

# 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 98    23 MAY 2013    PAGES 10379 TO 10487

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 23 MAY 2013]  
 2 [09:49] CHAIRPERSON: The Commission resumes. I  
 3 wish to announce that we will not be sitting tomorrow and  
 4 what we're going to do is we're going to take a half hour  
 5 lunch break today, in other words resume at half past 1,  
 6 and then adjourn at half past 3, and then resume again on  
 7 Monday. I thought it appropriate to tell people now so  
 8 that if necessary they can make the appropriate  
 9 arrangements. National Commissioner, I did swear you in a  
 10 long time ago and I'm sure you remember you're under oath,  
 11 but I think it probably best for me to swear you in again.  
 12 Would you stand up, please? Do you swear the evidence  
 13 you'll give before this Commission – this resumed sitting  
 14 of the Commission – will be the truth, the whole truth,  
 15 nothing but the truth? Please raise your right hand, say,  
 16 "I swear, so help me God."  
 17 MANGWASHI VICTORIA PHIYEGA: So help me  
 18 God.  
 19 CHAIRPERSON: You may be seated, thank  
 20 you. Mr Mpofo will now resume your cross-examination,  
 21 which was unfortunately interrupted by events which are  
 22 known to everybody in this country. Please proceed.  
 23 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 24 Thank you very much, Chairperson. Much appreciated. Yes,  
 25 I remember on the last day I kept on saying we'll deal with

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1 that on the 16th, and that was the 16th of April.  
 2 CHAIRPERSON: These predictions aren't  
 3 always fulfilled.  
 4 MR MPOFU: Or don't always come true.  
 5 Thank you, Chairperson. Good morning, National  
 6 Commissioner. I'm going to start with just a few minutes  
 7 of, given as you've heard the exchange between myself and  
 8 the Chairperson, there's been an unusually long gap for  
 9 reasons that are well-known, between the last time we spoke  
 10 and now. So I'll just recap a few of the issues that we  
 11 dealt with and then I'll move on from where we left it, if  
 12 that's okay with you. I must say that upon reading the  
 13 record I found that you and I had more agreements than  
 14 disagreements, which was a pleasant revelation. Firstly,  
 15 and I'm just going to confirm this with you so that we walk  
 16 together, as you usually put it.  
 17 GENERAL PHIYEGA: Ja.  
 18 MR MPOFU: Firstly we – remember that on  
 19 the 5th of April I put to you 10 key principles which are  
 20 distilled from the regulatory framework, or what you call  
 21 the prescripts, and we effectively agreed on all those 10.  
 22 I don't intend to repeat them, unless if you want me to.  
 23 GENERAL PHIYEGA: Remembering is one  
 24 thing, but I think they are on record and I would have  
 25 given my answer to those.

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1 MR MPOFU: Yes, and then, if you'll just  
 2 bear with me, maybe just to refresh everybody's memory I'll  
 3 just go through the things without asking you one by one,  
 4 as I did the last time. The first one was that the new  
 5 regime is a transformational – the new regime of POP, if  
 6 you know what I mean, of Public Policing, is a  
 7 transformational project from the apartheid regime, or  
 8 model, to the one that is under the new democratic  
 9 dispensation.  
 10 Second issue was that it is steeped in the  
 11 culture of fundamental rights for individuals, and the  
 12 third one was that it signifies a movement from crowd  
 13 control to crowd management. The fourth one was that it  
 14 promotes a participatory ethos, communication, and  
 15 stakeholder management. The fifth one was that it seeks to  
 16 achieve the prevention of violence, which obviously cannot  
 17 happen on all occasions. The sixth one was the need for  
 18 dialogue and accuracy of information, which comes from  
 19 FFF1.  
 20 The seventh was what we call the gradualist  
 21 approach from negotiation to defensive measures to  
 22 offensive measures, and the eighth was the tolerance, the  
 23 high levels of tolerance that are expected from policemen,  
 24 which are even higher than those of normal citizens.  
 25 Remember the example you gave us that there's one prescript

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1 that even says even when you are being thrown with stones,  
 2 you must be tolerant.  
 3 The ninth, which is very important, was the  
 4 emphasis of the prescripts on impartiality of the police,  
 5 which you acknowledged, and the 10th was that the regulatory  
 6 framework, in other words the Constitution, the act and the  
 7 Standing Orders all prescribe the use of minimum force, or  
 8 no more force than it is necessary. You remember those 10?  
 9 GENERAL PHIYEGA: I hear those, but as  
 10 I've already indicated, I have responded to you on those.  
 11 MR MPOFU: Yes. Yes, no everything I'm  
 12 saying now is, as I said it's a recap, in other words it's  
 13 something that we've already done. You also agreed in the  
 14 second place about the three dimensions of the issues that  
 15 confront of us, being the, obviously the security  
 16 dimension, what we call the economic dimension, or socio-  
 17 economic dimension, and that it also had a political  
 18 dimension, but you were obviously principally concerned  
 19 with the, what we can call the security dimension.  
 20 Correct?  
 21 GENERAL PHIYEGA: Advocate, as I've said,  
 22 I'm listen to the recap. I've already responded to those.  
 23 MR MPOFU: Ja. No, the purpose of this  
 24 is to recap, but also to check whether we are still agreed  
 25 on what we agreed last time, so that I must not move from a

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1 false premise. Okay, and we're also agreed that you  
 2 personally approved the following document, the opening  
 3 statement of SAPS, exhibit L, obviously the statements of  
 4 the 17th of September, and the other statements which you  
 5 made, which contained the remarks that you made between  
 6 let's say the 16th and 20th. Correct?  
 7 GENERAL PHIYEGA: I have responded also  
 8 to those.  
 9 MR MPOFU: Yes, and we also agreed, you  
 10 and I, that the operation per se was a normal, was what you  
 11 called a normal operation until the first shot was fired.  
 12 Correct?  
 13 GENERAL PHIYEGA: Again I've responded.  
 14 MR MPOFU: We also agreed in the fifth  
 15 place that at the top of the hierarchy are three heads,  
 16 namely yourself, the Minister, and the President, and that  
 17 you are accountable both from a policing point of view – I  
 18 think you described yourself as the commander-in-chief of  
 19 the police, so in that respect, and you're also accountable  
 20 from a PFMA point of view, like any other accounting  
 21 officer. In other words that the buck stops with you in  
 22 terms of the operational side, correct?  
 23 GENERAL PHIYEGA: I note the recap, and  
 24 I've responded also.  
 25 MR MPOFU: And we also agreed that should

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1 anybody have breached the 10 principles that I had  
 2 distilled from the prescripts, then remedial steps ought to  
 3 be taken against those people, and I used the term "heads  
 4 must roll." You used the term "remedial action would be  
 5 taken." So I'm happy to use your terminology. Agreed?  
 6 GENERAL PHIYEGA: I'm happy to keep with  
 7 the comments I gave. In fact, I spoke of relevant  
 8 remedies.  
 9 MR MPOFU: Right, and then lastly we  
 10 agreed on that as far as national deployment, more  
 11 specifically of POP but also of other units, but POP  
 12 because POP is covered in section 17 of the act, that the –  
 13 and when I say national deployment, I mean deployment of  
 14 people away from their provinces. You know what I mean?  
 15 To other provinces, that that is your responsibility and  
 16 that in terms of section 17(5) it's you or the President  
 17 who can do that deployment, and we agreed that in this case  
 18 the President did not do the deployment and that you had  
 19 done the deployment, and that the issue of capacity was an  
 20 issue of central concern to you. Remember that?  
 21 GENERAL PHIYEGA: I note that recap, and  
 22 I've given you my answer.  
 23 MR MPOFU: Okay, then where we did not  
 24 agree, there were two issues specifically where we did not  
 25 agree, and both of them had to do with the, what I call the

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1 tampering report, and the first one concerned whether or  
 2 not the weapons were removed at scene 1, the weapons were  
 3 removed before the paramedics arrived, in other words  
 4 controverting the central theory in the tampering report  
 5 that the removal of weapons was at the request of  
 6 paramedics, and I don't want to confuse you; I know that  
 7 the report dealt mainly with scene 2, but I was using scene  
 8 1 as an example to show that the removals were done before  
 9 the paramedics got there. There was a debate between Mr  
 10 Semenya and I and so on, but we did not agree on that, but  
 11 remember that?  
 12 GENERAL PHIYEGA: I note the recap, and  
 13 I've responded to that too.  
 14 MR MPOFU: And you also obviously did not  
 15 agree with my criticism of you in relation to your  
 16 acceptance of the report, in spite the witnesses that I had  
 17 pointed to, as amounting to a dereliction of your duties.  
 18 You didn't agree on that, correct?  
 19 GENERAL PHIYEGA: I note that, and also  
 20 the response that I gave that is on record.  
 21 MR MPOFU: Yes, so effectively we had –  
 22 if you take these issues, we had about seven topics on  
 23 which we agreed, and two that we did not agree, and we were  
 24 busy with the 10th one, so if we agree on the tenth one  
 25 we'll have eight out of 10, which is quite good; it's an A,

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1 A+. Now the issue that we were busy with then, which  
 2 hopefully will take us from a B to an A, was, if you  
 3 remember, I had just read to you an extract from the  
 4 National Development Plan, which suggests that policing  
 5 ought to take into account root causes, and you seemed to  
 6 suggest that we were not agreeing on that. In fact, you  
 7 didn't suggest, you said as much, and your two – and I'm  
 8 going to demonstrate to you that actually we are in  
 9 agreement because your two reasons that you cited for not  
 10 agreeing, which I agree with, were (1), that the NDP is a  
 11 forward-looking document, which we all accept; but also you  
 12 said that, I don't know if you said "sometimes," but you  
 13 said policing has to deal with situations there and then,  
 14 and sometimes there's no time to be looking at the  
 15 historical issues, which I also agree with, by the way.  
 16 You remember that?  
 17 GENERAL PHIYEGA: It sounds too sketchy  
 18 for me. I'd like to see the record, then we can take it  
 19 from there.  
 20 MR MPOFU: Okay, no, on this one you can  
 21 take my word; that's what is on the record.  
 22 GENERAL PHIYEGA: Okay.  
 23 MR MPOFU: But of course you are free to  
 24 check for yourself, and thank you, Chairperson, for  
 25 allowing me to recap. So now we're going to move from that

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1 point, which is exactly where we left it off, and I want to  
 2 put to you specifically that although yes, the NDP is a  
 3 forward-looking document, but the evidence that we have  
 4 shows that the police during the relevant period did take  
 5 the view that this problem was not a unidimensional problem  
 6 of criminality, but that some of the root causes, the  
 7 labour issues, or whatever was said to you, the rivalry  
 8 between unions and so on, also had to be addressed. Would  
 9 you agree with that?

10 [10:08] GENERAL PHIYEGA: Yes, it is true. Any  
 11 problem is unidimensional, particularly of a social nature.

