's had in leadership I'm 22 sure there is something that she can tell about expertise 23 or whatever. I'm the wrong judge.</p> <p>24 MR MADLANGA SC: Why can't you answer the 25 question, General? I'm not asking, I am – the Chair, the</p>	<p style="text-align: right;">Page 7153</p> <p>1 different angle. Would it be correct if I were to say that 2 I get the impression that you don't actually yourself know 3 what expertise, if any, General Mbombo has in the field of 4 crowd management but you assume, based on the fact that 5 she's been a police, a member of the police service for a 6 number of years and the fact that she's a general manager, 7 you assume that she has got some expertise in the field. 8 Would that be a fair summary of what you're saying? 9 GENERAL PHIYEGA: Yes, Judge. 10 CHAIRPERSON: Thank you. 11 MR MADLANGA SC: Do you know – again, 12 emphasis on your own knowledge – do you know if General 13 Mpembe has any expertise in crowd management? General 14 Mpembe being the police officer who was the C-JOC during 15 the operations? 16 GENERAL PHIYEGA: My answer is going to 17 be consistent with the last one so that I don't waste your 18 time. 19 MR MADLANGA SC: Just remind me again, 20 because I suggested – 21 CHAIRPERSON: The answer was, the answer 22 that I suggested to her was my understanding of what she 23 was saying, namely that she assumed that General Mbombo had 24 some expertise in the field of crowd management based upon 25 the fact that she'd been a member of the police service for</p>
<p style="text-align: right;">Page 7152</p> <p>1 Chairman explained to you that I'm asking you about your 2 knowledge. Why do you keep referring to something else? 3 Why can you not answer that question? It's a simple 4 question.</p> <p>5 GENERAL PHIYEGA: I know that you're an 6 SC, let me make an example, but I don't know whether you 7 know notaries and all those types of things but I know you 8 know the law. And that's where I'm coming from – 9 MR MADLANGA SC: The short - 10 GENERAL PHIYEGA: I don't want to really 11 make it difficult for you but I cannot – you know, you're 12 asking for specificity, I can't give that. 13 MR MADLANGA SC: You are making it 14 difficult for yourself, General. 15 GENERAL PHIYEGA: No, I'm not. 16 MR MADLANGA SC: Because if I'm asking 17 you, do you know whether I have any expertise in the things 18 that you referred to, notaries and so on, and because you 19 say you do not know, the short and simple answer is for you 20 to say you do not know. What's difficult with that? 21 GENERAL PHIYEGA: But I do know that 22 you're a lawyer. 23 CHAIRPERSON: General – sorry, National 24 Commissioner, can I ask a question – certainly the same 25 question Mr Madlanga's asking you but from a slightly</p>	<p style="text-align: right;">Page 7154</p> <p>1 a number of years and she was the general manager in charge 2 of the North-Western Province and she said yes, that was 3 the basis of the assumption which she made. Well, she said 4 yes but that amounted to an acknowledgement that she'd made 5 the assumption and that was the basis of the assumption. 6 And what she's now telling you is that the same answer 7 applies in the case of General Mpembe. I think that's 8 correct. If I'm wrong, she'll correct me. 9 MR MADLANGA SC: Did the South African 10 Police Service ever consider what it is that went wrong, if 11 they are of the view that anything went wrong at all, what 12 it is that went wrong that resulted in the death of 44 13 people at Marikana? Did SAPS ever sit down to consider 14 that, besides sitting down to prepare for the Commission, 15 which I understand what was done at Potchefstroom was 16 about? Did SAPS ever sit down and say now, as SAPS, let us 17 consider what is it exactly that went wrong that resulted 18 in the death of 44 people at Marikana? 19 GENERAL PHIYEGA: To the best of my 20 understanding this Commission is going to assist us to 21 synthesise a diversity of inputs and to assist us going 22 forward as SAPS, to understand what might have gone wrong. 23 There are bits and pieces of issues probably, but we are 24 hoping that the synthesis that comes out of here would 25 inform all of us in terms of what went wrong.</p>

<p style="text-align: right;">Page 7155</p> <p>1 MR MADLANGA SC: In paragraph 30 of your 2 statement – I hope I have the correct number because I was 3 quite confused by the changes or the metamorphosis that 4 your statement went through. Paragraph 30 which starts, 5 “Having learnt about” – is yours also paragraph 30? 6 GENERAL PHIYEGA: Yes. 7 MR MADLANGA SC: In that sentence you 8 speak in the passive, saying that members were invited to 9 Potchefstroom. Who is it that invited them? 10 GENERAL PHIYEGA: Potchefstroom is in the 11 North-West, so I would presume the Provincial Commissioner 12 of North-West would have convened that meeting because this 13 operation was taking place in the province. 14 MR MADLANGA SC: And did I understand you 15 to say that you visited Potchefstroom to check on progress 16 once? 17 GENERAL PHIYEGA: Correct. 18 MR MADLANGA SC: Now I want to take you 19 to the National Development Plan. I’m sure you are aware 20 of that. Wasn’t a copy handed over there? 21 GENERAL PHIYEGA: - let me check. No – 22 with some loose papers. 23 MR MADLANGA SC: It’s part of the 24 documents that were distributed electronically a day or two 25 ago, colleagues.</p>	<p style="text-align: right;">Page 7157</p> <p>1 Commission of which the chairperson was Mr Manuel – 2 MR MADLANGA SC: Or headed by Mr Manuel – 3 CHAIRPERSON: And the deputy chairperson 4 was Mr Ramaphosa. 5 MR MADLANGA SC: Yes, yes. And which I 6 understand was given to the President on 15 August 2012, Mr 7 Chairman. I’m going to read certain parts of this chapter. 8 This chapter deals with the South African Police Service, 9 General. 10 GENERAL PHIYEGA: Mm. 11 MR MADLANGA SC: I will read from page 12 387. In the second column right at the top, the page, the 13 387 does not appear but you can look at - page 386 does 14 appear, then you just go to the next page. Are you there? 15 GENERAL PHIYEGA: I hope we are on the 16 right place but – 17 [12:11] CHAIRPERSON: National Commissioner, if 18 you look at, 386 is the one that’s got a helmet on it – not 19 a helmet, rather, a police cap and the following page – 20 GENERAL PHIYEGA: Ja. 21 CHAIRPERSON: - is the page that begins 22 “Vision 2030.” 23 GENERAL PHIYEGA: Then I am there. 24 CHAIRPERSON: And that’s the page to 25 which counsel is referring.</p>
<p style="text-align: right;">Page 7156</p> <p>1 CHAIRPERSON: I think there are copies 2 for us. 3 MR MADLANGA SC: Yes, yes, Mr Chairman, 4 yes. 5 CHAIRPERSON: I think to be fair to the 6 witness, she should be given a hard copy as well. 7 MR MADLANGA SC: Yes, yes, Mr Chairman. 8 May the Commissioners bear with me, I’ve lost my copy. 9 CHAIRPERSON: Do you want this to be 10 marked as an exhibit? I take it you do. 11 MR MADLANGA SC: Yes, Mr Chairman. 12 CHAIRPERSON: FFF13. 13 MS PILLAY: That’s correct, Chair. 14 MR MADLANGA SC: I’m being offered a copy 15 but I prefer mine, Mr Chairman. 16 CHAIRPERSON: I can’t help you. What 17 exactly is this document, Mr Madlanga, can you tell us? 18 MR MADLANGA SC: Mr Chairman, I – 19 CHAIRPERSON: It appears to be chapter 12 20 of some publication. 21 MR MADLANGA SC: Yes, it’s chapter 12 of 22 the National Development Plan which I understand to be a 23 document that was put together by the National Planning 24 Commission. 25 CHAIRPERSON: The National Planning</p>	<p style="text-align: right;">Page 7158</p> <p>1 MR MADLANGA SC: Yes, and I’m taking you 2 – you will see there are two columns there, National 3 Commissioner. I am taking you to the column on the right 4 hand side. 5 GENERAL PHIYEGA: Okay. 6 MR MADLANGA SC: Right at the top, second 7 line, the following appears. “The remilitarisation of the 8 police in recent years has not garnered greater community 9 respect for police officers, nor has it secured higher 10 conviction rates. Certainly a para-military police force 11 does not augur well for a modern democracy and a capable 12 developmental state. The commission believes that the 13 police should be demilitarised.” Do you see that? Then 14 let us move to page 392 where a discussion on 15 demilitarising the police force commences and that is on 16 the column on the left hand side. You are there, 17 Commissioner? 18 GENERAL PHIYEGA: Yes. 19 MR MADLANGA SC: I will read again, 20 “Civilianising a highly militarised and politicised police 21 force was a transformation objective after the 1994 22 elections. It was considered necessary to professionalise 23 the police, establish a rapport with communities, develop 24 confidence and trust in the police and promote positive 25 community police relations. The goal was to transform the</p>

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1 police from a para-military force to a police service" -
 2 and you see they emphasise "service" – "that meets all the
 3 criteria of a civilian professional entity.
 4 Demilitarisation require changes in police insignia,
 5 military ranks and force orders to create a civil police
 6 service as the first phase of community policing. The
 7 second phase consisted of changing policing methodologies
 8 from a kragdadige" – my Afrikaans is not all that good but
 9 it think that's misspelt, Mr Chairman, should it not be
 10 krag?
 11 CHAIRPERSON: It should be kragdadige.
 12 MR MADLANGA SC: That is –
 13 CHAIRPERSON: There's a "g" missing after
 14 the –
 15 MR MADLANGA SC: Yes, yes.
 16 CHAIRPERSON: After the first "a".
 17 MR MADLANGA SC: Yes – "from a
 18 'kragdadige'" and kragdadige being in quotation marks,
 19 "style, to one which placed the community at the centre of
 20 policing through community policing." Do you see that?
 21 Let's skip again and go across to the opposite column, same
 22 page to – if you look from the top of the page, go to where
 23 the paragraph, the paragraph starting at the top of the
 24 page, or rather it starts from the previous column but if
 25 you start from the top, go right to the end of the

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1 paragraph. The end of that particular, count three lines
 2 upwards, you will see a line that reads "Police
 3 responsiveness," do you see that?
 4 GENERAL PHIYEGA: Mm-mm.
 5 MR MADLANGA SC: I read again, "Police
 6 responsiveness to community needs should always be at the
 7 heart of policing outcomes. That is the main difference
 8 between a police force and a police service. From 2000,
 9 however, the police service gradually started resembling a
 10 para-military force. This process was formalised with the
 11 reintroduction of military ranks in 2010. It took place
 12 against the backdrop of increasing violent crime, high
 13 levels of community frustration and fear and a perception
 14 that the old military police ranks would command greater
 15 respect from communities. However, these arguments are
 16 inconsistent with the police's mandate in a modern
 17 democracy. They also neglect the challenges of developing
 18 greater competence and skills in the police to respond to
 19 growing complexity and changing patterns of crime. The
 20 police will earn public respect if they are efficient and
 21 effective and display a professional approach to combating
 22 crime." Do you see that?
 23 Let us go to the next page, page 393 and start on
 24 the second paragraph there, the one starting "The most
 25 obvious" – do you see that?