12 MR MPOFU: Sorry I didn't hear that. Did  
 13 you say any problem is unidimensional, or is not  
 14 unidimensional?

15 GENERAL PHIYEGA: I said it is  
 16 unidimensional particularly because of its -

17 MR MPOFU: Multi-dimensional.

18 GENERAL PHIYEGA: Yes. I did say it is  
 19 unidimensional particularly because of the socio-economic  
 20 nature.

21 MR MPOFU: Yes, no, no, I heard that  
 22 correctly then, but I'm suggesting that maybe you're just  
 23 making a mistake, a slip of the tongue. What you mean is  
 24 that no problem - problems are multi-dimensional, in other  
 25 words, they don't have one facet, ja. Correct? Yes, thank

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1 you.

2 GENERAL PHIYEGA: [African language]

3 MR MPOFU: Which means multi-dimensional,  
 4 Chairperson.

5 CHAIRPERSON: I assumed so from the  
 6 translation.

7 MR MPOFU: Thank you. Right, now, and in  
 8 fact, sorry, without flogging that issue, since you and I  
 9 agree, I will refer you to I think it's 132, Chair, sorry,  
 10 Chair. In slide 114, L114 -

11 CHAIRPERSON: Exhibit L.

12 MR MPOFU: Exhibit L, slide 114,  
 13 incidentally, the police use exactly the wording that is  
 14 used in the NDP, in the National Development Plan. If you  
 15 look at the last bullet there it says, this is a recap of  
 16 what was said in the JOCOM meeting and it says, "This was  
 17 not only a security issue and the root of the conflict was  
 18 outside the mandate of the police." It's the same notion  
 19 that you and I are talking that as you say everything has  
 20 many facets. Correct?

21 GENERAL PHIYEGA: It is true.

22 MR MPOFU: And it is for that same reason  
 23 that you on the 13th among the steps that you took, you  
 24 appealed to Lonmin to do whatever it can, General Annandale  
 25 said you appealed for a partnership, but essentially what

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1 you were asking was for them to do whatever they can to  
 2 resolve that part of the problem, that dimension of the  
 3 problem, the socio-economic labour issue type of root  
 4 cause. Correct?

5 GENERAL PHIYEGA: To be direct, I asked  
 6 for them to strive for a peaceful solution.

7 MR MPOFU: Yes, as I say, let me move on  
 8 because we - okay, we have now achieved our 8 out of 10.  
 9 Now you've also said that - and I just want to say this  
 10 upfront; I accept that you were not on the scene and the  
 11 questions that I'm going to ask you will relate to your  
 12 role by and large, but now and again it will be inevitable  
 13 that I talk about the things that happened on the scene.  
 14 But I just want you to know that I'm not going to bog you  
 15 down with that kind of detail, of the things that you  
 16 typically say should be referred to the commanders. Are  
 17 you happy with that?

18 GENERAL PHIYEGA: I'm following.

19 MR MPOFU: And just once again to make  
 20 sure that we're on the same page, nothing that has happened  
 21 between the last time we met and now has changed your  
 22 stance that you stand by all the statements that I referred  
 23 you to. Correct?

24 GENERAL PHIYEGA: The testimony I've  
 25 given hasn't changed.

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1 MR MPOFU: And you are not of the view  
 2 that - or you are still not of the view that the police  
 3 committed any mistake or mistakes that you can own up to at  
 4 this stage?

5 GENERAL PHIYEGA: I have said in my  
 6 testimony that one is looking at a comprehensive outcome to  
 7 analyse as a thing and to look at what comes out of this,  
 8 and I think the Commission is about that.

9 MR MPOFU: Okay, I'll take that as a yes.  
 10 I asked you to do some "homework," to read some  
 11 documentation, particularly the IPID documentation, for  
 12 which I apologise. I know it's a lot. Did you read those  
 13 documents?

14 GENERAL PHIYEGA: You gave me statements  
 15 to read; I have read those. I'm not sure about the IPID  
 16 issue.

17 MR MPOFU: Okay, well those statements  
 18 are IPID statements and I had a discussion with your  
 19 attorney on the 5th of September, just so there's no  
 20 ambiguity. Do you remember I wanted to clarify it further  
 21 and the Chairperson was keen to stop at 12 and he said I  
 22 could do it offline, which I did with Mr Pretorius, just to  
 23 clarify exactly what it is that I needed, and the question  
 24 is, I take it that my discussion with Mr Pretorius was  
 25 conveyed to you as to what it is that I wanted you to read.

<p style="text-align: right;">Page 10391</p> <p>1 Correct?</p> <p>2 GENERAL PHIYEGA: As I've said, I have</p> <p>3 received some statements that I've read, and if there is</p> <p>4 any lapse in terms of the homework, I'm sure we can pick up</p> <p>5 from that.</p> <p>6 MR MPOFU: Yes. No, General, this is not</p> <p>7 a criticism. That's exactly why I'm doing this, because</p> <p>8 the Chairperson has just said that we are not sitting until</p> <p>9 Monday. If there was such a lapse - we can deal with it</p> <p>10 over the teatime. If there was such a lapse then you can</p> <p>11 read the stuff in the next couple of days. That's the only</p> <p>12 reason I'm revisiting that issue.</p> <p>13 Right, and maybe while we are on the subject of</p> <p>14 homework, can I also ask you to please read our opening</p> <p>15 statement? If you have not read it yet, you'll read it in</p> <p>16 your own time. It's numbered GGG18, our opening statement.</p> <p>17 I'm not going to ask you anything directly on it now</p> <p>18 because obviously you might not have read it, but can you</p> <p>19 just add it as something that you should read? I can</p> <p>20 assure you it's much shorter reading than the other stuff;</p> <p>21 it's about six or seven pages, and when you read that,</p> <p>22 please take this into account, because this is going to be</p> <p>23 the basis of the cross-examination going forward; you</p> <p>24 should add to what is in the opening statement what I'm</p> <p>25 going to say to you now, which I put to General Annandale,</p>	<p style="text-align: right;">Page 10393</p> <p>1 COMMISSIONER HEMRAJ: Mr Mpofu -</p> <p>2 MR MPOFU: Thank you, and that game</p> <p>3 change I have to -</p> <p>4 COMMISSIONER HEMRAJ: Mr Mpofu -</p> <p>5 MR MPOFU: Sorry.</p> <p>6 COMMISSIONER HEMRAJ: I'm sorry to</p> <p>7 interrupt you. Was not the reason they went to the koppie</p> <p>8 because the Wonderkop Stadium was closed to them?</p> <p>9 MR MPOFU: No.</p> <p>10 COMMISSIONER HEMRAJ: Because that's -</p> <p>11 MR MPOFU: No, the evidence, Commissioner</p> <p>12 Hemraj, is that they met, in the morning of the 11th they</p> <p>13 met outside the stadium and the reason might be that it was</p> <p>14 closed. Or rather on the 10th when they came back from the</p> <p>15 march, they met outside the stadium, and then on the 11th in</p> <p>16 the morning they also met outside the stadium, but after</p> <p>17 the attack, or rather from the stadium then they went to</p> <p>18 NUM. After the attack they were chased and they ran right</p> <p>19 through and up, and then that's how they got to be at the</p> <p>20 koppie, and if I'm not mistaken, at least one of the</p> <p>21 witnesses said there they would have been able to see</p> <p>22 anybody coming to attack them, or whatever, but I'm not</p> <p>23 putting my neck on the block on that one. But that's the</p> <p>24 kind of tenor of the evidence. Okay, anyway, I'm raising</p> <p>25 that only insofar as we all know that everything happened</p>
<p style="text-align: right;">Page 10392</p> <p>1 and as I say, which is going to be the base of our</p> <p>2 discussion until we're finished; that at the end of the</p> <p>3 case we're going to argue that the massacre, as we call it,</p> <p>4 or the tragedy, as you call it, of the 16th was merely a</p> <p>5 culmination and a logical conclusion of principally three</p> <p>6 significant milestones, or what I would call game changing</p> <p>7 events, three game changes, which I'm going to explain to</p> <p>8 you now. The first significant game changer was the attack</p> <p>9 or the shooting of the protestors by NUM members on the</p> <p>10 11th, it's the 11th.</p> <p>11 CHAIRPERSON: It is the 11th of course -</p> <p>12 MR MPOFU: It is the 11th. The 12th</p> <p>13 [inaudible] -</p> <p>14 CHAIRPERSON: I beg your pardon, you're</p> <p>15 quite right.</p> <p>16 MR MPOFU: Thank you, Chairperson. On</p> <p>17 the 11th of August which, or rather, after which they ran</p> <p>18 towards the koppie and they settled there for the next few</p> <p>19 days, in other words that was the reason why they went to</p> <p>20 the koppie in the first place. Now that game changer is a</p> <p>21 matter that I'm not going to cross-examine you on because,</p> <p>22 quite frankly, it doesn't concern you directly. I'm just</p> <p>23 giving it to you for the sake of telling you where our case</p> <p>24 is going. Understood?</p> <p>25 GENERAL PHIYEGA: I've noted.</p>	<p style="text-align: right;">Page 10394</p> <p>1 there, just to situate to you, in case you didn't know, why</p> <p>2 they were there in the first place. But this is a matter</p> <p>3 that has been exhausted in this Commission. It was dealt</p> <p>4 with during the NUM case and we said what we have to say</p> <p>5 about it, so it's been put to bed. The second game changer</p> <p>6 is the killings on the 13th, particularly of the two</p> <p>7 policemen who were part of the five deaths that occurred on</p> <p>8 that day and we will -</p> <p>9 CHAIRPERSON: Part of the what?</p> <p>10 MR MPOFU: Of the five people -</p> <p>11 CHAIRPERSON: Of the five?</p> <p>12 MR MPOFU: Yes, who died on that day, but</p> <p>13 I'm making specific emphasis on the policemen because we're</p> <p>14 going to suggest that that's what sparked your involvement,</p> <p>15 Annandale's involvement, the massive deployment and all</p> <p>16 that followed, which was directly contributory to the</p> <p>17 massacre. In other words we're going to suggest that but</p> <p>18 for killings, specifically of the two policemen, what I've</p> <p>19 described as a frenzy of activity which led to the events</p> <p>20 of the 16th and the deployments would not have happened.</p> <p>21 Then the third game changer in our submission</p> <p>22 will be what we call the political interference, or</p> <p>23 political intervention or activities in the political</p> <p>24 dimension that you and I have agreed on, which happened on</p> <p>25 the 15th. They may have happened on other days as well, but</p>

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1 significantly on the 15th there was a lot of that, and we're  
 2 going to suggest that that led to the declaration of so-  
 3 called D-Day among other things, and that without that  
 4 political interference the massacre would also not have  
 5 happened. Yes, so there will obviously be discussions  
 6 about what happened on the 16th, whether this one was  
 7 standing there, and so on. But what I'm saying to you is  
 8 these events cumulatively, these game changes made it  
 9 possible. In other words what happened on the 16th was  
 10 merely an inevitable culmination and outcome of the  
 11 cumulative effect of these game changes. Do you understand  
 12 - you don't have to agree, but do you understand where,  
 13 what the parameters of our case is?

14 GENERAL PHIYEGA: I continue to note.

15 MR MPOFU: Thank you. So now we're going  
 16 to deal with what I would call the effects of the second  
 17 turning point, which is what happened on the 13th. Firstly  
 18 I want to go to your statement  
 19 of the 20th of August where you said you thank the  
 20 police for what they did, and you said whatever happened  
 21 represented the best of responsible policing. It's a -

22 [10:28] CHAIRPERSON: It's exhibit FFF5.

23 MR MPOFU: Exhibit 12, I think,  
 24 Chairperson.

25 CHAIRPERSON: Yes, I beg your pardon,

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1 FFF12 is correct. FFF5 was an earlier address -

2 MR MPOFU: Yes, it is one of the other  
 3 statements. Yes, I think of the media statements.

4 CHAIRPERSON: FFF12 is the address of the  
 5 20th.

6 MR MPOFU: FFF12, General. Firstly, when  
 7 you made this statement, before we deal with it in - not in  
 8 detail, when you made this statement, you knew that there  
 9 was a commission of inquiry which had already been  
 10 announced on the 17th, correct?

11 GENERAL PHIYEGA: That is true.

12 MR MPOFU: You also knew that IPID had,  
 13 or rather, was busy conducting investigations in relation  
 14 to this matter?

15 GENERAL PHIYEGA: Yes, I did.

16 MR MPOFU: You only at that stage had the  
 17 version of your commanders, correct?

18 GENERAL PHIYEGA: Not only that; there  
 19 were many other versions that were on TV, on paper and  
 20 other places.

21 MR MPOFU: Alright. But let me put it  
 22 this way then; you did not have the benefit of the version  
 23 of the victims of the incident at that stage?

24 GENERAL PHIYEGA: I would not say that,  
 25 because at that point in time, you would know that there

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1 were cases that were being opened, and there were many  
 2 things happening. So to take it in such a narrow fashion,  
 3 to say I wasn't aware of other things, would be a  
 4 misrepresentation of facts.

5 MR MPOFU: Yes -

6 CHAIRPERSON: Am I correct in saying that  
 7 already by then there had been newspaper articles which  
 8 were based, to some extent, on interviews with some of the  
 9 so-called victims. Is that correct?

10 MR MPOFU: No, I don't know of those  
 11 articles, but I'm prepared to accept that there was a  
 12 public discourse on the matter.

13 CHAIRPERSON: And I think television  
 14 interviews as well. Weren't there interviews on  
 15 television?

16 MR MPOFU: Not with my clients. They  
 17 were in jail.

18 CHAIRPERSON: No, no, not with your  
 19 clients, but with people who could be described as  
 20 "victims."

21 MR MPOFU: No, not that I know of,  
 22 Chairperson. I'm prepared to accept that there might have  
 23 been, but obviously this was a -

24 CHAIRPERSON: I was just very concerned  
 25 whether the Commissioner had also had access to material

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1 from that side, as it were, not just from the side of the  
 2 police.

3 MR MPOFU: Ja, ja. Look, the only point  
 4 I want to make is quite simple. On the 5th of - let me put  
 5 it this way, on the 5th of April, when I asked you if you  
 6 had had sight of the IPID statements of the victims, you  
 7 said you had not read those.

8 GENERAL PHIYEGA: Advocate, I read that  
 9 as a different question, because you were asking me about  
 10 the statements, but what you are asking me now is that I  
 11 did not have the benefit of other inputs, and I'm saying it  
 12 would not be a good - a factual representation. There were  
 13 many other reports, many comments, and many people saying  
 14 many other things, and I did have access to that.

15 MR MPOFU: Ja, I heard what you said; if  
 16 you can just confine yourself to answering my questions.  
 17 Did you on the 5th of April say that you had not read the  
 18 statements of IPID, which, among others, were made by the  
 19 victims?

20 GENERAL PHIYEGA: Chairperson, may I  
 21 appeal for your support. Really, I would like to give  
 22 answers. I wouldn't like to give unconsidered responses to  
 23 narrow me and to push me into those enveloped type of  
 24 responses. I don't think would do this Commission some  
 25 good. I've answered you. I have said to you that you

<p style="text-align: right;">Page 10399</p> <p>1 asked me about the statements. Yes, I responded that way, 2 but the question you are asking me is not about the 3 statements, and I've responded to the question you asked me 4 today.</p> <p>5 CHAIRPERSON: National Commissioner, a 6 witness is always entitled to, once he or she has answered 7 the questions we asked, is entitled to add extra 8 explanation to qualify or clarify or –</p> <p>9 GENERAL PHIYEGA: Thank you, Chair.</p> <p>10 CHAIRPERSON: - somehow explain the 11 answer that's been given, and if Mr Mpofo tries to stop you 12 – I don't see him having tried to stop you from doing that, 13 but if he does, I'll come down on him like the proverbial 14 ton of bricks. So you don't have to worry about that.</p> <p>15 MR MPOFU: Thank you -</p> <p>16 CHAIRPERSON: There were two points, you 17 see. The one is whether she read the statements, the other 18 one, whether she knew the version of the so-called victims, 19 and I was trying to explore whether there wasn't other 20 material available to her from which she could have 21 ascertained something of the version, as it were –</p> <p>22 MR MPOFU: Which I said I accept, ja. So 23 we moved away from that.</p> <p>24 CHAIRPERSON: Ja, but anyway, you'll be 25 the first to agree that she's entitled to explain or expand</p>	<p style="text-align: right;">Page 10401</p> <p>1 weeks ago.</p> <p>2 CHAIRPERSON: You've said a lot of things 3 on the 5th of April, or asked a lot of questions. Maybe 4 that particular detail you can't remember, in which case 5 the record will speak.</p> <p>6 GENERAL PHIYEGA: Yes.</p> <p>7 MR MPOFU: Okay.</p> <p>8 CHAIRPERSON: Do you have a reference in 9 the record to which the witness can look in order to 10 refresh her memory as to what precisely she said on the 11 point?</p> <p>12 MR MPOFU: Yes, Chair, I'll just move on 13 so long. I've got the reference, but I just don't want to 14 be distracted for now. But in fairness to you, General, I 15 will give you the actual answer that you gave.</p> <p>16 GENERAL PHIYEGA: Thank you.</p> <p>17 MR MPOFU: Now when you said, and I'm not 18 going to belabour this, because Mr Madlanga dealt with it 19 as well. You say, "Whatever happened represents the best 20 of responsible policing." Do you remember that? Or in 21 fairness, let me read the whole sentence, because I think 22 part of your answers dealt with that. "I come before you 23 to actually say, trying as it may be, mourning as we are, 24 let us take note of the fact that whatever happened 25 represents the best of responsible policing." Do you</p>
<p style="text-align: right;">Page 10400</p> <p>1 on her answers.</p> <p>2 MR MPOFU: Of course, oh yes.</p> <p>3 CHAIRPERSON: And if she's got the 4 impression that you're trying to put her in a straitjacket, 5 you and I can unite in persuading her that's a mistaken 6 impression, is that right?</p> <p>7 MR MPOFU: Yes, thank you. No, no, 8 General, please, at the risk of repetition, when I insist 9 on getting an answer, it's because I want you to answer the 10 question. Of course, you wanted to qualify, explain and so 11 on the answer, that's fine, but don't just do the 12 qualification without answering the question. Did you, or 13 did you not on the 5th of April say that you had not read 14 the IPID statements of the victims?</p> <p>15 GENERAL PHIYEGA: I have answered that 16 question.</p> <p>17 MR MPOFU: Well, answer it again. I 18 can't remember the answer.</p> <p>19 GENERAL PHIYEGA: Maybe the record will 20 help us.</p> <p>21 MR MPOFU: So isn't it easier if you just 22 answer the question, General? Did you say it, or did you 23 not say it on the 5th of April? It's a simple question.</p> <p>24 GENERAL PHIYEGA: Advocate, I'm asking 25 that we look at the record, because the 5th of April is many</p>	<p style="text-align: right;">Page 10402</p> <p>1 remember that?</p> <p>2 GENERAL PHIYEGA: Yes, I do.</p> <p>3 MR MPOFU: And you also say, "I want to 4 thank you once more," rather, "So for that, I want to once 5 more thank you for having done what you did." Remember 6 that?</p> <p>7 GENERAL PHIYEGA: Yes, I do.</p> <p>8 MR MPOFU: And you know that –</p> <p>9 CHAIRPERSON: Mr Mpofo, wouldn't it be 10 fairer, if I may say so, to put to her the previous 11 paragraph as well, because I think that what she says in 12 the paragraph you've just read is to some extent more easy 13 to understand in the light of what's said in the previous 14 paragraph.</p> <p>15 MR MPOFU: Fair enough, fair enough. 16 Between the first paragraph that I read to you and the one 17 that I read now, there are these words. "You did what you 18 did because you are being responsible. You were making 19 sure that you continue to leave your oath," – to live, I 20 suppose it's L-I-V-E, but it's been badly transcribed, 21 "your oath of ensuring that South Africans are safe and 22 that you equally are citizens of this country and safety 23 starts with you." You know that despite the explanations 24 that you've given, this statement has been interpreted to 25 mean that you were thanking the police for killing people,</p>