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1 GENERAL PHIYEGA: Mm.
 2 MR MADLANGA SC: There the commissioners
 3 quote from R Balko, "Overkill: The rise of paramilitary
 4 police raids in America" a 2006 publication and this is the
 5 quotation. "The most obvious problem with the
 6 militarisation of civilian policing is that the military
 7 and the police force have two distinctly different tasks.
 8 The military's job is to seek out, overpower and destroy an
 9 enemy. Though soldiers attempt to avoid them, collateral
 10 casualties are accepted as inevitable. Police, on the
 11 other hand, are charged with 'keeping the peace' or 'to
 12 protect and serve.' Their job is to protect the rights of
 13 the individuals who live in the communities they serve, not
 14 to annihilate the enemies." End of the Balko quote.
 15 Continuing on that same column but beginning from
 16 the last paragraph on that page in that column, "Police
 17 discipline is based on command and control, whereas
 18 discipline in a modern" – and they emphasise modern –
 19 "police organisation, is based on self-discipline and
 20 leadership. The South African Police Service has been
 21 under strain as a result of serial management crises over
 22 the past few years, coupled with organisational rank
 23 changes to military ranks. Without any or further training
 24 in judgment, discretion and professional conduct, these
 25 crises have had a detrimental effect on police culture and

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1 sub-cultures. The recent case where members from the
 2 police unit in Cato Manor were charged for allegedly
 3 executing suspects could be cited as an extreme example of
 4 a police sub-culture that developed out of a lack of
 5 professionalism and a perceived impunity. The commission
 6 therefore recommends that the South African Police Service
 7 be demilitarised. This is a short-term objective which
 8 should happen in the immediate term. Furthermore, the
 9 organisational culture and sub-cultures of the police
 10 should be reviewed to assess the effects of militarisation,
 11 demilitarisation, remilitarisation and the serial crises of
 12 top management." And I end there. Before today, General,
 13 were you aware of these findings and recommendations by the
 14 National Development Commission in this National
 15 Development Plan – National Planning Commission, my
 16 apologies, National Planning Commission.
 17 GENERAL PHIYEGA: I am aware of the
 18 recommendations of the National Planning Commission.
 19 MR MADLANGA SC: Do you agree with them?
 20 GENERAL PHIYEGA: You read a very long
 21 paper and I would like to also respond in a longish way.
 22 Let me start off by saying the National Planning
 23 Development Plan is an aspirational plan of the country on
 24 various sectors. I understand it to be setting a vision
 25 for the country and it starts from a number of

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1 philosophical points of departure. You also, as you were
 2 reading, alluded to concepts such as perception and I can
 3 also say that being an aspiration that is looking at a 2030
 4 vision, it is the plan that looks at various sectors,
 5 whether it's education, whether it's arts, whether it's
 6 health, to start saying if we want to be a country that we
 7 aspire to be, how do we navigate towards that. I also read
 8 from what you were reading and my reading of the NDP
 9 outside this process, that it also presupposes that this is
 10 not going to be an event but a process. It also recognises
 11 the genesis of the journey and the destiny we are working
 12 towards and the issues that you are raising really are part
 13 of that process, are part of that journey, are part of the
 14 history, are a part of where we are going. And I would
 15 also say, if I just look at where we come from and refer to
 16 some of what I said in my statement, to say if I just look
 17 at maybe one example that one can pick up to say if you
 18 look at the issue of how public order policing, in the past
 19 three years we've handled 33 000 of those and of those
 20 33 000, 31 000 or so were very peaceful, well-handled
 21 without incident and that shows that the police continues
 22 to grow, to develop and to try and do their work in a
 23 manner that shows that their experience has carried them in
 24 a number of areas. Whilst I'm still talking about the
 25 peaceful ones, it also shows that the community and the

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1 people that were protesting were also being responsible,
 2 they understood their rights to say we have the right to
 3 protest and we have to, we are able to do it without a
 4 manner that is adversarial, we can express our rights and
 5 police support us in doing so. And there are others where
 6 we would say about maybe 2 000 plus of those were maybe
 7 having unrest, where there could have been damage to
 8 property and all those. Even those, we tried as police to
 9 manage in a professional manner and I think this is why in
 10 my statement I talk about an unprecedented event. And it
 11 is our aspiration as police also to continuously improve
 12 ourselves and that holds for all the sectors that the NDP
 13 is talking about and what you have been reading, I hear
 14 aspiration and a journey and where we are positioning a
 15 destiny for this particular sector and there are other
 16 issues that are being aspirational in many other sectors.
 17 So I understand and I think it's a journey that we all will
 18 try and travel.
 19 MR MADLANGA SC: General, let us again
 20 look at page 393, the column on the right hand side. There
 21 is a sentence that starts from the previous column, which
 22 says "Charged for allegedly executing," let's skip that
 23 portion of the paragraph and go to the very next paragraph.
 24 "The commission therefore recommends," do you see that?
 25 GENERAL PHIYEGA: Yes.

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1 [12:31] MR MADLANGA SC: I will read that part
 2 again. I understand what you say about certain
 3 aspirational matters and so on and so on. That may well be
 4 so in respect of certain matters, perhaps even certain
 5 matters insofar as SAPS is concerned but what I'm going to
 6 read seems to suggest something else about the
 7 demilitarisation of the South African Police Service. I
 8 will proceed to read it again. "The commission therefore
 9 recommends that the South African Police Force be
 10 demilitarised. This is" and I emphasise "a short-term
 11 objective which should happen in the immediate term." So
 12 that does not appear to be something that must happen way,
 13 somewhere way into the future, by for example the 2030 that
 14 you referred to. The recommendation seems to emphasise
 15 immediacy. I will go back to my question, do you agree
 16 with that recommendation?
 17 GENERAL PHIYEGA: I think you're asking
 18 me a binding and difficult question because I note the
 19 recommendation, I've said it's a journey and we, as SAPS,
 20 like all the other sectors, we are engaging the NDP and
 21 looking at how we can embrace the recommendations that we
 22 have been given.
 23 CHAIRPERSON: I'm afraid you haven't
 24 answered the question, National Commissioner. The question
 25 was, do you agree with that recommendation?

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1 GENERAL PHIYEGA: Judge, I am saying we
 2 have noted the recommendations.
 3 CHAIRPERSON: Noted, but that's not an
 4 answer to the question. Do you agree with that
 5 recommendation? I'm sorry to pester you on the point but
 6 it's a direct question that Mr Madlanga asked you and I
 7 think he's entitled to a direct answer.
 8 GENERAL PHIYEGA: The recommendation,
 9 Judge, and I will again try to explain myself, the starting
 10 point of militarisation for me is a point of discussion and
 11 therefore it would be difficult for me to say I agree
 12 without dealing with that.
 13 MR MADLANGA SC: General, I don't -
 14 CHAIRPERSON: No, no, I'm sorry. I can
 15 understand you may say you don't agree with it or you don't
 16 agree with it entirely and you're entitled then to motivate
 17 your answer, but the question has not yet been answered.
 18 GENERAL PHIYEGA: Maybe let me go to that
 19 military - are we saying militarisation because of the
 20 rank, because of what, and that's the discussion that we
 21 are having as SAPS and that is the discussion that makes it
 22 difficult for me to say I agree or don't agree. I think
 23 with certain reservations, with certain discussions, we
 24 will embrace the recommendation. It's a recommendation and
 25 we must embrace it and we must find a way of working around

<p style="text-align: right;">Page 7167</p> <p>1 it.</p> <p>2 MR MADLANGA SC: Does that mean the South</p> <p>3 African Police Service is still studying the</p> <p>4 recommendation?</p> <p>5 GENERAL PHIYEGA: We are in the process</p> <p>6 of looking at the plan to look at how we implement because</p> <p>7 we have a responsibility to look at the recommendations and</p> <p>8 plan how we are going to implement within the context of</p> <p>9 our work.</p> <p>10 MR MADLANGA SC: Do you have a committee</p> <p>11 that is looking at this recommendation, a committee within</p> <p>12 SAPS?</p> <p>13 GENERAL PHIYEGA: We are actually having</p> <p>14 a work session in our May national management forum to look</p> <p>15 at this and all the provinces have received letters from me</p> <p>16 to say look at the NDP, start telling us what you are</p> <p>17 thinking of, we are having a session to discuss this in our</p> <p>18 May meeting.</p> <p>19 MR MADLANGA SC: When did you write those</p> <p>20 letters?</p> <p>21 GENERAL PHIYEGA: I distributed them last</p> <p>22 week.</p> <p>23 MR MADLANGA SC: Would you be kind enough</p> <p>24 to furnish the Commission with a copy?</p> <p>25 GENERAL PHIYEGA: Absolutely, I can get</p>	<p style="text-align: right;">Page 7169</p> <p>1 get us to a common point. I can choose a number of things</p> <p>2 and I can safely take 30 years and say I take four quarters</p> <p>3 out of 30 years, it may say maybe in the next five years,</p> <p>4 maybe in the next 10 years, so I think it's important for</p> <p>5 us to be given the space to look at that. We understand</p> <p>6 the medium to short term, we haven't as yet contextualised</p> <p>7 what medium to short term means, short to medium term, I'm</p> <p>8 sorry.</p> <p>9 MR MADLANGA SC: I assume that you take</p> <p>10 the recommendation in the plan seriously, is that a correct</p> <p>11 assumption?</p> <p>12 GENERAL PHIYEGA: You are very right.</p> <p>13 MR MADLANGA SC: Now, bearing that in</p> <p>14 mind and bearing in mind the fact that the plan refers to</p> <p>15 the immediate term, what I referred to as immediacy, do you</p> <p>16 – I'm asking the question again – do you have an end point</p> <p>17 by which you would like to see the process that you have</p> <p>18 engaged in to have come to an end?</p> <p>19 GENERAL PHIYEGA: I have indicated that</p> <p>20 already in January we started engaging in this and I've</p> <p>21 also indicated that we're having a workshop in May to look</p> <p>22 at this. I'm not able to answer you in specific terms but</p> <p>23 even the letter that you will see, that you want to see,</p> <p>24 that I'll share with you this afternoon, will tell you that</p> <p>25 we are an organisation at work, we are an organisation that</p>
<p style="text-align: right;">Page 7168</p> <p>1 them to fax it today.</p> <p>2 MR MADLANGA SC: Prior to writing that</p> <p>3 letter, what steps had you taken?</p> <p>4 GENERAL PHIYEGA: We've had our top 1 500</p> <p>5 meeting at the beginning of this year where we had</p> <p>6 everybody from, you know, all leaders of SAPS which</p> <p>7 includes the station commanders, the cluster commanders,</p> <p>8 the provincial com – deputy provincial commissioners, the</p> <p>9 provincial commissioners and our, my entire executive,</p> <p>10 because we are trying to – we were talking about our</p> <p>11 journey going forward, what does it mean for us to lead</p> <p>12 SAPS and what are the things we should be looking into.</p> <p>13 One of the key issues that we started debating and</p> <p>14 discussing was the NDP.</p> <p>15 MR MADLANGA SC: Because the</p> <p>16 recommendation says that demilitarisation must take place</p> <p>17 immediately, by when do you think that the process you are</p> <p>18 referring to is going to come to an end?</p> <p>19 MR SEMENYA SC: No, Chair, the</p> <p>20 recommendation is that it must be implemented in the</p> <p>21 immediate term, not immediately.</p> <p>22 CHAIRPERSON: Well, the difference</p> <p>23 between in the immediate term and immediately – I think he</p> <p>24 can ask the question.</p> <p>25 GENERAL PHIYEGA: *07-51 is that going to</p>	<p style="text-align: right;">Page 7170</p> <p>1 is embracing the recommendations that have been put before</p> <p>2 us. To answer you anyhow would be really not doing justice</p> <p>3 to the process. Maybe if this Commission is still on after</p> <p>4 May, I can share some of the specifics that you're asking</p> <p>5 for.</p> <p>6 MR MADLANGA SC: I may be paraphrasing</p> <p>7 but you referred to yourself as a strategic manager.</p> <p>8 GENERAL PHIYEGA: Yes, I am.</p> <p>9 MR MADLANGA SC: Must I understand your</p> <p>10 answer to be that despite that attribute that you have</p> <p>11 given to yourself, despite that you did not see it fit to</p> <p>12 have in your own mind an end point by which this process</p> <p>13 that you've engaged in should reach finality?</p> <p>14 GENERAL PHIYEGA: I think it is incorrect</p> <p>15 to make that statement and I am saying to you that this is</p> <p>16 work in progress and at some point I would be able to give</p> <p>17 a programme plan. Perhaps if we weren't doing anything,</p> <p>18 you could maybe make that type of statement but I'm saying</p> <p>19 this is work in progress, I am leading a team that is</p> <p>20 working on this matter and the specificity at this point in</p> <p>21 time which you're looking for which is a time point, I must</p> <p>22 say – that's why even this document is talking about short,</p> <p>23 medium, short to medium term. It isn't giving us a point</p> <p>24 in terms of time to say in 2015, but we understand, we must</p> <p>25 interpret the short to medium term within our planning</p>