<p style="text-align: right;">Page 10403</p> <p>1 correct?</p> <p>2 GENERAL PHIYEGA: Do I - maybe just to</p> <p>3 understand your question, are you saying it's the</p> <p>4 interpretation that you are giving me?</p> <p>5 MR MPOFU: No. Sorry, I'll repeat the</p> <p>6 question, okay. Are you aware that this statement,</p> <p>7 particularly the thank-you statement, has been interpreted</p> <p>8 to mean that you were thanking the police for the</p> <p>9 operation, including the killing of the 34 people and the</p> <p>10 injury of the others and so on?</p> <p>11 MR SEMENYA SC: Chair, perhaps Mr Mpofo</p> <p>12 may want to tell us who's affixing that interpretation and</p> <p>13 why their opinions would be any relevant, beyond what the</p> <p>14 statement we all can read says.</p> <p>15 MR MPOFU: Okay, well, among other, there</p> <p>16 are many who interpret it like that, but most pertinently</p> <p>17 it's the people that I represent who will come and say</p> <p>18 that, and I'm told the family members who are sitting here.</p> <p>19 CHAIRPERSON: The second leg of the</p> <p>20 objection was the relevance of that. He raised two</p> <p>21 objections. He said you will explain who interpreted in</p> <p>22 that way, which you've now done, and he said you will also</p> <p>23 explain to us, or he wants you to explain to us the</p> <p>24 relevance of such an interpretation. If, as he suggests,</p> <p>25 it's not an appropriate interpretation, we can interpret</p>	<p style="text-align: right;">Page 10405</p> <p>1 MR MPOFU: Relevance, okay, I'll address</p> <p>2 that. The relevance, Chairperson, is – maybe I'm the only</p> <p>3 one – I thought that one of the purposes of this Commission</p> <p>4 is to achieve reconciliation among the parties that are</p> <p>5 estranged by the events of the relevant period, and if, as</p> <p>6 we have just said, the bulk of the victims – those that I</p> <p>7 represent, and I've just been told that those who are</p> <p>8 deceased as well - are of the view that no less than the</p> <p>9 National Commissioner of Police thanked the police for</p> <p>10 killing their loved ones, then the prospects of such</p> <p>11 reconciliation ever being achieved will be almost zero.</p> <p>12 And we have seen the rejection, to put it bluntly, of the</p> <p>13 overtures at such a reconciliation, and I think it's a very</p> <p>14 relevant issue to explore and to offer the National</p> <p>15 Commissioner an opportunity to put her remarks into</p> <p>16 context, which may or may not allay those views. Thank</p> <p>17 you.</p> <p>18 CHAIRPERSON: Mr Semanya?</p> <p>19 MR SEMENYA SC: Chair, the words the</p> <p>20 Commissioner used are on paper. We can read them</p> <p>21 ourselves. Mr Mpofo is not answering why the construction</p> <p>22 given to them by his witnesses are any relevant.</p> <p>23 CHAIRPERSON: Well, I would have thought,</p> <p>24 I must say, that if the Commissioner believes that her</p> <p>25 words were misinterpreted, and she obviously does, and you</p>
<p style="text-align: right;">Page 10404</p> <p>1 for ourselves, but that's the second leg of the objection</p> <p>2 you haven't answered yet.</p> <p>3 MR MPOFU: Okay. You know that one of</p> <p>4 the purposes of this Commission is, as it says on that</p> <p>5 banner there, truth and some of it is restoration – truth,</p> <p>6 justice, and restoration, you know that?</p> <p>7 GENERAL PHIYEGA: Yes, I've noted the by-</p> <p>8 line and the intention of this Commission.</p> <p>9 MR MPOFU: You would accept that – this</p> <p>10 is my personal view, that I think the word "restoration"</p> <p>11 there is misplaced, because that will probably be done in</p> <p>12 other forums, but that one of the purposes of the</p> <p>13 Commission is at least reconciliation, which might be</p> <p>14 subsumed in restoration and justice, do you agree?</p> <p>15 CHAIRPERSON: Mr Mpofo, you haven't</p> <p>16 addressed the objection fully.</p> <p>17 MR MPOFU: I'm doing it through the</p> <p>18 witness, Chairperson.</p> <p>19 CHAIRPERSON: No, no, but you don't, if</p> <p>20 an objection is raised, you answer it; you don't ask</p> <p>21 further questions of the witness. I mean that's not the</p> <p>22 way to deal with an objection.</p> <p>23 MR MPOFU: Okay, that's fine –</p> <p>24 CHAIRPERSON: The question is the</p> <p>25 relevance. What Mr –</p>	<p style="text-align: right;">Page 10406</p> <p>1 will in due course contend that that is so, that she's</p> <p>2 correct in saying that she didn't intend to say what</p> <p>3 Mr Mpofo's clients think she intended saying, it would be</p> <p>4 appropriate for her, regard being had to the broader aims</p> <p>5 of the Commission, to give her a short time just to herself</p> <p>6 say what she meant, that she didn't mean what they think</p> <p>7 she meant, and I don't think that will prejudice your case,</p> <p>8 and I think it might help to achieve the broader objectives</p> <p>9 to which Mr Mpofo referred. But I think we must keep a</p> <p>10 close eye on what's going to happen to make sure that this</p> <p>11 doesn't go beyond the legitimate confines of the point that</p> <p>12 I put to you. So, Mr Mpofo, you may proceed, but in the</p> <p>13 light of the cautionary note that I -</p> <p>14 MR MPOFU: I'm mindful of it,</p> <p>15 Chairperson. Commissioner, this is –</p> <p>16 CHAIRPERSON: Would you give the</p> <p>17 Commissioner an opportunity to explain that she didn't mean</p> <p>18 what your client thinks she meant -</p> <p>19 MR MPOFU: Yes –</p> <p>20 CHAIRPERSON: - so that the air could be</p> <p>21 cleared, and so that that would assist in achieving the</p> <p>22 broader objectives to which you've referred. You make the</p> <p>23 point, then you don't give her a chance to do what you said</p> <p>24 you wanted her to do. So I think we should give her a</p> <p>25 chance.</p>

<p style="text-align: right;">Page 10407</p> <p>1 MR MPOFU: That's fine. I think let her  2 do that first, Chairperson, but I am going to ask some more  3 questions. Yes, Commissioner, take it from me that there  4 is that view. It's prevalent, particularly among the  5 people that I represent, and the people who are sitting  6 here, who represent the families, and I would like you to  7 tell them why they should not continue holding that view.  8 [10:48] GENERAL PHIYEGA: Perhaps let me start  9 off by saying the reason I requested when I gave my  10 testimony right at the beginning that the statement be  11 played in full, was in itself my attempt to say the words  12 that are printed in this document that we are reading and  13 that we articulated in that captured video, were meant to  14 be exactly what I said that day, and they were never meant  15 to be the interpretation that you are talking about. I  16 continued to say in my responsible position, and I've also  17 continued to say just being a human being that I am, I  18 could never go out and celebrate death, and I want to say  19 the issues that are mentioned here about the police had to  20 do with your work. They had given many hours. They had  21 not followed the protocols that they were supposed to  22 follow, and we were mourning. I have been very articulate  23 in terms of that. I have tendered my condolences to the  24 families. I have noted the responses to that, and all that  25 I have put on record and what I've said in the message, and</p>	<p style="text-align: right;">Page 10409</p> <p>1 words can kill, but in this case the reason why we don't  2 make headway in selling your version of what you said is  3 among others that you were quoted on the 20th of August here  4 on the front page of The Sowetan, and it says, "We are not  5 sorry" –  6 CHAIRPERSON: I'm sorry, Mr Mpofu, before  7 you move on to that, in fairness to the witness, there's a  8 passage in FFF12 which I think is relevant, which has been  9 put.  10 MR MPOFU: Paragraph? Which paragraph,  11 Chair?  12 CHAIRPERSON: It's the fourth paragraph  13 from the foot of the first page. You did read the opening  14 section, "So for that I just want to once more than you for  15 having done what you did, for having endured the challenges  16 that we endured." Then she went on to say, and that I  17 would think supports the point you put, it goes on to say,  18 "and as we mourn as a country, let us remember the pain  19 that everybody is feeling is felt by all of us, but,"  20 etcetera. So I think that passage also, to be fair, is  21 part of what she said.  22 MR MPOFU: Yes, yes, thank you. No,  23 Chairperson, and in fairness, when I read the passage I did  24 not –  25 CHAIRPERSON: No, no, I'm not saying</p>
<p style="text-align: right;">Page 10408</p> <p>1 all that I have there expressed as my sense of condolence,  2 whether it is accepted or not, I cannot withdraw it. It  3 remains the truth in my spirit and what I stand for. And  4 finally just to say at the end of the day as police we  5 needed to continue with our work to bring back stability in  6 Marikana, and this is why we are able to sit here today and  7 have a commission, and as a leader it was important for me  8 when the situation was so unstable, when the situation was  9 so testing, to encourage the members to continue to go and  10 work.  11 MR MPOFU: Yes, ja well, you have  12 previously said that you were thanking them for following  13 the prescripts, so we'll deal with that separately, but for  14 now I just want to say to you that when we point out to  15 them your references to mourning, as you have previously  16 referred to, their view is that you were only mourning the  17 deaths of the police and celebrating the death of their  18 loves ones. What do you say to them about that?  19 GENERAL PHIYEGA: I think what is  20 important, Advocate, is that at least you use the phrase  21 "interpretation." The meaning of what I said is in the  22 words that I have put in there and in the testimony that  23 I've given here.  24 MR MPOFU: Yes. No, thank you, I agree  25 with that. You know words, as they say, words can heal and</p>	<p style="text-align: right;">Page 10410</p> <p>1 you're dealing unfairly, I'm just –  2 MR MPOFU: No, no, it –  3 CHAIRPERSON: But you now want to move on  4 to what happened on the 20th, and I think you've got an  5 exhibit to put in?  6 MR MPOFU: Ja, I've got an exhibit which  7 you have in front of you, General, The Sowetan of the 20th  8 of August 2012, and as you can see, "We are not sorry,"  9 with your picture, and I'm just saying these are the kinds  10 of things that play in the mind of the people I'm talking  11 about, and I want to give you an opportunity to deal –  12 CHAIRPERSON: Alright, let me give it an  13 exhibit number, and then we'll –  14 MR MPOFU: Oh, yes. Sorry, Chair –  15 CHAIRPERSON: Then we'll take the tea  16 adjournment. Now Ms Pillay I hope will help us.  17 MR MPOFU: It will be FFF –  18 CHAIRPERSON: When the National  19 Commissioner was in –  20 MR MPOFU: I suggest, Chairperson, we go  21 back to the FFFs.  22 CHAIRPERSON: Yes, that's what I was  23 about to say. When the – thank you, two minds with but a  24 single thought. When the National Commissioner was here  25 last time, as Mr Mpofu points out, we were using the FFF-</p>

<p style="text-align: right;">Page 10411</p> <p>1 series. What is the next number in the FFF-series?  2 MS PILLAY: Chair, it's FFF27.  3 CHAIRPERSON: 27. So FFF27 is an extract  4 from an article in The Sowetan of the 20th of August. I  5 think at this stage we can then take the tea adjournment,  6 if that's convenient, unless you want to make a point  7 quickly before we take the –  8 MR MPOFU: Yes, Chair, what I, I just  9 wanted –  10 CHAIRPERSON: I'm in your hands. You  11 tell me when it's appropriate to take the tea adjournment,  12 whether you want to put something first before we do that.  13 MR MPOFU: Yes, I just want to put that  14 so that the witness over tea, she can –  15 CHAIRPERSON: Yes, carry on.  16 MR MPOFU: The article, apart from the  17 front page, the screaming headline there, the article  18 itself is on page 2, and it's headed, and it's also on page  19 2 of FFF27, and the headline says, "No sorry for miners'  20 death. It was all in the line of duty, says top cop," and  21 then it says, "Police Commissioner Riah Phiyega yesterday  22 told officers not to be sorry about the Marikana massacre  23 that saw cops shooting to death 34 miners, and injuring  24 many more. Speaking yesterday at the funeral service for  25 Warrant-Officer Sello Ronnie Lepaaku at Seabe Village near</p>	<p style="text-align: right;">Page 10413</p> <p>1 MR MPOFU: Ja.  2 CHAIRPERSON: Can we take the tea  3 adjournment now?  4 MR MPOFU: We can.  5 CHAIRPERSON: Alright.  6 MR MPOFU: Thank you.  7 CHAIRPERSON: Unless she wants to answer  8 it before tea. Would you like to think about it and give  9 us your answer after tea, or do you want to deal with it  10 now?  11 GENERAL PHIYEGA: I can answer it now.  12 MR MPOFU: Ja.  13 CHAIRPERSON: Alright, well answer it –  14 MR MPOFU: And sorry, if you want to  15 answer, then let me just put it in the following context.  16 I'm putting this to you for the following purpose, General,  17 to say that effectively you can't blame the people for  18 holding the view that they hold, in the light of the fact  19 that coupled with what you said, they were obviously  20 reading what you are saying together with things like this,  21 which was in the public domain, which said you are not  22 sorry, and that's why they strongly hold the view that they  23 hold, and it is your opportunity I suppose after tea or now  24 to allay, to say to them despite what I said, and even if  25 you read it together with this, this is what I meant or did</p>
<p style="text-align: right;">Page 10412</p> <p>1 Barapeane(?), Mpumalanga, Phiyega said officers who did the  2 shooting were 'emotionally bruised' by the incident that  3 had happened that week," and then it deals with the, the  4 next two paragraphs deal with the Lepaaku bereavement, and  5 then further down it says, "On Thursday police opened fire  6 on protesting miners, killing 34 and injuring 78 more," and  7 then it says, "Safety of the public is not negotiable, said  8 Phiyega. Don't be sorry about what happened. Take into  9 account the reason why we did what we did, she said."  10 CHAIRPERSON: Mr Mpofu, I don't know if  11 anything turns on it. I notice the sentence "Don't be  12 sorry about what happened" isn't in quotation marks.  13 MR MPOFU: Ja, I'm actually –  14 CHAIRPERSON: Whereas the sentence  15 "Safety of the public is not negotiable" is in quotation  16 marks, as is the next section, "Take into account the  17 reasons why we did what we did," but it may be that there  18 was a printing error and the quotation marks were left out.  19 But anyway, you put –  20 MR MPOFU: Ja, I think that's a matter  21 for the subeditor, Chairperson –  22 CHAIRPERSON: Yes, yes.  23 MR MPOFU: But the –  24 CHAIRPERSON: Anyway, you put the passage  25 to the witness.</p>	<p style="text-align: right;">Page 10414</p> <p>1 not mean. Thank you.  2 GENERAL PHIYEGA: I think, Advocate, let  3 me just say I sincerely hold no authority on what a  4 journalist writes. I have shared with this Commission the  5 scripted speech that I read at the funeral, and if you read  6 that scripted speech you will not find what is written  7 here.  8 CHAIRPERSON: Exhibit FFF6.  9 GENERAL PHIYEGA: And I think it would  10 also be interesting to look at what other newspapers  11 reported on the day, that were there, and all I can say is  12 that I read the message; it didn't have any of this. That  13 it was interpreted the way it was interpreted, sincerely, I  14 have no control upon that.  15 MR MPOFU: We'll deal with it after tea  16 then. Thank you. Do I take it – sorry –  17 CHAIRPERSON: Shall we take the tea  18 adjournment now?  19 MR MPOFU: Let's take the tea  20 adjournment.  21 CHAIRPERSON: The witness has had the  22 opportunity to answer.  23 MR MPOFU: Yes, thank you, Chairperson.  24 CHAIRPERSON: She says none of the other  25 newspapers – I understand her answer – none of the other</p>

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1 newspapers reported that –

2 MR MPOFU: I heard her, Chair.

3 CHAIRPERSON: And that she didn't say it,

4 and what she said is –

5 MR MPOFU: She never said she didn't say

6 it, but we'll deal with it afterwards, after tea. Thank

7 you, Chair.

8 CHAIRPERSON: I thought –

9 MR MPOFU: She said it's not in the

10 scripted speech –

11 CHAIRPERSON: Yes.

12 MR MPOFU: - which I accept.

13 CHAIRPERSON: Alright. Okay. Alright,

14 we'll carry on with the discussion after the tea

15 adjournment.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [11:32] CHAIRPERSON: The Commission resumes.

18 National Commissioner, you're still under oath.

19 MANGWASHI VICTORIA PHIYEGA: s.u.o.

20 CHAIRPERSON: Mr Mpofu, you may proceed

21 with your cross-examination, if you wish.

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

23 I wish, Chairperson. Just before we move on, General, I

24 just want to give the reference that we spoke about, and I

25 know that your attorneys have found the place. It's on

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1 page 7846, Chairperson, 7846, round about line 6. Have you

2 been shown the passage, General, and are you satisfied that

3 I asked you if you had read the statements, with emphasis

4 on the statements of the victims, and your answer was no?

5 GENERAL PHIYEGA: Yes, I am satisfied.

6 MR MPOFU: Right. Okay, before the

7 break, in fact the Chairperson pre-empted what I was going

8 to ask you, which I wanted to ask before the tea break, and

9 it was simply this; I hear what you're saying, or that what

10 was quoted there was not in the scripted speech, and so on.

11 I accept that, but you'll appreciate that the fact that it

12 was not in the scripted speech does not mean you did not

13 say it in some unscripted fashion. So I'm going to ask you

14 the direct question. It says here, "Safety of the public

15 is not negotiable. Don't be sorry about what happened.

16 Take into account the reasons why we did what we did." Did

17 you say those words?

18 GENERAL PHIYEGA: I did not.

19 MR MPOFU: Right, now if you did not say

20 those words, well firstly, do you accept that if true, the

21 words that are ascribed to you here would have a seriously

22 damaging effect not only on yourself as a person, but on

23 the organisation that you lead, and they might even go as

24 far as to reflect on your –

25 CHAIRPERSON: Mr Mpofu, Mr Semenya –

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1 MR MPOFU: - suitability for your

2 position?

3 CHAIRPERSON: Mr Mpofu, I'm sorry to

4 interrupt you. Mr Semenya has turned on his microphone; he

5 wants to say something.

6 MR MPOFU: Yes.

7 MR SEMENYA SC: Chair, again the witness

8 says I did not say that. Then comes the hypothesis, if you

9 had said it. It cannot follow.

10 CHAIRPERSON: No, no, no, I think Mr

11 Mpofu is leading up to something else.

12 MR MPOFU: I am.

13 CHAIRPERSON: The way I read it he's

14 saying, accepting you, for the moment accepting you didn't

15 say it, nevertheless if that report was accurate it would,

16 if the report were read it would cause –

17 MR MPOFU: Damaging.

18 CHAIRPERSON: - damage, and therefore,

19 but I don't think it's right for us to pre-empt what he's

20 going to do. I understand what you're saying, but is that

21 correct? You're not –

22 MR MPOFU: No.

23 CHAIRPERSON: You're not putting the

24 question on the basis "You say you didn't say it, but I

25 still say you do" –

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1 MR MPOFU: No.

2 CHAIRPERSON: No, you are busy with

3 something else. Alright.

4 MR MPOFU: Thank you, Chairperson, yes I

5 am.

6 CHAIRPERSON: Yes, Mr Semenya, do you

7 want –

8 MR MPOFU: It will become clear in the

9 next two questions where I'm going with this.

10 CHAIRPERSON: Yes, yes, perhaps you could

11 repeat the question.

12 MR MPOFU: Yes.

13 CHAIRPERSON: And focussing on the

14 objection that was raised, just to make sure, to make it

15 clear that if that's your intention, that you're not really

16 saying what Mr Semenya thinks you're saying, and then when

17 he's heard you repeat the question, I'll then have to

18 decide if he persists in his objection.

19 MR MPOFU: Yes, thank you, Chairperson.

20 Yes, General, to be fair, I'm not saying to you, "Ah, I've

21 got Mr Jones who was there and he has a tape." That's not

22 what I'm saying. So if you're saying you didn't say those

23 words, that's what you are saying. Neither am I saying you

24 did not say the words, but as the Chair says, I'm busy with

25 something else, which is this; had the words that are

<p style="text-align: right;">Page 10419</p> <p>1 ascribed to you, had they been uttered by you, would you  2 agree that, (a), they would have a seriously damaging  3 effect on you as a person, on the institution that you  4 lead, which is the SAPS, and might even raise questions  5 about your suitability for the position you hold? I'm  6 saying that, sorry, the background of that is that I'm  7 hoping you agree with me that one of the requirements for  8 your position and the police service that you lead is that  9 of being compassionate, which I'm sure you accept. So  10 that's the background. So it would have a damaging effect  11 apropos that kind of requirement. Do you accept that,  12 without accepting that you said these things?</p> <p>13 CHAIRPERSON: Mr Semenya still wants to  14 object, I think.</p> <p>15 MR SEMENYA SC: Chair, it's just like  16 saying, without foundation, if it is found that you're  17 convicted of a criminal offence you'll not be fit for  18 office. What has that got to do with it if it has no  19 factual foundation?</p> <p>20 CHAIRPERSON: May I suggest an  21 alternative formulation, which I think will satisfy both  22 sides. Would you agree that that is a serious  23 misrepresentation as to what you said, which could in  24 itself have serious consequences? I think – would that be  25 okay?</p>	<p style="text-align: right;">Page 10421</p> <p>1 believed, as I take it some of them really did – that this  2 is actually what you said, although in fact you assure us  3 that's not what you said, would that – you understand?  4 That basically is the point you're making, Mr Mpofu?</p> <p>5 MR MPOFU: That's correct, Chairperson.  6 CHAIRPERSON: Alright.  7 GENERAL PHIYEGA: Judge, if I answered  8 that I would like to say I would first lament the  9 misrepresentation, and to say if anyone read this  10 misrepresentation, would have a misrepresented view that is  11 negative about what was reported.</p> <p>12 CHAIRPERSON: Is that what you wanted, Mr  13 Mpofu?</p> <p>14 MR MPOFU: Yes. In other words you  15 accept that, and I don't know what the readership of The  16 Sowetan is, let's say for argument sake it's a million, you  17 accept that for those X-number of readership of The Sowetan  18 would at least, and as the Judge said, and believed it, it  19 did have damaging effect on your reputation and that of the  20 police to those people.</p> <p>21 GENERAL PHIYEGA: I would say they would  22 have a misrepresented unfair view that would have been  23 presented by Sowetan.</p> <p>24 MR MPOFU: Ja. No, okay, maybe let me  25 just go straight to where I was going, which is you did not</p>
<p style="text-align: right;">Page 10420</p> <p>1 MR SEMENYA SC: Then I would –  2 CHAIRPERSON: That leaves the door open  3 to go down the passage you want to go down. You hear the  4 reformulated question? You agree that what is published in  5 The Sowetan was a serious misrepresentation of what you'd  6 said? Would you agree with that?</p> <p>7 GENERAL PHIYEGA: Yes, Chair, I agree  8 with the misrepresentation notion.</p> <p>9 MR MPOFU: You agree with the  10 misrepresentation notion. Do you agree with the serious  11 notion, that its impact would have serious, if not  12 devastating effects, on family members of those who had  13 died? Don't you agree with that?</p> <p>14 GENERAL PHIYEGA: Advocate, let me answer  15 you this way. Because it is a misrepresentation, and  16 because it is a presupposition, and given the very  17 sensitivities that you are talking about, I sincerely would  18 not want to speculate.</p> <p>19 CHAIRPERSON: Let me put the question  20 slightly differently. What would you say to this  21 proposition, which I think is Mr Mpofu's proposition, and  22 that is that people who read it and if they believed it,  23 they would have very serious misgivings and have actually  24 very hostile feelings towards you personally and towards  25 the police service, because they believed – and if they</p>	<p style="text-align: right;">Page 10422</p> <p>1 issue a statement refuting this headline and article?  2 GENERAL PHIYEGA: I did not, because as,  3 at that point in time, as I have already indicated, we did  4 not respond to any statement. We wanted to give this  5 process a chance.</p> <p>6 MR MPOFU: Ja, so you were prepared to  7 live with the fact that until the outcome of this  8 Commission is published, whenever that is, the people that  9 I represent and the families must continue to hold the view  10 that you said that people should not be sorry for the  11 deaths of their loved ones? You're prepared to do that?  12 Sorry, if I may, just to be exact, with the incorrect view.  13 That's what I'm saying, because you have already denied it.</p> <p>14 GENERAL PHIYEGA: I was hopeful, and we  15 were hopeful as the police, that we would have an  16 opportunity in this very Commission to correct those  17 misrepresentations.</p> <p>18 MR MPOFU: So then why did you not insist  19 - I would put it as strongly as that – that your legal  20 representatives when they were leading you, that they would  21 deal with this serious and damaging misrepresentation to  22 your person and to your organisation, so that you could  23 have addressed whoever it is who might have believed it,  24 especially since you had never denied it?</p> <p>25 GENERAL PHIYEGA: My perception is though</p>