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1 context, within our way of doing things and we are going to
 2 do that.
 3 MR MADLANGA SC: You are saying my
 4 statement –
 5 CHAIRPERSON: Forgive me, National
 6 Commissioner – I'm sorry to interrupt, Mr Madlanga –
 7 forgive me, National Commissioner, where do you get this
 8 phrase short to medium term from? The second sentence of
 9 the paragraph that's been read to you from paragraph 39,
 10 from page 393, simply talks about a short term objective.
 11 Where do we find a reference to short to medium? Did you
 12 understand it to mean that it was something to be done on
 13 the short to medium basis or is there something in this
 14 report that I missed which –
 15 GENERAL PHIYEGA: No, I –
 16 CHAIRPERSON: - states short to medium?
 17 GENERAL PHIYEGA: I see immediate term,
 18 but when I use my planning lingo it would be anything - you
 19 have short, you have medium, you have long term and
 20 immediate for me would talk to short to medium term.
 21 CHAIRPERSON: In that sentence it begins
 22 by talking about a short term objective. Now short term
 23 doesn't mean short to medium term, short term means short
 24 term, doesn't it?
 25 MR MADLANGA SC: And you referred to –

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1 CHAIRPERSON: Sorry, the National
 2 Commissioner hasn't answered my question yet.
 3 GENERAL PHIYEGA: Judge, perhaps what I
 4 can say is that that immediate would be interpreted by SAPS
 5 in their planning. At this point in time we haven't as yet
 6 done so.
 7 CHAIRPERSON: I think you'll forgive me
 8 if I say that you haven't quite answered my question. You
 9 spoke about short to medium term and I said to you, where
 10 do you find that expression? Surely short term doesn't
 11 mean short to medium, it means short, and you haven't
 12 answered that yet so I'd be grateful if you'd answer that.
 13 GENERAL PHIYEGA: Perhaps it's my
 14 interpretation and you know my interpretation and what
 15 you're expressing maybe may not be meaning the same thing.
 16 I just read immediate to mean, you know, and if I use my
 17 planning experience and knowledge is that I would always
 18 put my – my plans to say whatever is immediate would be
 19 short, whatever is immediate to medium term would be short
 20 to medium and then I would have the long plan. It's purely
 21 an interpretation, it's not what is, maybe what is
 22 interpreted here, it's an interpretation of what I use as a
 23 – in my experience of planning.
 24 CHAIRPERSON: I understand that answer,
 25 thank you.

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1 MR MADLANGA SC: In response to my
 2 question you said that the statement I had made is
 3 incorrect. I did not make a statement, I asked you a
 4 question and that question expected a response which would
 5 either be you agree or you do not agree with – what I said
 6 was, as a strategic manager, would you not have seen it
 7 necessary to plan such that you want this process that
 8 you've started to have come to an end at a predetermined
 9 end point? As a strategic manager did you not see that
 10 necessary?
 11 GENERAL PHIYEGA: Maybe I fail to
 12 understand where you are taking me with that because I've
 13 tried to explain that. The recommendation, the NDP was
 14 released last year and as SAPS we are already at work,
 15 embracing this recommendation. We consider it a very
 16 important document of government and this work in progress,
 17 as I've explained, already with the 1 500, top 1 500
 18 leaders of SAPS, they're things that have never happened.
 19 I called them because I wanted us to discuss the strategic
 20 issues. And I've also said that we continue, we are having
 21 a big workshop in May to discuss this specific document. I
 22 may not be having the end times but this work in progress
 23 is pumping and it's very active.
 24 MR MADLANGA SC: Let me take you to
 25 another document, National Commissioner, I believe that it

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1 must be in front of you. It has the title "Mampoor shots:
 2 Marikana and the doctrine of maximum force" by David Bruce.
 3 Do you have it there?
 4 CHAIRPERSON: Mr Madlanga, do you want
 5 this to be an exhibit as well?
 6 MR MADLANGA SC: Yes, yes, Mr Chairman.
 7 CHAIRPERSON: That will be FFF14.
 8 MR MADLANGA SC: Thank you, Mr Chairman.
 9 Do you have a copy there, Commissioner?
 10 GENERAL PHIYEGA: Yes, we do.
 11 MR MADLANGA SC: I will take you to page
 12 26 of that document or perhaps let me take you to page 3
 13 first. Do you see there that the author of this document
 14 is described in the following terms, "David Bruce has been
 15 researching and writing about policing, violence and the
 16 criminal justice system since 1996 and is regarded as the
 17 country's leading expert on issues relating to police use
 18 of force. He has worked for a variety of think tanks and
 19 NGOs, including the Centre for the Study of Violence and
 20 Reconciliation, the Institute for Security Studies and
 21 Corruption Watch." Let me take you to page 26.
 22 CHAIRPERSON: Before you do that, may I
 23 ask you, have you seen this? This is an e-book, I believe.
 24 Have you seen this e-book before or is this the first time
 25 you've seen it?

<p style="text-align: right;">Page 7175</p> <p>1 [12:51] GENERAL PHIYEGA: I saw it yesterday on 2 the table. 3 CHAIRPERSON: Mr Madlanga, I don't know 4 what questions you're going to ask her but if she only saw 5 the book on the table yesterday, I take it you haven't 6 really – have you had a chance to read it? 7 GENERAL PHIYEGA: Mm-mm. 8 CHAIRPERSON: Well, it may be, depending 9 on the questions you're going to ask, that we should give 10 her an opportunity to read it, alternatively to read 11 particular passages before you question her because 12 otherwise it wouldn't be fair just to take a sentence and 13 ask her about it. I don't know how you're going to handle 14 this document. 15 MR MADLANGA SC: I propose doing 16 something similar to what I did with the National 17 Development Plan, Mr Chairman, which is - 18 CHAIRPERSON: Alright, you're going to 19 read passages and then you'll ask for comment. 20 MR MADLANGA SC: Yes. 21 CHAIRPERSON: I see, no, it's alright. 22 May I make one comment? It appears that this book or e- 23 book has got relevance in the context we're busy with. I 24 must say I'm surprised that you hadn't heard about it 25 before. I would've expected you to have had a division in</p>	<p style="text-align: right;">Page 7177</p> <p>1 an asterisk in the big gap there. Do you see it? 2 GENERAL PHIYEGA: Yes, I do. 3 MR MADLANGA SC: I'm going to start 4 reading from below the asterisk. "How widely the term 5 'maximum force' is used in the SAPD is not clear." I 6 assume that to be the Afrikaans version of the South 7 African Police Service, Suid-Afrikaanse Polisiediens. 8 GENERAL PHIYEGA: Mm. 9 MR MADLANGA SC: "One revealing piece of 10 information are some notes, made by a SAPS member, 11 distressed by a new 'Firearms in law enforcement' course 12 that he attended early in 2011. The notes make no 13 reference to 'maximum force'. But, he says, "The trainer 14 kept saying, 'Shooting in the SAPS has been neglected for 15 many years and they're finally encouraging people to shoot 16 again.'" And in relation to the theory section where 17 members were supposedly instructed in the legal framework 18 that should determine when and whether officers use lethal 19 force or not, he notes that despite being given "about 20 1 000 pages to read" the instructor "would just mark those 21 pages on which we would be tested and the rest would be 22 ignored." The police officer says of his course that, "We 23 were given a two hour lecture on the use of lethal force, 24 half of which I'm pretty sure was incorrect. For example, 25 the instructor told us that if a member is being assaulted</p>
<p style="text-align: right;">Page 7176</p> <p>1 the police that, you know, monitors publications that come 2 out that have relevance and draws your attention to 3 material passages in them, but is there such a division in 4 the police because I think if you haven't got one I suggest 5 you start one pretty soon. 6 GENERAL PHIYEGA: I think, Judge, we have 7 libraries, we have research divisions but I may not 8 personally have looked at it, there could be others who – 9 CHAIRPERSON: I wouldn't expect you to 10 deal with the research yourself, but anyway you've answered 11 my question, you have got – 12 GENERAL PHIYEGA: Ja. 13 CHAIRPERSON: - a research division. So 14 I take it we can accept as a matter of high probability 15 that somebody in one of your research divisions – 16 GENERAL PHIYEGA: Could be. 17 CHAIRPERSON: - would have accessed this 18 e-book and read it but obviously if that happens, they 19 failed to draw your attention to any passages in it which 20 Mr Madlanga seems to think may be relevant. 21 GENERAL PHIYEGA: Mm. 22 CHAIRPERSON: Anyway, that'll be done to 23 you now. Yes Mr Madlanga, please proceed. 24 MR MADLANGA SC: Thank you, Mr Chairman. 25 National Commissioner, at the foot of the page you will see</p>	<p style="text-align: right;">Page 7178</p> <p>1 by a big man, they have the right to shoot him dead 2 immediately. Someone asked, 'But why not use pepper 3 spray?', at which the instructor laughed and made a joke 4 about 'you've obviously never been donnered'. He then 5 reiterated that police could shoot at the slightest hint of 6 threat." About his exam at the conclusion of the course, 7 the police officer says, "We were given a mound of paper 8 work to go through. We were given the questions and 9 answers to a test on the Firearms Control Act and told to 10 copy word for word the answers out. We then marked 200 out 11 of 200 in red pen at the top of the pages and put it in our 12 official file. We went through a number of other tests for 13 which the instructor gave us the answers without even 14 reading the questions and we then marked ourselves 100% for 15 each of these two. We were also instructed to sign various 16 forms which stated that we had been informed of things we 17 hadn't been informed of. This was a classroom including a 18 brigadier, quite a few colonels and captains and then all 19 the rest and nobody paused for a second to question our 20 participating in this giant organisationally sanctioned 21 lie." And I end there. Do you see all of that? 22 CHAIRPERSON: Mr Semenya, I see you 23 turned your microphone on but it's now 1 o'clock. I take 24 it that the point you want to make you can make after we've 25 taken the lunch adjournment.</p>

<p style="text-align: right;">Page 7179</p> <p>1 MR SEMENYA SC: I can, Chair. 2 CHAIRPERSON: We'll take the lunch 3 adjournment at this stage. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [14:02] CHAIRPERSON: The Commission resumes. Mr 6 Malindi, are you in a position yet to enlighten us further 7 on the matter that we debated yesterday, or discussed 8 yesterday? 9 MR MALINDI SC: Chairperson, 10 unfortunately I will ask for further indulgence. I may be 11 able to address the issue tomorrow morning. 12 CHAIRPERSON: National Commissioner, 13 you're still under oath. 14 MANGWASHI VICTORIA PHIYEGA: s.u.o. 15 CHAIRPERSON: Sorry, Mr Semenya, I 16 reminded the National Commissioner she's still under oath. 17 Yes, Mr Ntsebeza? 18 MR NTSEBEZA SC: Thank you. It's 19 something in relation to which, Mr Chairman and members of 20 the Commission, I just want to take advantage of everybody 21 being here so that we can get clarification in relation 22 thereto going forward. During lunch I was involved in what 23 I would have thought was mild altercation between a police 24 captain and I. I brought a pamphlet titled "Socialism from 25 below" and I had it in my hands and I was approached by a</p>	<p style="text-align: right;">Page 7181</p> <p>1 are not acceptable or uncomplimentary to one of the 2 parties, to the extent that they seem to be exercising 3 their democratic right to do so they should be allowed to 4 do so, because my sense was that it was a peaceful 5 demonstration and then at a venue like this, Mr Chairman, I 6 thought that we should try by all means to keep our tempers 7 as cool as we can manage to do so. So I thought maybe 8 taking advantage of the National Commissioner of Police 9 being on the stand and the Chairman and the Commissioners 10 being here, this might probably be the right place for some 11 accord to be arrived at as to how we conduct ourselves 12 relevant to placards and stuff like that. 13 CHAIRPERSON: Mr Semenya, you were going 14 to say something before the adjournment in relation to the 15 passage that was read from the book by Mr Bruce, but I take 16 it before we get there, you would wish to say something in 17 response to what Mr Ntsebeza said? 18 MR SEMENYA SC: Chair, Mr Ntsebeza has 19 just raised the matter with me and my immediate response 20 was to say the right of protest freely in this country is a 21 constitutional right about which I don't think if his facts 22 are correct, should be condoned. I will investigate the 23 matter and raise it with those members that they have no 24 right to prevent anybody making their public protest for as 25 long as it remains peaceful.</p>
<p style="text-align: right;">Page 7180</p> <p>1 police captain. He grabbed it from my hands and it 2 appeared that generally there was an objection to placards 3 that were displayed by some of the workers, that have got 4 some uncomplimentary remarks about the police officers, and 5 I think the mistake was that even this document is part of 6 that, and I tried to reason with the police captain to find 7 out what exactly was the position, even in relation to the 8 placards, is the offence, as they saw it, the mere 9 possession of the placards, or is it in displaying them, in 10 which case even if it is the two of those, it would appear 11 that certainly during lunch as the people are sitting 12 there, holding their placards in their hands, there didn't 13 seem to be any offence to me, and therefore, before 14 emotions could get out – 15 CHAIRPERSON: Where were they sitting? 16 You say – 17 MR NTSEBEZA SC: They were sitting 18 outside here where we usually have lunch. 19 CHAIRPERSON: I see. 20 MR NTSEBEZA SC: Some of them were 21 displaying the placards from quite a distance from where we 22 were sitting, and it seemed to me – and I've just conferred 23 with my learned friend Mr Semenya – that perhaps if we had 24 some rules of engagement, my sense is that, and people are 25 standing up saying things, which may even be things that</p>	<p style="text-align: right;">Page 7182</p> <p>1 CHAIRPERSON: Thank you. In regard to 2 the suggestion about rules of engagement, I'm not sure that 3 engagement is quite the right word in this context, but may 4 I suggest that you and Mr Ntsebeza might have at least a 5 preliminary discussion to see whether it is desirable that 6 rules of that kind should be drawn up, and possibly even 7 prepare a draft which we could then give to the evidence 8 leaders and the other parties, before the Commission is 9 called upon to add its imprimatur, as it were, to them. 10 But it's the sort of thing which I would think could be 11 sorted out cordially and harmoniously among the parties. 12 We've had a very harmonious atmosphere here up to now. I 13 think I must commend all the parties for the way that 14 they've conducted themselves, and cordial relationships 15 have been established and it's important for the work that 16 we're called upon to do that that atmosphere should 17 continue. But there are various aspects to it. The 18 public's confidence in the Commission mustn't in any way be 19 eroded or diminished, but if everyone continues the way 20 they've been continuing up to now, I've no doubt it will 21 help us substantially to achieve what the President has 22 asked us to do. But if in the meanwhile you and Mr 23 Ntsebeza could have preliminary discussion at least on 24 that, I'd be grateful. 25 MR NTSEBEZA SC: Mr Chairman, may I just</p>

<p style="text-align: right;">Page 7183</p> <p>1 also place on record that my colleague Semenya immediately 2 – I just confirmed what he said – immediately when I 3 mentioned this, his attitude was surely there is a 4 constitutional right for people to protest. We may not 5 like what they are protesting about, but I just wanted to 6 endorse and say I confirm what he said to me. What he says 7 to you, is what he said to me. He said all those things in 8 general terms. 9 MR BIZOS SC: Chair, we were witness to 10 what happened outside. I think a very simple advice should 11 be given to the numerous police officers that are in the 12 periphery. It is not an offence for people, women at the 13 back, who have been given a pamphlet. They don't have to 14 surrender it to a policeman, and there were quarrels 15 between them in high-pitched voices, particularly from the 16 women, "I'm not prepared to give it to you," and it created 17 quite an unfortunate impression. People want to take a 18 pamphlet, they've got the right to take it. It may be very 19 good public relations for the police officers to be told 20 just ignore it and there wouldn't be, wouldn't have been 21 what my learned friend has complained about, and what my 22 other learned friend on the right has to investigate. 23 CHAIRPERSON: I understood Mr Semenya to 24 say more in relation to the other aspect – 25 MR BIZOS SC: Placards.</p>	<p style="text-align: right;">Page 7185</p> <p>1 your objection. What exactly is your objection? 2 MR SEMENYA SC: The reading of the 3 various excerpts which Mr Madlanga did. 4 CHAIRPERSON: I understood he was going 5 to ask – or the impression I got was that he was going to 6 ask a question of the National Commissioner based upon 7 those passages, but what exactly is your objection? 8 MR SEMENYA SC: I want to know if this 9 evidence is going to be led of what is called an SAPS 10 member, to be able to identify the trainer who is said to 11 have said the things which were said. If there is no such 12 intention, then the questions cannot be put, with respect, 13 Chair. 14 CHAIRPERSON: Well, let's hear what the 15 questions are first before I rule on the matter. I can see 16 there are various questions that can be asked, but let's 17 see which are the ones that Mr Madlanga is going to ask 18 before we take the matter any further. 19 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.): 20 Thank you, Mr Chairman. Is it correct, National 21 Commissioner, that in parliament last week you stressed or 22 emphasised the importance of improving the training which 23 members of SAPS receive? 24 GENERAL PHIYEGA: - specifically because 25 we were presenting our budget.</p>
<p style="text-align: right;">Page 7184</p> <p>1 CHAIRPERSON: - of holding the placards, 2 but it would apply equally to the question of distribution 3 of and receipt of pamphlets. 4 MR BIZOS SC: Once they explain – 5 CHAIRPERSON: I did suggest to Mr Semenya 6 that he would speak to, to say that he would speak to the 7 various members of his client who have been behaving in the 8 way that's been described, and remind them of what the 9 Constitution says about these matters, to ensure that 10 instances of this kind don't occur again, and I'm sure we 11 can rely on him and depend upon him to discharge his 12 obligations in that regard very correctly and efficiently. 13 Thank you. Mr Semenya, before we adjourned you were going 14 to say something, I think about the e-book by Mr Bruce. 15 MR SEMENYA SC: Indeed, Chair. Chair, 16 just to, as a prelude to our objection, may we be advised 17 if this so-called – 18 CHAIRPERSON: I'm not sure what exactly 19 you're objecting to. 20 MR SEMENYA SC: Yes. 21 CHAIRPERSON: You haven't said what 22 you're objecting to yet. 23 MR SEMENYA SC: Sorry, Chair? 24 CHAIRPERSON: You haven't told us yet 25 what you're going to object to. You said as a prelude to</p>	<p style="text-align: right;">Page 7186</p> <p>1 MR MADLANGA SC: Anyway, even if perhaps 2 you might not have said it, but if I were to ask you the 3 direct question, would you consider it important to improve 4 the training of SAPS members? 5 GENERAL PHIYEGA: Yes, because continuous 6 improvement is a mantra of any organisation. 7 MR MADLANGA SC: You have already said in 8 response to a question by the Chairman that you were not 9 aware of the publication, the e-book that I referred you 10 to. 11 GENERAL PHIYEGA: Yes. 12 MR MADLANGA SC: Now assuming that the 13 content of the excerpt that I read to you were true – I 14 already see my learned friend Mr Semenya shaking his head – 15 would that be a matter of concern to you, or not? 16 MR SEMENYA SC: I raise the objection 17 again, Chair. There is no predicate for the supposition 18 that any of these allegations are, (1), correct; or even 19 made. Unless my learned colleague intends to lead that 20 evidence, I can understand the question that is now being 21 put to the witness, but without that foundation the 22 question cannot be put, with respect, Chair. 23 CHAIRPERSON: Yes, Mr Madlanga? 24 MR MADLANGA SC: Mr Chairman, 25 Commissioners, the matter does appear in the excerpt that I</p>

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1 read and I prefaced my question by saying if correct, would
 2 this be a matter that concerns the National Commissioner,
 3 or not. I do not believe that I have to indicate whether
 4 or not the evidence will be led before the witness can be
 5 required to answer the question that I have put to her. It
 6 is in proceedings of this nature, that is proceedings
 7 before a commission, it is not correct to suggest that in
 8 respect of every and any piece of material that is
 9 presented to the commission, the person responsible for the
 10 existence of that piece of material must actually come
 11 before the commission to testify to the content of that
 12 which they are responsible – for the existence of which
 13 they are responsible. That, as I understand the position,
 14 is not the law. I understand the law in commission
 15 proceedings to be that any commission of inquiry like this
 16 one can inform itself, and can admit evidence of whatever
 17 nature it considers acceptable, and that is not the same
 18 legal position that finds application in courts of law.

19 Let me again refer to authority that I referred
 20 to quite early on, but I think then I referred to it off
 21 the top of my head. Let me now refer to it, and I'll
 22 actually read a passage from the relevant judgment. The
 23 version of the judgment that I have here is a JOL judgment,
 24 but I do know that this judgment is also reported in the
 25 South African Law Reports. I'll ask Ms Pillay to find me

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1 the South African Law Reports report, or citation rather.
 2 It's the matter of Bongoza, that's B-O-N-G-O-Z-A, versus
 3 Minister of Correctional Services & Others, [2006] JOL
 4 16653 –

5 CHAIRPERSON: Sorry, JOL?
 6 MR MADLANGA SC: JOL 16653. It's a
 7 judgment of the Transkei High Court. The citation in the
 8 South African Law Reports is 2002 (6) SA 330, Transkei
 9 Division. This is what appears at paragraph 17 of the
 10 judgment, and there the commission is referring to
 11 submissions that were made by counsel. "It was argued that
 12 the commission was not bound by the rules of evidence
 13 applicable to a court of law. It was entitled to adopt its
 14 own procedure, including the receipt of evidence or
 15 information relevant to the issues before it. In fact,
 16 counsel contended further that the commission was
 17 responsible for collecting evidence and obtaining
 18 statements from witnesses. It could consider information
 19 of any nature, including hearsay evidence, newspaper
 20 reports, or submissions made without sworn evidence. For
 21 these submissions counsel relied on Bell versus Van
 22 Rensburg," and the citation is given, S versus Mulder,
 23 citation given, and S versus Sparks NO & Others, citation
 24 given. "In the latter case, Human J, (with whom Theron AJP
 25 and Franklin J concurred) gave the following distinction

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1 between a court of law and a commission at 961 C, 'A court
 2 of law is bound by rules of evidence and the pleadings, but
 3 a commission is not. It may inform itself of facts in any
 4 way it pleases, by hearsay evidence and from newspaper
 5 reports, or even through submissions or representations on
 6 submissions without sworn evidence.' In this matter the
 7 regulations under which the commission operated made it
 8 clear that it was not intended to be regarded as a court of
 9 law," and then it goes on. I will skip and go to paragraph
 10 25, and I would submit that obviously this Commission also
 11 was not intended to be a court of law.

12 [14:22] "Furthermore," this is paragraph 25, "I am
 13 satisfied on the authority in De Beer supra that the
 14 commission was not required to follow and apply rules of
 15 evidence applicable to courts of law. The fact that it had
 16 the power to set aside contracts, did not change it from
 17 being a commission to a court of law. It remained a
 18 commission with a procedure dissimilar to the ordinary
 19 court procedure, and the legal rules applied therein. It
 20 was not bound by the rules regulating the admission of
 21 evidence of evidentiary material in a court of law, nor was
 22 it obliged to adopt the approach of analysing and
 23 evaluating evidence which is usually followed in a court of
 24 law. Its regulations indicated that it will be improper
 25 for it to act as if it was a court of law when it was not.