<p style="text-align: right;">Page 10423</p> <p>1 that, Advocate, that in the, in many forms our representing 2 ourselves here, responding to questions, our lawyers have 3 done good justice to trying to respond to the many 4 questions that we have to answer, and I'm sure that this is 5 not a complete process. There are many questions that 6 would still remain, and if we have an opportunity we shall 7 answer such.</p> <p>8 CHAIRPERSON: Mr Semenya, do you know 9 whether there's a video clip available of this speech? 10 It's not been put before us, but I don't think the 11 relevance of it was then apparent, but if there is a video 12 clip that is available it could be shown and that would 13 hopefully put the point to bed forever, but if there isn't 14 a video clip obviously we'd have to go a bit further with 15 it, but –</p> <p>16 MR SEMENYA SC: I'm not aware there is 17 one, but I'll enquire, Chair.</p> <p>18 CHAIRPERSON: Alright, thank you. Or a 19 video clip or possibly a tape recording, you know. It 20 doesn't have to be a video thing. If what's said is 21 available, an audio recording, that would also help.</p> <p>22 MR SEMENYA SC: I'll enquire.</p> <p>23 CHAIRPERSON: Then we can put the point 24 to bed once and for all, but –</p> <p>25 MR SEMENYA SC: I'll enquire.</p>	<p style="text-align: right;">Page 10425</p> <p>1 know about that industry, if you got it from the media, 2 it's likely to be edited, whereas your own unit would have 3 no reason to edit your tape. So we would prefer to get 4 that one, if it exists.</p> <p>5 GENERAL PHIYEGA: We do not have the 6 video for the 16th.</p> <p>7 MR MPOFU: The 17th?</p> <p>8 GENERAL PHIYEGA: I've seen it been 9 played here. I don't know where it's submitted from.</p> <p>10 CHAIRPERSON: Mr Mpofo, her answer is 11 that she's not sure whether the video clip we saw of her 12 speech on the 17th, the transcripts of which are FFF5, I 13 think, she's not sure whether that was obtain from the 14 media, one of the media houses, or whether it's a police 15 video. But that's her answer.</p> <p>16 MR MPOFU: And I accept that. Well, if 17 it is, if the one we saw, FFF5, whatever, is the one from 18 the media, can you please give us the tape from the police?</p> <p>19 CHAIRPERSON: I think that's a request 20 that you can address to the evidence leaders. It's not 21 necessary to ask it in cross-examination. She's not going 22 to do it, anyway.</p> <p>23 MR MPOFU: She's the National 24 Commissioner –</p> <p>25 CHAIRPERSON: No, no, I'm aware of that,</p>
<p style="text-align: right;">Page 10424</p> <p>1 CHAIRPERSON: Thank you.</p> <p>2 MR MPOFU: Yes, which is just as an 3 aside, or a follow-up to what the Chairperson is saying, is 4 it correct that in most police events where somebody like 5 you or the Minister features, there's usually the police 6 video unit which would for its own sake tape those events?</p> <p>7 GENERAL PHIYEGA: There would be in some 8 instances, not always.</p> <p>9 MR MPOFU: Okay, and obviously this 10 happened some time ago, so I can't pin you down as to 11 whether you remember in this specific instance. Mr Semenya 12 has already said he'll enquire, but while we are on that 13 subject, did the police video unit take the footage of your 14 press conference on the 17th and that of Mbombo on the 15th, 15 rather, 15th in the morning, as part of what I've just 16 described?</p> <p>17 GENERAL PHIYEGA: I'm aware that General 18 Mbombo's video was not taken. The one that we have for the 19 17th for myself, I'm not sure whether we got it from the TVs 20 or it was taken by our people, but the one of the 17th I 21 know we don't have, of the 16th, I know that we don't have. 22 We've been trying to get footage of that; we haven't been 23 successful.</p> <p>24 MR MPOFU: Yes. No, that's exactly why 25 I'm asking the question, because knowing the little that I</p>	<p style="text-align: right;">Page 10426</p> <p>1 but her counsel I'm sure, if you ask him nicely, as you 2 always do, would be happy to oblige.</p> <p>3 MR SEMENYA SC: I will indeed, Chair.</p> <p>4 MR MPOFU: Right, now we were still on 5 the issue of your failure to refute the statements ascribed 6 to you by The Sowetan, and the fact that that refutation, 7 insofar as it on your version it is likely to last until 8 either the end of the Commission or your legal 9 representatives at some other stage take steps to correct 10 the article, that that failure entitles the readers of this 11 article, including the people that I represent, to assume 12 that this is indeed your position.</p> <p>13 [11:52] MR SEMENYA SC: Can we use the water in 14 the bucket meaningfully? From this morning we have just 15 repeated what happened in the past, and this statement has 16 been - we have been told repeatedly it's incorrect. 17 Impressions that may have been formed on it are 18 unfortunate. Can we move on?</p> <p>19 CHAIRPERSON: Yes, I thought Mr Mpofo had 20 more or less reached the end of this topic, but you've 21 heard what Mr Semenya says. Be mindful of all the water in 22 the bucket that's being used -</p> <p>23 MR MPOFU: Well, Chairperson, ja, with 24 respect to Mr Semenya, I care more about the objectives of 25 this Commission, which is reconciliation, than so-called</p>

<p style="text-align: right;">Page 10427</p> <p>1 water in a so-called bucket. Please answer the question.  2 GENERAL PHIYEGA: Advocate, I appreciate  3 the opportunity I've been given to refute that. In this  4 Commission I have done so and I am hoping that those that  5 published what they published before, if they have the  6 appetite to correct, could do so. If they don't, I am very  7 happy for the opportunity I've been given to correct it  8 here.  9 MR MPOFU: Okay well, I'm going to put to  10 you that until that stage has been reached, or the  11 explanation that you are giving today is either accepted or  12 not accepted, the position of the people I represent is  13 that what you said on the 20th, which is that whatever had  14 happened was an example of responsible policing in  15 particular, read together with this article, without any  16 refutation on your side, entitles them to believe that you  17 were only mourning the death of the police and that you  18 were prematurely, at the very least, thanking and placing  19 your confidence on the police who had killed their loved  20 ones. Would you care to comment?  21 GENERAL PHIYEGA: My response, Advocate,  22 is that I'm truly grateful for the opportunity that I've  23 been given by this Commission to correct any  24 misrepresentation, and I'm grateful. Those that have ears  25 and eyes to see, would hear that I have refuted the</p>	<p style="text-align: right;">Page 10429</p> <p>1 again actually, but presumably if -  2 MR MPOFU: Ja well, it will build up to  3 the next section, Chairperson.  4 CHAIRPERSON: Yes, I was going to suggest  5 that.  6 MR MPOFU: Thanks. Is that correct,  7 General?  8 GENERAL PHIYEGA: As I've said, Advocate,  9 that question in its many forms, I have answered it to the  10 best of my ability.  11 MR MPOFU: Okay, thank you. Once again  12 I'll take that as a yes. Chairperson, may I ask for the  13 playing of exhibit EEE16, and if the Chairperson could  14 kindly issue the warning?  15 CHAIRPERSON: Have you arranged with  16 those responsible for showing that it will be done?  17 MR MPOFU: Yes.  18 CHAIRPERSON: I understand that a video  19 is now going to be shown which contains sensitive images,  20 the viewing of which may cause some of those in the  21 auditorium distress, particularly if they see their  22 relatives or loved ones on the video after what happened on  23 the 16th. So I would ask that the video not be shown until  24 two minutes have elapsed after what I've said has been  25 interpreted.</p>
<p style="text-align: right;">Page 10428</p> <p>1 misrepresentation.  2 MR MPOFU: Yes, I'm happy to have played  3 a small part in that opportunity, but the point is the  4 people I represent do not believe that you are thanking the  5 people for following the prescripts, as you have claimed,  6 because that very question of whether or not they followed  7 the prescripts, you had no basis to make such a conclusion,  8 at that stage at least, in other words on the 20th August  9 when you thanked the police.  10 GENERAL PHIYEGA: Let me say, Advocate,  11 that I've addressed the Commission to the best of my  12 ability on this matter, and indeed I want to say those  13 perceptions and interpretations are not correct. What I  14 have given to this Commission as my testimony represents  15 the best of what I know is the truth.  16 MR MPOFU: And moving on, but linking it  17 to this, all the things that you have heard in this  18 Commission, all the media footage that you have seen and  19 the information at your disposal at this stage, some of the  20 things that I've asked you to read during the break,  21 despite all those things, you still maintain that the  22 police followed the prescripts to such an extent that you  23 had to thank them, as you did. You don't want to change  24 any of that? I think I've already done that, I just want -  25 CHAIRPERSON: You did it over and over</p>	<p style="text-align: right;">Page 10430</p> <p>1 MR MPOFU: Yes thank you, Chairperson,  2 and in that two minutes, General, I'll just put the video  3 into context. I'm going to show you material, and we'll  4 pause at certain parts where there is depiction of police  5 behaviour which I will propose is in breach of the  6 prescripts as opposed to being in conformity, as you had  7 thanked them for that, and at the end of which I will ask  8 whether you still want to thank them even for those things.  9 Okay, thank you, Chairperson, can we have EEE16?  10 [VIDEO RECORDING PLAYED]  11 MR MPOFU: Ja, sorry General, I thought I  12 could do this at the end, but it's quite long, so let's do  13 it in instalments so that you don't forget some of the  14 things you have seen. You saw the visuals as what was  15 described as the police moving towards the workers.  16 Remember that? The movement before there was any shooting,  17 when they were moving towards the area of the shooting.  18 GENERAL PHIYEGA: I've seen your movie.  19 MR MPOFU: And there's a specific comment  20 made - I don't want to rely on the commentary of the  21 journalist, except if I'm able to back it up independently  22 for obvious reasons, but there's a specific comment the  23 koppies where the people had gathered had cleared out, in  24 other words there were no longer people there, and that -  25 would you accept that to be the position? If you don't,</p>