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1 For example, cross-examination was subject to the
 2 chairperson's permission, which could be granted only if he
 3 was convinced that such cross-examination would be in the
 4 interests of its functions. Consequently I find that the
 5 commission has competently reviewed the information and
 6 evidence placed before it, and that it was entitled to rely
 7 thereon for the purposes of its decision, and of the
 8 quotation."

9 Now that said, I am in my submission by no means
 10 suggesting that once the evidence has been admitted, it
 11 then holds that it must be of – a certain level – once the
 12 evidence has been admitted, what weight the Commission will
 13 then attach thereto is a totally different matter, but that
 14 does not say the same thing as just because it's evidence
 15 of a particular nature, then it becomes inadmissible. That
 16 is not the law, and I am submitting that there is nothing
 17 wrong in putting that excerpt to this witness. There is
 18 nothing wrong in that excerpt being admitted as evidence
 19 before this Commission, but what weight will then attach
 20 thereto, totally something different, and I would submit
 21 that there is no substance in the objection and I will ask
 22 to be allowed to continue.

23 CHAIRPERSON: Thank you, Mr Madlanga.
 24 Yes, Mr Semenya.
 25 MR SEMENYA SC: Chair, clearly the law as

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1 outlined is one with which we have absolutely no quarrel.
 2 We also are not alarmed that a commission in law is able to
 3 take any form of information. The exercise of a discretion
 4 though in the – and the probative value is a completely
 5 different thing. I'm not even addressing that. The
 6 exercise of that discretion is aimed at establishing
 7 whether the interests of justice so require it, and has to
 8 be measured against the prejudice that a party may suffer
 9 in relation to its admission, and it is the prejudice about
 10 which you're addressing the Commission.
 11 If an excerpt of that nature is given under an
 12 authority of somebody who is speaking about the conduct of
 13 this very Commission, about which the police conduct is a
 14 direct issue under focus, and we are given that the police
 15 are not even given any training – if this is anything to go
 16 by – they are made to pass exams without doing anything,
 17 they have not been “donnered,” that's why that's not
 18 happening, we say the prejudice is manifest, and the
 19 Commission cannot in the proper exercise of a discretion
 20 admit this evidence to stand, whatever its probative value.
 21 CHAIRPERSON: Sorry, I don't understand
 22 your submissions about prejudice. I understand Mr
 23 Madlanga's question to be if these facts are correct, is
 24 that a serious matter. Now obviously the answer must be,
 25 it must be a serious matter. If it's true - it's not

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1 suggested it is, but if it's true that trainers, or a
 2 particular trainer at a particular course went through the
 3 motions, pretended to train people about the use of
 4 firearms in law enforcement situations in the way
 5 described, that is a serious matter which I take it the
 6 Commissioner would wish to do something about, to
 7 investigate if it's true; if it is true, take certain
 8 steps; if it isn't true, then be able to say it's untrue.
 9 So I don't understand the prejudice – what prejudice the
 10 police service can suffer from the fact that the
 11 Commissioner's being asked if these things are true, is it
 12 a serious matter, and I take it she – or I mustn't say what
 13 she will say, but depending on what she will say, I can't
 14 see the prejudice to the police. But if there is some
 15 point that I don't understand, please enlighten me.
 16 MR SEMENYA SC: May I try my last
 17 attempt, Chair? The issue is if there is no basis for the
 18 hypothesis, and there won't be a basis for the hypothesis
 19 if it is not going to be even an effort at making that
 20 evidence come about, it's like asking if South Africa is
 21 corrupt, then what? But you can't make a proposition if it
 22 has no basis in law in the first place. That's the
 23 objection, Chair.
 24 CHAIRPERSON: Mr Madlanga, you were
 25 replying to Mr Semanya, but he's now raised a new point,

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1 well not quite a new point, but I think he's emphasised on
 2 a particular aspect of the matter that you didn't deal with
 3 in your argument, namely that the police service will
 4 suffer prejudice if you are permitted to ask this question,
 5 and would you like to deal with that submission?
 6 MR MADLANGA SC: Thank you, Mr Chairman.
 7 Let me deal with the very last point my learned friend
 8 made. My learned friend refers to a lack of basis in law
 9 for the question. I do not understand that. I do not know
 10 what law he is referring to for saying that there is no
 11 basis in law. I would understand if, as he says, there are
 12 no facts that tend to – except for the excerpt, there are
 13 no facts that tend to support what has been said, I would
 14 understand he - and by saying I would understand, I'm not
 15 suggesting that I would accept – I would understand if he
 16 were saying that there is no basis in fact, not law. What
 17 is that law? I do not know what law he's referring to in
 18 this regard. I have referred to the law as I understand
 19 it, and I understand that to be applicable to this very
 20 scenario, and my learned friend says that he's not
 21 quarrelling with that legal position, then what law he's
 22 referring to, I do not know.
 23 Now that said, on the question of prejudice, I
 24 agree wholeheartedly with what the Chairman says. The
 25 question is in so many words prefaced by saying if correct

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1 - and those are the operative words, if correct, would this
 2 be a matter of concern for the National Commissioner. It
 3 is not saying this, the content of this excerpt is correct.
 4 It's not saying so, but Commissioner, National
 5 Commissioner, if this were correct, would it be a matter of
 6 concern. Where is the prejudice? I do not see it.
 7 But in any event, in any event, I would have
 8 expected quite the opposite from the South African Police
 9 Service. I would have expected a reaction that says an
 10 allegation of this nature that on the use of force by the
 11 police there is in actual fact, according to what this
 12 writer says, there is a “fraud” of this nature on police
 13 training on the use of firearms, we as SAPS must
 14 investigate this, see if there is any truth in this. So I
 15 would have expected an opposite reaction, not from my
 16 learned friend, Mr Semanya, but from SAPS. So I don't
 17 quite follow, I do not quite follow why my question on this
 18 subject should be found to be objectionable, and I
 19 emphasise the point that I would have expected them to say
 20 let us see if we cannot get to the bottom of what Mr David
 21 Bruce is saying, and see whether or not they come to a
 22 conclusion that there is any truth in it.
 23 MR SEMENYA SC: Chair, that's precisely
 24 the difficulty. We can't even investigate this thing for
 25 as long as the SAPS man is, must, is not going to be

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1 produced. We can't investigate who the trainer is and it's
2 a prejudice we cannot undo.

3 CHAIRPERSON: I'm afraid I don't
4 understand that. I can understand if these allegations are
5 true - they may not be true, may be a total fabrication,
6 but if the allegations are true, there's enough
7 information, I would have thought, to enable an astute
8 investigator to get to the bottom of it. What is alleged
9 is that early in 2011 there was a course called "Firearms
10 in law enforcement." I don't know how many courses under
11 that name were held early in 2011, but I would not think
12 that there'd be so many that it will be difficult to
13 investigate further. What is then said is that it was a
14 course attended by a brigadier, quite a few colonels, and
15 captains. Again that would serve to identify the course, I
16 would have thought, with some particularity. But the
17 allegation goes further, that the people at the course,
18 there was a stunt; there was a pretence that they were
19 writing exams. They were given the manual, told to copy
20 out passages, write in red ink at the top 200 out of 200,
21 and there were certain other allegations of a similar kind.
22 So I can imagine an investigator who says to the head of
23 training, how many courses did you have in early 2011
24 called "Firearms in law enforcement," they say how many
25 they had. How many of them were attended by a brigadier,

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1 colonels and captains? Say how many they had. They say
2 right, please send us the examination papers which were
3 completed by the people who attended. They look at them;
4 they find none of them have got passages from the notes
5 copied out; none of them have got 200 out of 200. They say
6 well, this is obviously a false allegation. On the other
7 hand, the courses that they find a whole batch of alleged
8 exam papers with things copied out of the manual, with 200
9 out of 200 in red, then it's clearly true. Then they say
10 right, this is a serious - well, I would hope they would
11 say it's a serious matter. Something has got to be done to
12 the trainer. Those people who received that "training" had
13 better come back immediately, and immediately in the
14 literal sense, so that they can be retrained in Public
15 Order Policing because they obviously need it. I don't
16 understand the prejudice. I don't think your objection is
17 a good one, and I disallow it, and Mr Madlanga may
18 continue.

19 I just might stress that if these had been
20 generalised allegations of a kind which could not
21 reasonably have been investigated on the information
22 available, then the position might well have been different
23 and there might well have been prejudice incapable of being
24 remedied, and then I would have allowed the objection, but
25 in the particular circumstances of this case, whether I'm

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1 applying the law or applying some broader doctrines which
2 are allowed to be imported from the Transkei I'm not sure,
3 but I'm satisfied that even sitting as judge in a court of
4 law I would in these particular circumstances allow the
5 question.

6 MR MADLANGA SC: Thank you, Mr Chairman.
7 Three other judgments that are not from the Transkei are
8 referred to, and -

9 CHAIRPERSON: No, I know that, and it
10 sounded from what you said as if they were given by eminent
11 judges as well.

12 MR MADLANGA SC: Yes, and lastly -

13 CHAIRPERSON: But to be fair, the big
14 point which Mr Semenya makes is correct, that if there is
15 prejudice incapable of being remedied, then that would have
16 formed a basis even for a commission to reject the
17 evidence.

18 MR MADLANGA SC: Yes.

19 CHAIRPERSON: It's only because I've
20 found that there wasn't such prejudice that I allowed the
21 question.

22 MR MADLANGA SC: Lastly - thank you, Mr
23 Chairman. Lastly -

24 MR SEMENYA SC: Chair, I'm not
25 countermanding the -

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1 MR MADLANGA SC: Just the -

2 MR SEMENYA SC: Sorry. Sorry, Mr
3 Madlanga. Would we be - in fairness then in this
4 Commission, because it is at the core of the conduct of
5 policing - would we be given an opportunity to bring all
6 those witnesses who'd offered those lectures so that we
7 refute this, and those students who were given lectures to
8 come and say what those lectures were? Because we'll have
9 to meet it in full, otherwise there would be a lingering
10 thought that there may be some mote of weight about these
11 allegations which would be damaging to our position.

12 CHAIRPERSON: Well, we'll cross that
13 bridge when we get there, but I would have thought if you
14 called someone who gave evidence to say I investigated this
15 allegation, I found there was no such course early in 2011,
16 or I found there was no such course attended by a
17 brigadier, colonels and captains, or I found there were
18 such courses, I looked at the examination papers and I
19 found what were obviously original essays written by all
20 the examination candidates, and I found none, nobody who
21 got 200 out of 200, then that evidence would be accepted
22 without more, but we will deal with that matter as and when
23 it arises. We may find of course that an investigation
24 produced the opposite results, and that it is found that
25 these allegations are substantiated, and you would then be