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1 then I'll refer you to a slide in exhibit L which shows the  
 2 same thing, but do you accept that at that stage none  
 3 people were still gathering at the koppie?  
 4 GENERAL PHIYEGA: In this snip I didn't  
 5 see it.  
 6 CHAIRPERSON: - gone quite quickly,  
 7 because I must confess I didn't notice it either, but I'm  
 8 not saying it's not there, I'm just -  
 9 MR MPOFU: No, it's not there.  
 10 CHAIRPERSON: - expressing my - sorry?  
 11 MR MPOFU: It's not there, you wouldn't  
 12 have seen it.  
 13 CHAIRPERSON: Oh well, that [inaudible] -  
 14 MR MPOFU: The point I'm making is that -  
 15 that's why I was qualifying it - the journalists says,  
 16 who's standing there, at this point the koppie has been  
 17 cleared, and all I'm saying is that according to - does she  
 18 accept that that is the case. If she doesn't then I'll  
 19 refer her to something else, that at that stage there were  
 20 no -  
 21 CHAIRPERSON: She says she doesn't accept  
 22 it. So you'll have to refer her to something else.  
 23 MR MPOFU: No, she didn't say that,  
 24 Chair. She said she didn't see it on the video.  
 25 CHAIRPERSON: I see, well you'd better

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1 put the question then.  
 2 [12:11] MR MPOFU: Ja, I think let's stick to  
 3 what she says. If you go to slide L200, this is a stage -  
 4 you can accept it that this a stage even before what was  
 5 being described or what you've seen, when the people were  
 6 making the so-called second attempt, and are you able to  
 7 see that at that stage, at least, the koppies are clear of  
 8 any people, just from this slide?  
 9 GENERAL PHIYEGA: Advocate, I'm going to  
 10 say I see what is written here, but I just want to again  
 11 say remember, I was not in this operation.  
 12 MR MPOFU: I'm not asking you about an  
 13 operation. I'm asking you about the photograph. Are you  
 14 not prepared to say whether you can see, or not, that the  
 15 koppies are clear of people on the photograph, not on an  
 16 operation?  
 17 GENERAL PHIYEGA: I would like the  
 18 advocate to understand my answer. I said I see the  
 19 picture. What I wanted to say is that it is important to  
 20 underscore the fact that in this space, I was not there.  
 21 MR MPOFU: That's fine. I'll move on.  
 22 Did you also hear the several calls of ceasefire? I think  
 23 on the previous occasions we counted more than 10 calls of  
 24 ceasefire?  
 25 GENERAL PHIYEGA: Yes, I've heard.

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1 MR MPOFU: And did you also hear the  
 2 instruction, or call, to use a neutral word, for "Basic  
 3 line, basic line," and "Stretch it out, stretch it out,"  
 4 before the shooting?  
 5 GENERAL PHIYEGA: I've heard them from  
 6 the TV.  
 7 MR MPOFU: And finally, did you see the  
 8 members of the police service running backwards, seemingly  
 9 affected by the teargas?  
 10 GENERAL PHIYEGA: I saw them running  
 11 back. I don't know whether it's teargas.  
 12 MR MPOFU: Thank you. Okay, we can  
 13 continue, thank you.  
 14 [VIDEO RECORDING PLAYED]  
 15 MR MPOFU: Stop. Sorry, General, just a  
 16 quick point, so that we don't cloud the next point. You've  
 17 already answered, because this part of this was shown in  
 18 the first segment, but in this version of the moving in  
 19 that you and I have agreed upon, do you see that members of  
 20 the TRT, in particular, were literally running into the  
 21 position? And I say members of the TRT, because of the  
 22 notorious "mabarete", the ones who were wearing the berets.  
 23 GENERAL PHIYEGA: There are two things  
 24 that you are saying in your statement, you are talking  
 25 about the berets, you are talking about me agreeing with

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1 you on some moving in. I was listening to commentary. I  
 2 don't know whether they were moving in or out. I think  
 3 those are operations people that can tell you that.  
 4 Really, I just was just listening to commentary on moving  
 5 in and your interpretation. I don't know whether they are  
 6 moving in or out, and this is why I said to you earlier on  
 7 that remember I wasn't there, I don't know what is  
 8 happening there.  
 9 MR MPOFU: No, that's fine, General, I  
 10 want us to walk together. Are you now changing your  
 11 earlier answer in respect of which you agreed that the  
 12 people were moving in, or maybe amending it is a more  
 13 neutral word, but whether in or out, did you observe that  
 14 those people were jogging towards a particular common  
 15 destination?  
 16 GENERAL PHIYEGA: You asked about people  
 17 moving back, moving in and I've seen people moving back and  
 18 I've seen people moving in - moving forward, so I don't  
 19 know what you're trying to pin down here. You've lost me.  
 20 MR MPOFU: Ja, no, that's exactly why I  
 21 stopped this thing, so that I don't lose you. The segment  
 22 that we dealt with put aside now, I'm talking about this  
 23 little segment that has just played here now. There's  
 24 nobody moving backwards in it. We've dealt with the people  
 25 moving back and so on, just try and leave that aside. In

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1 this little segment, do you see people running forward with  
 2 guns, wearing berets – members of the TRT, or not?  
 3 Otherwise we can play it again.  
 4 GENERAL PHIYEGA: I think you should.  
 5 MR MPOFU: Okay, can you rewind from the  
 6 words where it says people are moving in – where it says  
 7 seconds before the shooting they were moving in.  
 8 [VIDEO RECORDING PLAYED]  
 9 MR MPOFU: There, thank you. Okay, so in  
 10 that segment nobody was moving backwards. Did you see the  
 11 people running forward, including the majority of whom were  
 12 wearing the berets?  
 13 GENERAL PHIYEGA: I think, Advocate, I  
 14 just want to say to you, not having been there, I don't  
 15 know whether they are moving to the side or to the front.  
 16 I can see the movement, I can say to you they are moving to  
 17 the side – where I'm sitting, I can say to you these people  
 18 are moving to from left to right, so it really doesn't help  
 19 me.  
 20 MR MPOFU: What do you mean, are they  
 21 running from left to right?  
 22 GENERAL PHIYEGA: No –  
 23 MR MPOFU: Are they not running forward?  
 24 How does one run from left to right? They are running  
 25 forward.

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1 GENERAL PHIYEGA: I don't know. That's  
 2 what I'm trying to say to you. When I look at this, I can  
 3 tell you that that men at the corner, they may be moving  
 4 towards the right. I don't know whether that is front or  
 5 back, and it really doesn't assist me. I can't assist you  
 6 in this one.  
 7 MR MPOFU: Yes. I'm going to argue at  
 8 the end that you are evading a very simple question. Did  
 9 you hear the police, or rather the announcement, "Media go  
 10 away, media go away?"  
 11 GENERAL PHIYEGA: Yes, I've heard that.  
 12 MR MPOFU: Okay, continue.  
 13 [VIDEO RECORDING PLAYED]  
 14 MR MPOFU: Did you - in that segment, did  
 15 you hear that shots were fired after the first calls of  
 16 ceasefire?  
 17 GENERAL PHIYEGA: I heard shots being  
 18 fired.  
 19 MR MPOFU: If shots are fired after the  
 20 order to cease fire, does that represent the best of  
 21 responsible policing?  
 22 GENERAL PHIYEGA: I think, Advocate, the  
 23 important thing is to note that if you were saying to me 15  
 24 minutes after ceasefire somebody was still shooting, if  
 25 somebody was in the process of shooting and ceasefire

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1 comes, would that be a notion that there is somebody who is  
 2 non-compliant or disregarding instructions. I'm not sure  
 3 whether that's what I saw here, or heard here.  
 4 MR MPOFU: Yes, that's a fair comment,  
 5 but since you were thanking these people for following the  
 6 prescripts, do you remember the part of the prescript that  
 7 says that the use of force, even if it becomes necessary,  
 8 must be ceased immediately as soon as the threat is no  
 9 longer there?  
 10 GENERAL PHIYEGA: Yes, I'm aware of that  
 11 prescript.  
 12 MR MPOFU: And would it be a fair  
 13 assumption that if a policeman orders others to cease fire,  
 14 at least from their point of view, there's no longer a  
 15 threat?  
 16 GENERAL PHIYEGA: Yes, I do.  
 17 MR MPOFU: And if somebody defies that  
 18 call, and it is made about 10 times, or it becomes  
 19 necessary to make it about 10 times, would you say that  
 20 represents the best of responsible policing or not?  
 21 Considering that we are dealing with live ammunition, which  
 22 is deadly.  
 23 GENERAL PHIYEGA: I think the 10 times is  
 24 more members just saying, "Have you heard the message,  
 25 ceasefire, ceasefire," I don't think it is how you are

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1 interpreting it.  
 2 MR MPOFU: Okay, well we're going to  
 3 argue that even a single shot that is fired after the call  
 4 to cease fire, which may or may not have killed some of the  
 5 people who died, or injured those who were injured, was  
 6 done outside the requirements of the prescripts, in  
 7 particular the one that I quoted to you.  
 8 GENERAL PHIYEGA: I'm sure the commanders  
 9 would have a different opinion to you, and I'm sure we  
 10 would have to look at other best practices and other  
 11 examples elsewhere. I do not believe that what you are  
 12 interpreting is what happened here.  
 13 MR MPOFU: Okay, I'm resisting the  
 14 temptation to play it again. We'll leave it at that. Can  
 15 we continue, please?  
 16 [VIDEO RECORDING PLAYED]  
 17 MR MPOFU: Stop. Oh okay, I suppose it's  
 18 my lucky day, In the next extract we still have the  
 19 numerous ceasefire calls, but I want to ask you in  
 20 particular whether you heard the voice of someone who says,  
 21 "We'll shoot you?" If you didn't, we'll play it again.  
 22 Sorry, General, did you hear it, or if you didn't, we'll  
 23 play it again. Did you hear it?  
 24 GENERAL PHIYEGA: Yes, I did hear.  
 25 MR MPOFU: Does that represent the best