<p style="text-align: right;">Page 7199</p> <p>1 able to lead evidence to say we accept this is a serious 2 matter and this is what we've done to remedy the situation. 3 But all these things are, lie in the future. We will deal 4 with them as and when we get there. Please proceed, Mr 5 Madlanga. 6 MR MADLANGA SC: Thank you, Mr Chairman. 7 I go back to the question that I asked, National 8 Commissioner. If true, would the content of the excerpt 9 that I read to you be cause for concern to you? 10 GENERAL PHIYEGA: I would start off by 11 saying you've asked me a lot of hypothetical questions, and 12 this is one of those, because indeed when I look at the 13 statement, just gleaning through it, the author does make 14 reference to dates, to names, to particular months, to 15 particular years. On this piece of articulation it is 16 interesting that there is no date, there is no name, and 17 that bothers me, and having said so, I don't know whether 18 it's just a statement or whether it's innuendo, and I would 19 like to say I do not believe it is true. 20 MR MADLANGA SC: The matters that you 21 raised before you said you don't believe the content of the 22 excerpt to be true, are matters that would go into the 23 investigative process, if that is a matter that SAPS would 24 find warranting investigation at all. I repeat my 25 question, what you have said does not answer it, not even</p>	<p style="text-align: right;">Page 7201</p> <p>1 she doesn't believe it, but she said she's going to 2 investigate it. That's a fair answer. You can ask her 3 what she will do if her investigation finds out things 4 which you can elaborate perhaps, but I don't think it's 5 necessary to ask her the question you've asked. It is 6 sarcastic, and which I don't think is worthy of you. 7 MR MADLANGA SC: My apologies to the 8 Commission and to General Phiyega. 9 [14:42] CHAIRPERSON: Mr Madlanga, are you not 10 going to ask her what will happen if she investigates and 11 finds some of the allegations to be true? Because if 12 you're not going to ask it, I will. You say you're going 13 to have it investigated, which is a very proper approach. 14 If the investigation shows that these allegations are 15 without substance, as Mr Semenya said, that will be brought 16 to this Commission and this allegation will be exposed to 17 be a lie. If on the other hand your investigation proves 18 that the allegations are correct, then that would mean that 19 some of the training that's been given has been a farce, as 20 had been described, a fraud. If that is so, what would you 21 do? I know that's a hypothetical question, but I think 22 it's a question that you can be asked. 23 GENERAL PHIYEGA: Judge, I definitely 24 shall bring sanctions to the trainers, and secondly I shall 25 remedy that because it is my responsibility and duty as a</p>
<p style="text-align: right;">Page 7200</p> <p>1 the latter portion that says you do not believe the content 2 of the excerpt to be true. My question is, if true, that's 3 not saying that excerpt or the content of the excerpt is in 4 fact true, but if true, would the content of that excerpt 5 be cause for concern to you, General? 6 GENERAL PHIYEGA: I still say I do not 7 believe it is true. 8 MR MADLANGA SC: General, are you going 9 to say that you honestly believe that - that is the 10 question that I'm asking you, that is whether or not this 11 excerpt is true? Are you telling this Commission that you 12 believe that that's the question I'm asking you, or are you 13 deliberately being evasive? 14 GENERAL PHIYEGA: I am not being 15 deliberately evasive. You've presented to me that, you've 16 read to me that thing on page 26 to page 27. I say I don't 17 believe it is true, because your question is if it is true, 18 I say I do not believe it is true. 19 MR MADLANGA SC: I will leave it. Are 20 you going to investigate it at all? 21 GENERAL PHIYEGA: I definitely shall. 22 MR MADLANGA SC: If you do not believe 23 that it's true, why would you even want, why would you even 24 bother to investigate it? 25 CHAIRPERSON: - the question. She said</p>	<p style="text-align: right;">Page 7202</p> <p>1 leader to ensure that the training that we offer does 2 deliver what it's supposed to deliver for the citizens of 3 this country. 4 CHAIRPERSON: Thank you. 5 MR MADLANGA SC: May the Commission just 6 bear with me, please. Now, Commissioner, let me take you 7 back to something that we have debated, but the context now 8 will be different. You said that the SAPS expert on Public 9 Order Policing must have received his information on the 10 problems with the analogue radio system of SAPS from SAPS 11 commanders or SAPS members. What I would like to find out 12 is, are you in a position to explain why we only see this 13 in Mr De Rover's statement, why it is not in the SAPS 14 presentation, why it is not in the SAPS opening statement. 15 Are you in a position to explain that or not? 16 GENERAL PHIYEGA: I'm not sure whether 17 this question is coming for the first time because I do 18 know that an issue was raised much, much earlier, where we 19 even got our TMS division to write a short statement to 20 explain the radio functioning of SAPS. Much earlier when 21 the Commission was starting we were asked that question as 22 SAPS and we submitted something. 23 MR MADLANGA SC: I will agree with you, 24 National Commissioner, that in their interaction with 25 members of SAPS the evidence leaders have spoken to some</p>

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1 members of SAPS about the radio network. So probably that
 2 is what you are referring to, but I'm asking you a
 3 different question, and the question is why do we not see
 4 the problem about that radio network in exhibit L, the SAPS
 5 presentation, as also in the SAPS
 6 opening statement?
 7 CHAIRPERSON: I think you should ask her
 8 whether she's able to tell us, because it may be a matter
 9 of which she has no knowledge.
 10 MR MADLANGA SC: Yes, yes, yes. Thank
 11 you. Thank you, Mr Chairman. Are you able to tell us why
 12 it is not in those two documents? Perhaps for context and
 13 for you to understand why I'm asking that question,
 14 according to Mr De Rover, this, the malfunctioning of that
 15 radio system –
 16 MR SEMENYA SC: Chair, I object again.
 17 Can we go to paragraph 81 of Mr De Rover's statement? The
 18 problems with the analogue radio network is not a
 19 malfunctioning, it is how a analogue radio works. He says
 20 its problems are those. He's not saying it's
 21 malfunctioning.
 22 MR MADLANGA SC: I will substitute –
 23 MR SEMENYA SC: By contrast he's saying –
 24 MR MADLANGA SC: I will –
 25 CHAIRPERSON: I think Mr Semenya is

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1 right, because it doesn't follow from what he says that
 2 there was a malfunction. It may be that there was a
 3 problem not caused by malfunctioning, but caused by
 4 something else, so the objection is well taken.
 5 MR MADLANGA SC: I'm a layperson – thank
 6 you, Mr Chairman. I'm a layperson in matters analogue
 7 radio systems. Let me phrase the question differently, and
 8 substitute "problems" for "malfunctioning." Are you in a
 9 position to tell this Commission, National Commissioner,
 10 why the problems with the analogue radio network that
 11 resulted in the overall commander not being able to call a
 12 halt to the operations, are you able to tell why it is that
 13 we do not see that in exhibit L, the SAPS presentation, and
 14 in the SAPS opening statement?
 15 GENERAL PHIYEGA: I'm not able to do so,
 16 but I will also say we have addressed you in particular on
 17 the radio matter. The TMS note that we sent you did talk
 18 about the radios.
 19 MR MADLANGA SC: But do you accept that
 20 it was such a crucial matter that it ought to have had some
 21 importance in the case that SAPS presented before this
 22 Commission? Would you agree with that?
 23 GENERAL PHIYEGA: Yes, I regard it as
 24 important, and this is why we responded to you in writing.
 25 MR MADLANGA SC: And that was a response

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1 in writing at our request. We initiated that process, not
 2 so?
 3 GENERAL PHIYEGA: You would recall that
 4 there was even an article in the press which concerned us
 5 and it was important for us to also correct that.
 6 MR MADLANGA SC: But would it be fair to
 7 suggest to you that SAPS must have been aware of this
 8 problem prior to the press, the article, and also prior to
 9 the enquiry by the evidence leaders?
 10 GENERAL PHIYEGA: I am sure that when you
 11 talk to the commanders that are going to present to you,
 12 they will mention that.
 13 MR MADLANGA SC: Are you not aware, are
 14 you yourself not aware whether or not SAPS was already
 15 aware of the problem prior to the article in the press that
 16 you are referring to, and also prior to the enquiry by the
 17 evidence leaders?
 18 GENERAL PHIYEGA: I think the important
 19 thing to mention is that our responding to you was not a
 20 back-footed matter. We responded because we were able to
 21 tell you that Petra is not here, Petra is in Eastern Cape.
 22 We needed to do that because we were aware that there is an
 23 issue around radios, and that's why we did what we did.
 24 MR MADLANGA SC: I understand that and I
 25 appreciate the response that we received from SAPS, but I'm

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1 asking you a different question. Were you as the National
 2 Commissioner of Police, were you aware prior to the article
 3 that you are referring to, and also prior to the enquiry by
 4 the evidence leaders, that there were on the day in
 5 existence the problems that we have been talking about
 6 around the analogue radio system of SAPS? Were you aware?
 7 That is the question, and also prior to the article that
 8 you are referring to, as also prior to the enquiry by the
 9 evidence leaders.
 10 GENERAL PHIYEGA: Yes, the issues of
 11 communication and radios have been part and parcel of this
 12 process from beginning to today. You have said in response
 13 to an earlier question that the commanders would have been
 14 aware as well. Now the question that I want to ask is –
 15 no, no, no, I asked that. I will now take you to a
 16 different subject, the tampering report. I hope that it
 17 has been placed before you. That is the report that was
 18 commissioned by you after you became aware that there had
 19 been a tampering –
 20 GENERAL PHIYEGA: I have it.
 21 MR MADLANGA SC: - with the crime scene
 22 at scene 2. Do you have a copy there, General?
 23 GENERAL PHIYEGA: Yes.
 24 MS PILLAY: Chair, this exhibit should be
 25 marked FFF15. FFF15.

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1 CHAIRPERSON: The possible tampering
 2 report. Exhibit FFF15.
 3 MR MADLANGA SC: General, when did you
 4 first become aware of the possible tampering with the crime
 5 scene at scene 2 in Marikana?
 6 GENERAL PHIYEGA: I think it was the 24th,
 7 or the 23rd of October.
 8 MR MADLANGA SC: Now are you aware that
 9 the Commission only became aware – or perhaps, yes, the
 10 Commission, including the evidence leaders, became aware of
 11 the investigation that you had instituted after evidence on
 12 the crime scene, evidence of Captain Mohlaki had been led
 13 before this Commission? Are you aware of that, or not?
 14 GENERAL PHIYEGA: I'm not aware, but I
 15 can say that my becoming aware was because of Captain
 16 Mohlaki's presentation here.
 17 MR MADLANGA SC: I will just look at – or
 18 perhaps so long let me ask this question. You will accept
 19 if I suggest to you that Captain Mohlaki's evidence on this
 20 subject was on 5 November 2012? You accept that? Ms
 21 Pillay has just looked at the record for me on this.
 22 GENERAL PHIYEGA: Ja, I think, I may be
 23 wrong. During the presentation of Captain Botha and
 24 Captain Mohlaki, that's when I became aware of that. I was
 25 here.

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1 MR MADLANGA SC: Just to be sure what
 2 exactly you are referring to, in particular insofar as
 3 Captain Mohlaki is concerned, are you talking about when
 4 Captain Mohlaki's evidence actually addressed the
 5 tampering, where for instance two pictures would be shown
 6 on the screens and the position of the weapons would be
 7 different, or in some pictures there would be none, and
 8 then a picture of the same person would actually have a
 9 weapon when it wasn't there earlier? Are you talking about
 10 that evidence when you refer to the evidence of Captain
 11 Mohlaki?
 12 GENERAL PHIYEGA: In fact the person who
 13 was presenting I think was Botha, because I was here when
 14 they broke for lunch, when he was coming to show his
 15 pictures. I was alerted to that and we looked at them and
 16 I saw that, and it was on the basis of that, that I said I
 17 want to understand what is sitting behind these
 18 differences.
 19 MR MADLANGA SC: Well, I'm told by my
 20 colleague in the evidence leading team, Mr Wesley, that
 21 Lieutenant-Colonel Botha testified on 24 – or I'm sorry, 26
 22 October 2012.
 23 GENERAL PHIYEGA: And he was here for
 24 many days. I mean he was here for many days.
 25 MR MADLANGA SC: I'd like just a little

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1 bit of time, Commissioners.
 2 CHAIRPERSON: I see it's after 3 – Mr
 3 Madlanga, after 3 o'clock, so we can give you the time and
 4 take the tea adjournment at the same time.
 5 MR MADLANGA SC: Thank you, Mr Chairman.
 6 CHAIRPERSON: I just want to see
 7 something before we do. Yes, the Commission will now
 8 adjourn for tea. We'll resume just after quarter past 3.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [15:25] CHAIRPERSON: The Commission resumes.
 11 You're still under oath, National Commissioner. Mr
 12 Madlanga?
 13 MANGWASHI VICTORIA PHIYEGA: s.u.o.
 14 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 15 Thank you, Mr Chairman. National Commissioner, you were
 16 quite correct, Colonel Botha started testifying on 23
 17 October 2012, and he was indeed, as you say, still
 18 testifying even the following day. There's a matter that I
 19 would like to get clarity from you on, and it is this. You
 20 have already instituted an investigation on the possible
 21 tampering on 24 October 2012. Captain Mohlaki comes to
 22 testify before this Commission on 5 November 2012 and he
 23 gives his evidence-in-chief based on his, on the
 24 photographs that he had taken, which in and of themselves
 25 did not show that there had been tampering before he took

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1 the photographs that he presented before this Commission as
 2 part of his evidence. I know this is long, but I'm just
 3 setting a scene. Then when he is being re-examined – it
 4 seems that I have my wires crossed when it comes to the
 5 dates. I'm being told that he was re-examined on the 5th of
 6 November, so his testimony must obviously have commenced
 7 before that.
 8 CHAIRPERSON: His testimony went on for a
 9 quite a long time, you remember, much longer than we
 10 anticipated.
 11 MR MADLANGA SC: Yes, yes. Thank you, Mr
 12 Chairman. Let me take one step back then. So he's been
 13 cross-examined on the 5th of November. He would have
 14 started testifying before that, but one thing sure is that
 15 he testified after Colonel Botha had testified, which would
 16 mean that he testified after you had instituted the
 17 investigation. What I want to find out from you, are you
 18 as the National Commissioner and as the head of SAPS in a
 19 position to explain why it is that SAPS let this Commission
 20 listen to and view – listen to the evidence of Captain
 21 Mohlaki and view photographs taken by him, photographs
 22 taken at a time when the tampering had already taken place?
 23 Why was this Commission not alerted beforehand that that in
 24 fact does not represent the scene; the scene had already
 25 been tampered with? Are you in a position to give an

<p style="text-align: right;">Page 7211</p> <p>1 explanation?</p> <p>2 CHAIRPERSON: Yes, Mr Semenya?</p> <p>3 MR SEMENYA SC: Chair, I think at the</p> <p>4 heart of the question is probably why did we as SAPS legal</p> <p>5 representatives allow the leading of evidence to happen in</p> <p>6 the way it did, without alerting the Commission to the</p> <p>7 investigation. If it is any –</p> <p>8 MR MADLANGA SC: May I, even before my</p> <p>9 learned friend proceeds, may I say for now let us hear what</p> <p>10 the answer will be and only if it does turn on what my</p> <p>11 learned friend says, will what my learned friend says</p> <p>12 perhaps come into the equation. For now I just want to</p> <p>13 know why the National Commissioner as the National</p> <p>14 Commissioner and as the head of the South African Police</p> <p>15 Service, why they as that organisation let evidence proceed</p> <p>16 on a basis that was in fact not correct.</p> <p>17 CHAIRPERSON: Mr Semenya, do you persist</p> <p>18 in your objection?</p> <p>19 MR SEMENYA SC: Let the witness answer,</p> <p>20 correct, I'll give you the information just now.</p> <p>21 CHAIRPERSON: Alright.</p> <p>22 GENERAL PHIYEGA: I'm going to try and</p> <p>23 deal with some chronology which may miss certain things.</p> <p>24 If I do so, please pardon me. On the 23rd/24th when that</p> <p>25 thing was happening, was, remember we had submitted our</p>	<p style="text-align: right;">Page 7213</p> <p>1 lawyers would be able to talk to that. All I know is that</p> <p>2 when we discovered this, we did ask them to actually talk</p> <p>3 to the Commission about what we are doing, because we</p> <p>4 wanted to understand, and we've been open. I think you've</p> <p>5 met a number of people who have been investigating, who</p> <p>6 we've engaged. You've met with the - because we wanted to</p> <p>7 be open and transparent about what we were doing.</p> <p>8 MR MADLANGA SC: General, who drafted</p> <p>9 your press statement? Did you do it yourself, or did</p> <p>10 somebody do it for you?</p> <p>11 MR SEMENYA SC: Chair, I -</p> <p>12 MR MADLANGA SC: The press statement of</p> <p>13 17 –</p> <p>14 MR SEMENYA SC: Is Mr Madlanga moving</p> <p>15 away from that?</p> <p>16 CHAIRPERSON: Mr Semenya wants to say</p> <p>17 something.</p> <p>18 MR SEMENYA SC: Are you moving away?</p> <p>19 MR MADLANGA SC: Yes. Yes, Mr Semenya.</p> <p>20 MR SEMENYA SC: Chair, just for the</p> <p>21 record, might we look at the very document, FFF15.</p> <p>22 CHAIRPERSON: FFF15, the so-called, the</p> <p>23 possible tampering report.</p> <p>24 MR SEMENYA SC: Indeed, Chair, at page 8.</p> <p>25 The date of the document is 2012/11/21. We could not have</p>
<p style="text-align: right;">Page 7212</p> <p>1 preliminary presentation. Botha and Mohlaki were, even</p> <p>2 though they work for us, were coming from the LCRC and</p> <p>3 whatever information they were giving was coming to the</p> <p>4 evidence leaders, not to us. So the discord that we</p> <p>5 noticed, because all those documents were already with you,</p> <p>6 and correct me, were discovered at that point in time,</p> <p>7 that's how we managed to get your document that was</p> <p>8 different from ours. I was alerted to that because I was</p> <p>9 saying if this is the document that is with the evidence</p> <p>10 leaders, and what we have submitted as our own submission</p> <p>11 and whatever, I wanted to understand why the difference,</p> <p>12 and it was on the basis of that that I said please</p> <p>13 investigate for me and tell me what is happening, and</p> <p>14 through - I'm sure our lawyers will talk to that – through</p> <p>15 our lawyers we didn't wait to be asked; we brought the</p> <p>16 information to yourselves to say this has happened, we are</p> <p>17 doing the following, and that's my understanding of what</p> <p>18 has happened here.</p> <p>19 MR MADLANGA SC: By the information being</p> <p>20 brought to us, to the attention of us evidence leaders, and</p> <p>21 also us being advised as to what SAPS was doing, I trust</p> <p>22 that you are not suggesting that that was done prior to the</p> <p>23 re-examination of Captain Mohlaki on 5 November 2012?</p> <p>24 GENERAL PHIYEGA: The specifics of the</p> <p>25 telling of the Commission I don't have and I'm sure my</p>	<p style="text-align: right;">Page 7214</p> <p>1 known anything about how this investigation is positioned.</p> <p>2 That's the first point. The second point is, we did not</p> <p>3 even lead the evidence of Captain Mohlaki ourselves.</p> <p>4 MR MADLANGA SC: May I move on, Mr</p> <p>5 Chairman?</p> <p>6 CHAIRPERSON: Yes.</p> <p>7 MR MADLANGA SC: Thank you. National</p> <p>8 Commissioner, who drafted your press statement of 17 August</p> <p>9 2012?</p> <p>10 CHAIRPERSON: That's FFF5, I think?</p> <p>11 MR MADLANGA SC: Yes, Mr Chairman.</p> <p>12 GENERAL PHIYEGA: I – may I request a</p> <p>13 copy of that, because I don't have it with me.</p> <p>14 CHAIRPERSON: Does the witness need a</p> <p>15 copy of FFF5? To save time, she can have mine.</p> <p>16 GENERAL PHIYEGA: Oh, is it this one? My</p> <p>17 apologies, I thought you were talking about another</p> <p>18 statement. Are we going back to this one? Then you can</p> <p>19 have yours back.</p> <p>20 MR MADLANGA SC: Yes, we are going back</p> <p>21 there, General, but I don't think we are going back to any</p> <p>22 previous question. The question was, who drafted it,</p> <p>23 General? Did you do it yourself, or did somebody do it for</p> <p>24 you?</p> <p>25 GENERAL PHIYEGA: You've asked me that</p>

<p style="text-align: right;">Page 7215</p> <p>1 question yesterday and I did say that that was a joint 2 operation committee output and we also had our 3 communications people in that environment. We had the team 4 that were there, the commanders, as well as the COMS 5 people. 6 MR MADLANGA SC: I asked you about the 7 briefing on the 16th and the update on the following day, 8 not about the authorship. 9 GENERAL PHIYEGA: You asked me. 10 MR MADLANGA SC: Are you saying the 11 people concerned all sat down around a table and they all 12 drafted the document? There wasn't a single person who 13 actually took responsibility for the drafting? 14 GENERAL PHIYEGA: Yes, I am saying the 15 people that – remember the process of putting this 16 together, you asked me this question and I did say to you 17 the JOC was responsible for – because these facts come from 18 various people. You asked who was in the field, who was 19 where, and I think everybody was sitting there, that these 20 are the facts coming from this environment and the 21 communications people for instance would not have been in 22 the field, they'd be sitting there as communication 23 scribes. Mashego was there and Ria was there and they were 24 writing, being fed information to do that. So it's a 25 collaborative output.</p>	<p style="text-align: right;">Page 7217</p> <p>1 try to use the time, Mr Chairman. May I ask you, do you 2 prefer to be called General or Commissioner? 3 GENERAL PHIYEGA: Anything is fine. 4 MR BIZOS SC: I prefer to call you 5 Commissioner, for reasons which may become clearer to you 6 during the course of our conversation. 7 GENERAL PHIYEGA: I'm comfortable. 8 CHAIRPERSON: It might be helpful if you 9 called her National Commissioner, because otherwise – 10 MR BIZOS SC: National Commissioner. 11 CHAIRPERSON: - there may be confusion 12 between her and us. 13 MR BIZOS SC: And the provincial, yes. 14 National Commissioner, very well. You were asked by one of 15 the people, the journalists that sit around here day in and 16 day out, Redi Tlhabi, whether the conduct of the police in 17 shooting criminals encouraged the criminals to become 18 brazen. Did you say that to her? 19 GENERAL PHIYEGA: She spoke about brazen. 20 I responded to the brazen – 21 MR BIZOS SC: Yes. 22 GENERAL PHIYEGA: - the statement she 23 made. 24 MR BIZOS SC: What did you say? 25 GENERAL PHIYEGA: I wouldn't recall</p>
<p style="text-align: right;">Page 7216</p> <p>1 MR MADLANGA SC: So that collaborative 2 process, the actual scribes were the communications people? 3 GENERAL PHIYEGA: Yes. 4 MR MADLANGA SC: And who drafted the 5 internal briefing note that was sent to the Department of 6 International Relations; that is exhibit FFF4? 7 GENERAL PHIYEGA: It was the same 8 process. 9 MR MADLANGA SC: General, did you have a 10 written text when you addressed the police parade on 20 11 August 2012? 12 GENERAL PHIYEGA: No. 13 MR MADLANGA SC: Commissioners, those are 14 all my questions. Thank you very much. And thanks to the 15 National Commissioner as well. 16 GENERAL PHIYEGA: Thank you. 17 CHAIRPERSON: Thank you, Mr Madlanga. Mr 18 Bizos, I understand you're going to cross-examine next. Is 19 that correct? 20 MR BIZOS SC: That's correct. 21 CHAIRPERSON: Yes, we'll go on till just 22 about 4 o'clock, which means you've got 20 minutes, unless 23 you want me to adjourn now for tomorrow morning, but I'm 24 happy if you wish to proceed. 25 CROSS-EXAMINATION BY MR BIZOS SC: I'll</p>	<p style="text-align: right;">Page 7218</p> <p>1 precisely. If you have – 2 MR BIZOS SC: Let me remind you. 3 CHAIRPERSON: Sorry, can you tell us on 4 what occasion did this take place? 5 MR BIZOS SC: It's on the 16th of March 6 2013, according to my notes. 7 CHAIRPERSON: Thank you. 8 MR BIZOS SC: "They are absolutely brazen 9 because we have the most beautiful Constitution that allows 10 rights." Then that was in inverted commas. It was shown 11 on television. It was picked up, it wasn't denied by you. 12 Do you concede that that is what you have said? 13 GENERAL PHIYEGA: I do not deny that. 14 MR BIZOS SC: Perhaps you can explain to 15 us why you chose to use the word "beautiful," which is 16 usually used in relation to cosmetic and fashion matters. 17 What is it that they consider, or you consider "beautiful 18 Constitution?" Please explain. 19 GENERAL PHIYEGA: Perhaps being a Mopedi 20 girl that I am, I took "busi," which may mean beautiful, 21 which may mean wonderful, which may mean good. I probably 22 made it a direct translation. I did not pay particular 23 attention to the language, but all I was saying, was that 24 we have a very good Constitution. 25 [15:45] MR BIZOS SC: You were not asked whether</p>

<p style="text-align: right;">Page 7219</p> <p>1 the Constitution was blue or white or what colour; you were 2 asked why did the criminals behave in the manner in which 3 they did, and why did you say that they are "absolutely 4 brazen because we have the most beautiful Constitution that 5 allows rights?" Explain that, please. Why did you use 6 those words? 7 GENERAL PHIYEGA: I think if you were 8 part of the discussion and the breaks that we had, we had 9 quite some discussion around rights and responsibilities 10 and that interview, entirely edited. It was pre-recorded, 11 it was edited, and the issue of rights and responsibilities 12 was seriously canvassed and discussed during that day. 13 MR BIZOS SC: Am I misinterpreting your 14 statement that the criminals are absolutely brazen because 15 they, there is a beautiful Constitution that protects their 16 rights? Am I misreading it? 17 GENERAL PHIYEGA: What I said was that 18 our country has a good Constitution – 19 MR BIZOS SC: No, you didn't say that. 20 No, National Commissioner, you said that criminals are 21 brazen because we have the most beautiful Constitution that 22 allows rights. Rights to whom? To the criminals, or not? 23 GENERAL PHIYEGA: I thought you were 24 asking me what I was saying. 25 MR BIZOS SC: No, I asked you what you</p>	<p style="text-align: right;">Page 7221</p> <p>1 force or service that you are heading ever express regret 2 that the liberal Constitution that we have is responsible 3 for the criminality that the country is unfortunately 4 facing? Did you ever hear anyone of your subordinates 5 expressing that view? 6 GENERAL PHIYEGA: No. 7 MR BIZOS SC: Not ever? 8 GENERAL PHIYEGA: Not to me. 9 MR BIZOS SC: Or publicly? 10 GENERAL PHIYEGA: No, not to me. 11 MR BIZOS SC: No, the question is not to 12 you. Are you aware of any public statements made by your 13 subordinates that the Constitution molycoddles criminals 14 and that is the reason why we have high criminality? 15 GENERAL PHIYEGA: I'm not aware. 16 MR BIZOS SC: You must be the only South 17 African who have not heard this. 18 MR SEMENYA SC: Chair, really – 19 CHAIRPERSON: Mr Bizos, that's a comment. 20 You're not to make those. If there's a statement that you 21 think is a matter of general knowledge which you suggest 22 she knows about, you can put it to her, but don't make 23 comments. 24 MR BIZOS SC: I'm sorry, yes. I am going 25 to put to you that you well know that there is a body of</p>
<p style="text-align: right;">Page 7220</p> <p>1 meant. Please, you know, this is not a classroom in which 2 we're playing with words. Please try and answer the 3 questions. I asked you what you meant. Did you mean what 4 I have said and will argue you meant? 5 GENERAL PHIYEGA: I do not mean what you 6 said. 7 MR BIZOS SC: What did you mean? 8 GENERAL PHIYEGA: If you allow me, I 9 would say I said we had a good Constitution. 10 MR BIZOS SC: No, that's not what you 11 said. Nobody asked you whether we had a good Constitution 12 or not. You were asked why were criminals so brazen, and 13 you said they are so brazen because we have the most 14 beautiful Constitution that allows for rights. You gave a 15 germane answer to the question, did you not? You were not 16 asked do we have an ugly or a beautiful Constitution. 17 GENERAL PHIYEGA: I have given you my 18 understanding of what I was saying and indeed the way you 19 are interpreting it, I'm saying I am not interpreting it 20 the way you are interpreting it. 21 MR BIZOS SC: Do you believe, or did you 22 ever believe or did you ever express a view that the 23 Constitution was molycoddling the criminals? 24 GENERAL PHIYEGA: No. 25 MR BIZOS SC: Did any members of the</p>	<p style="text-align: right;">Page 7222</p> <p>1 South Africans who resent the rights afforded to the people 2 of South Africa and are yearning for the absence of such 3 fundamental rights. Have you not heard anything? Have you 4 not read anything to that effect? 5 GENERAL PHIYEGA: May I be assisted maybe 6 to be able to answer that to say this body of people that 7 you're talking about, are which people? 8 MR BIZOS SC: Are there not people who 9 are writing newspaper letters, making editorial comments in 10 some publications, that the criminals in South Africa are 11 exploiting the rights that have been accorded to them in 12 the Constitution, and this is why we have a high degree of 13 criminality? Have you never heard or read anything like 14 that? 15 GENERAL PHIYEGA: That helps me. Yes, I 16 do read about those things. 17 MR BIZOS SC: Do you agree with them, or 18 you disagree with them? 19 GENERAL PHIYEGA: I do not agree with 20 them. 21 MR BIZOS SC: You do not agree with them. 22 Now why did you answer the question that you did, why are 23 they brazen, and they are absolutely brazen because we have 24 the most beautiful Constitution that allows rights? I'm 25 going to put to you - I don't want to repeat myself – that</p>

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1 you actually made a derogatory remark in relation to our
 2 Constitution and the rights that it guarantees for the
 3 people of South Africa. Do you admit it or deny it, so
 4 that we can get on?
 5 GENERAL PHIYEGA: I deny it.
 6 MR BIZOS SC: You could have given a
 7 different answer, National Commissioner, and without any
 8 disrespect to you, but two of your predecessors, it may
 9 well be that criminals benefited from the fact that two of
 10 your predecessors, one was jailed and the other was sacked
 11 for corruption. You could have given that answer as to why
 12 we have such high degree of criminality, couldn't you?
 13 MR SEMENYA SC: Chair, the criminality in
 14 the country can't always sell because there was a
 15 predecessor who was sacked, another one who was jailed.
 16 CHAIRPERSON: I'm not quite sure that's
 17 what the question means. I'm not quite sure what the
 18 question means. Perhaps Mr Bizos should rephrase it and
 19 then you can –
 20 MR BIZOS SC: I don't understand the
 21 objection.
 22 CHAIRPERSON: Well, may I suggest you
 23 reformulate your question and then Mr Semenya can then, if
 24 he wants to, give us the focus of it.
 25 MR BIZOS SC: Did you know that two of

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1 your predecessors, one was convicted of corruption and the
 2 other was removed from office for alleged corruption?
 3 Selebi and Bheki Cele. Do you know that?
 4 MR MADLANGA SC: Mr Chairman,
 5 Commissioners, may I offer to make a correction? I do not
 6 know whether it's proper. I was actually involved in the
 7 Cele matter and the finding was not one of corruption, it
 8 was one of lack of proper management. I'm putting it very
 9 broadly. Yes, we had argued strongly for a finding on
 10 corruption, but we did not succeed on that. So this is not
 11 correct.
 12 MR BIZOS SC: Sorry, thank you. One was
 13 convicted and the other was sacked for incompetence, if –
 14 or misconduct. Would that be a matter that may have led,
 15 if those actions led to non-proper policing, might that not
 16 have been a reason for the criminality that we have in the
 17 country?
 18 CHAIRPERSON: Before she answers the
 19 question, we have an objection from Mr Semenya that I must
 20 deal with.
 21 MR SEMENYA SC: Chair, the objection is
 22 it cannot be because of the predecessors, one being sacked
 23 on misconduct, another one jailed, that can explain the
 24 criminality in South Africa.
 25 MR BIZOS SC: I'm entitled to put the

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1 question – I'm entitled –
 2 CHAIRPERSON: What is happening, as I
 3 understand, is Mr Bizos is asking you do you agree, or do
 4 you accept that a possible cause of the increased
 5 criminality in the country was the misconduct of two of
 6 your predecessors. Is that your question?
 7 MR BIZOS SC: That will be it.
 8 CHAIRPERSON: Ja.
 9 GENERAL PHIYEGA: I do not agree, because
 10 criminality has many causes.
 11 MR BIZOS SC: Could that be one?
 12 GENERAL PHIYEGA: I've already said I
 13 don't agree.
 14 MR BIZOS SC: Could the criminality have
 15 been as a result of the inefficiency of the police force,
 16 as it was renamed? Could it be because of the
 17 inefficiency?
 18 GENERAL PHIYEGA: I still do not agree.
 19 MR BIZOS SC: Sorry, I didn't hear your
 20 answer.
 21 GENERAL PHIYEGA: I do not agree.
 22 MR BIZOS SC: You don't agree. Could it
 23 have been that they were brazen because of the number of
 24 complaints that there have been about police torture and
 25 ill-treatment of arrested persons?

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1 GENERAL PHIYEGA: I do not know.
 2 MR BIZOS SC: Could it have been that a
 3 number of citizens have been killed by the police?
 4 GENERAL PHIYEGA: Maybe before I answer
 5 this one, let me try to understand. Are you saying the
 6 criminals are conducting the crime they are, are doing the
 7 criminality that they are doing because there are people
 8 who are killed by the police?
 9 MR BIZOS SC: Yes, as an act of revenge.
 10 How many people have the police killed in the last year,
 11 the last year meaning 2012? Do you know? Did you find
 12 out?
 13 GENERAL PHIYEGA: So I should understand
 14 that the criminality is about revenge, it's a war?
 15 MR BIZOS SC: How many ordinary people
 16 have been killed by the police in 2012? Do you know?
 17 GENERAL PHIYEGA: I can get those
 18 statistics from IPID.
 19 MR BIZOS SC: You don't remember?
 20 GENERAL PHIYEGA: Not off-hand.
 21 MR BIZOS SC: Why did you mention to us
 22 the conversation that you had in Tanzania that there are
 23 only 10 policemen that were killed in Tanzania for the last
 24 year? Why did you mention it in your evidence?
 25 GENERAL PHIYEGA: Because in my evidence

1 I make reference to police killings.
 2 MR BIZOS SC: You wanted to inform the
 3 Commission and the public in South Africa, look at the
 4 wonderful record of Tanzania, there were only 10 policemen
 5 killed and about very many more were killed in South
 6 Africa?
 7 GENERAL PHIYEGA: I'm not using words
 8 such as "wonderful." I was just giving a comparative
 9 analysis that I have made.
 10 MR BIZOS SC: If you –
 11 CHAIRPERSON: Mr Bizos –
 12 MR BIZOS SC: I'll just finish this off,
 13 Mr Chairman.
 14 CHAIRPERSON: Alright.
 15 MR BIZOS SC: Did you tell your opposite
 16 number in Tanzania how many people were killed by the
 17 police in Tanzania?
 18 GENERAL PHIYEGA: It was not part of that
 19 conversation and he did not ask me.
 20 MR BIZOS SC: No, but you were there and
 21 you mentioned it as a matter of relevance because of
 22 comparative purposes. Surely the proper comparison would
 23 have been how many people did the Tanzanian police kill,
 24 and by way of contrast, how many people in South Africa
 25 were killed from either side. That would have been a

1 proper enquiry and proper information to put before the
 2 Commission.
 3 GENERAL PHIYEGA: Advocate, that was not
 4 our conversation.
 5 MR BIZOS SC: I just want to put to you
 6 finally on this topic –
 7 GENERAL PHIYEGA: I beg your pardon?
 8 MR BIZOS SC: I'm going to put to you
 9 finally for your comment that you are actually concerned
 10 not to say a single word which may be uncomplimentary to
 11 the South African Police. You are patting them on the
 12 back. You did so on the 17th. You did so on the 20th. You
 13 are doing so in the witness box in the lengthy cross-
 14 examination. What do you say to that?
 15 [16:05] GENERAL PHIYEGA: I do not agree, but I
 16 cannot change your assertion.
 17 MR BIZOS SC: Well [inaudible], thank you
 18 very much for the opportunity.
 19 CHAIRPERSON: The Commission will now
 20 adjourn until 9:30 tomorrow morning.
 21 [COMMISSION ADJOURNED]
 22 .
 23 .
 24 .
 25 .

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