<p style="text-align: right;">Page 10439</p> <p>1 of responsible policing, that behaviour or demeanour?  2 Sorry, and professionalism.  3 GENERAL PHIYEGA: I think again,  4 Advocate, I would say to you the context of the statement  5 lends itself to multiple interpretations. You are saying  6 it is a misrepresentation of responsible policing. I'm not  7 sure whether the context in which the member was saying  8 that was the spirit of what was happening there. So I'm  9 unable to judge that one.  10 MR MPOFU: Are you aware that one of the  11 prescripts which should be followed, for which you'd  12 thanked the people of having followed, prescribes that the  13 police at all times must act with the necessary  14 professionalism? And if you aware of that, would somebody  15 saying those words in the context that we've seen - I don't  16 know about what other context you want to talk about. The  17 representative of the requisite levels of professionalism,  18 and compassion, sorry, compassion.  19 [12:31] GENERAL PHIYEGA: I shall again repeat  20 what I answered, and I think that's my best answer to your  21 question, to say the context and the situation doesn't  22 allow me to be able to judge that.  23 MR MPOFU: Okay, once again at the end -  24 I don't want to waste time - we'll argue that you are  25 evading once again what is a very simple proposition. Can</p>	<p style="text-align: right;">Page 10441</p> <p>1 weapons were taken away from those people, are you prepared  2 to accept or are you not prepared to accept that at that  3 stage the paramedics had not arrived?  4 GENERAL PHIYEGA: I do not know.  5 MR MPOFU: Okay, thank you, let's move  6 on.  7 [VIDEO RECORDING PLAYED]  8 MR MPOFU: Just one question, General, it  9 might not have been clear but if it was, did you see the  10 police dragging the bodies of the injured or deceased  11 people?  12 GENERAL PHIYEGA: No.  13 MR MPOFU: Okay, let's play on.  14 [VIDEO RECORDING PLAYED]  15 MR MPOFU: Now did you see the police  16 dragging the person on the ground?  17 GENERAL PHIYEGA: Yes.  18 MR MPOFU: Thank you, play on. Oh sorry,  19 while we are there, does that represent the best of  20 responsible policing?  21 GENERAL PHIYEGA: I think it is important  22 to understand what was happening there and I think the  23 people in operations will explain that to you.  24 MR MPOFU: No, General, I'm asking for  25 your view, whether the dragging of a person who's just been</p>
<p style="text-align: right;">Page 10440</p> <p>1 we move on? Let's move on.  2 [VIDEO RECORDING PLAYED]  3 MR MPOFU: In that clip, did you see the  4 police moving forward after the shooting, still in what I  5 assume is the basic line, in some form of a line?  6 GENERAL PHIYEGA: Yes, I have.  7 MR MPOFU: And did you see the police  8 crossing the road, the path to where the people were lying  9 down?  10 GENERAL PHIYEGA: I just saw some dusty  11 space, I don't know if it's a road, but I saw them moving  12 forward.  13 MR MPOFU: Okay, and when they reached  14 the people, you saw that some of the police officials had  15 their guns pointed at the people, and did you hear one or  16 two gunshots?  17 GENERAL PHIYEGA: No, I didn't hear any  18 gunshots.  19 MR MPOFU: Okay, we'll play it again, but  20 before we do that, did you see that the, when the police  21 arrived at the people who were down, they started taking  22 away the weapons and putting them in a stack or a pile - I  23 don't want to exaggerate, but putting them together?  24 GENERAL PHIYEGA: Yes, I did.  25 MR MPOFU: And would you, when those</p>	<p style="text-align: right;">Page 10442</p> <p>1 injured in the manner that you observed, in your view  2 represents the best of responsible policing, or does it  3 depend on the context in which that person has been dragged  4 by the police?  5 GENERAL PHIYEGA: Advocate, I can never  6 divorce my answer from the context and therefore those in  7 operations will tell you what they were doing there and  8 that will inform my answer.  9 MR MPOFU: Do you accept that the removal  10 of the arms which you said you have observed, prima facie,  11 in other words at face value, represents tampering with the  12 scene? And if you accept that, does that represent the  13 best of responsible policing?  14 GENERAL PHIYEGA: I do not accept that  15 because at that point in time we've seen some people still  16 seem to be alive, and me and you would not even have been  17 able to certify those people dead at that point in time.  18 MR MPOFU: What difference does that  19 make, whether a person is alive or dead? Does it stop  20 being a crime scene?  21 GENERAL PHIYEGA: The difference, in my  22 very illiterate opinion, is that the issue of danger could  23 still be presenting.  24 MR MPOFU: Do I understand from that that  25 if, you are only prepared to accept that it would amount to</p>

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1 the tampering with the scene if those arms were removed  
 2 from people who were obviously dead?  
 3 GENERAL PHIYEGA: I would again go back  
 4 to the issue of context to say indeed those who were there,  
 5 if they still perceived danger, they would explain what  
 6 they were doing there. Advocate, I'm not the best person  
 7 to answer you on those issues.  
 8 MR MPOFU: And do you accept that if it  
 9 is subsequently established that at the stage of the  
 10 removal of those weapons the paramedics had not arrived,  
 11 then the reason for the removal of those arms could never  
 12 have been some instruction from the paramedics, who were  
 13 not there, whatever other valid reason might have been,  
 14 even the one that you are suggesting of danger, whatever,  
 15 but that it would not have been an instruction from the  
 16 paramedics, because they were not there?  
 17 MR SEMENYA SC: Chair, is the question  
 18 really that if the paramedics were never there at that  
 19 time, they could not have given the instruction?  
 20 CHAIRPERSON: I think the answer is that  
 21 – sorry, not the answer, the question is that if the  
 22 paramedics hadn't arrived yet, the arms couldn't have been  
 23 removed in consequence of a request from them. I think  
 24 that's the way the question is phrased.  
 25 MR MPOFU: That's all, Chair. Not never.

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1 CHAIRPERSON: In other words, not never,  
 2 but not yet, that's his question.  
 3 MR SEMENYA SC: That's my explanation,  
 4 Chair, that if they were never there, they could never have  
 5 been removed as a result of them. I'm trying to get us go  
 6 somewhere.  
 7 MR MPOFU: Well, I would prefer the  
 8 answer from the witness, not from her advocate.  
 9 GENERAL PHIYEGA: I'll go back to what  
 10 I've said already, to say the context is important. (a),  
 11 We saw that there were people that were still alive. I  
 12 don't know the perception of danger by those that were in  
 13 operation, and I shall again say, they would be in a better  
 14 position to tell you why those actions took place, their  
 15 perception of danger. I was not there; we were not there.  
 16 MR MPOFU: Okay, once again you have not  
 17 answered my question, but this time I won't argue that you  
 18 are being evasive because of the interruption. The  
 19 question is simply whether you accept that if the evidence  
 20 subsequently shows that the paramedics had not arrived at  
 21 that point, whatever reason there was, valid or not valid,  
 22 including the perception of danger and so on, what you're  
 23 saying, for the removal of those weapons, it could not  
 24 conceivably have been as a result of a request by  
 25 paramedics who were not there, simple.

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1 GENERAL PHIYEGA: I think at the fear of  
 2 being a scratched record, I've tried to answer you to the  
 3 best of my ability.  
 4 MR MPOFU: Okay, but I will argue at the  
 5 end that you are evading what is a very simple question.  
 6 Can we move on?  
 7 [VIDEO RECORDING PLAYED]  
 8 MR MPOFU: So did you observe the further  
 9 dragging of other bodies by the police?  
 10 GENERAL PHIYEGA: I've seen them turning  
 11 the bodies.  
 12 FILE: 12:51  
 13 MR MPOFU: Does that mean you did not see  
 14 the further dragging of bodies, or do you want us to play  
 15 the tape again?  
 16 GENERAL PHIYEGA: Maybe we should,  
 17 Advocate.  
 18 MR MPOFU: Please rewind a little bit and  
 19 play.  
 20 [VIDEO RECORDING PLAYED]  
 21 MR MPOFU: Okay, stop. Yes, did you see  
 22 the dragging and not the turning of that particular body?  
 23 GENERAL PHIYEGA: Yes, I have..  
 24 MR MPOFU: Thank you. Please play on.  
 25 [VIDEO RECORDING PLAYED]

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1 MR MPOFU: Okay. Can you please pause at  
 2 the point where the boot is on somebody's face?  
 3 [VIDEO RECORDING PLAYED]  
 4 MR MPOFU: You've just passed it, so  
 5 you'll have to rewind. Yes. Can you see the boot against  
 6 somebody's face?  
 7 GENERAL PHIYEGA: I see it above his  
 8 head.  
 9 CHAIRPERSON: Could you take it back a  
 10 couple of seconds?  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: I thought I saw something  
 13 else. Let's see whether I saw – that's it, yes.  
 14 MR MPOFU: Yes, look, the evidence, which  
 15 was not disputed, was that there was the kicking of the  
 16 person, so when you look at it again, as the Chairperson  
 17 has correctly suggested, you must know that that's where  
 18 I'm going to go with the question.  
 19 CHAIRPERSON: I wouldn't call that  
 20 kicking, but I would say that the boot is on the face of  
 21 the person, and the person's head is being pushed and  
 22 rolled almost with the booted foot. I wouldn't describe it  
 23 as kicking. but it is an action which I've described –  
 24 MR MPOFU: Okay.  
 25 CHAIRPERSON: - which you may wish to ask

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1 questions about.

2 MR MPOFU: That's fine. I'm happy with

3 that. Did you observe that the boot was on the person's

4 face or neck area and that the boot was used by the wearer

5 of the boot to push, at the very least, against the face of

6 the victim?

7 GENERAL PHIYEGA: I see the picture, but

8 again what you interpret it to be, I'm not sure whether I

9 move with you on that one.

10 MR MPOFU: Are you with the Chairperson's

11 description of what we saw?

12 GENERAL PHIYEGA: I see a person pulling

13 and I see a boot almost over the face of that person. I

14 don't know what that may mean.

15 MR MPOFU: And does the placing of a boot

16 on somebody who is down-faced and pushing against that with

17 the boot in your estimation represent the best of

18 responsible policing, or does it depend on the context in

19 which the person is being kicked, or rather is being pushed

20 by the boot?

21 GENERAL PHIYEGA: I will repeat what I've

22 said, and I would say indeed those who were there would

23 explain in a much better way, the context they were doing,

24 anything they were doing there, and what I saw was that

25 there was moving, there was checking of weapons. That's

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1 what I saw there, but I'm sure it will be explained by

2 those who were there.

3 MR MPOFU: Yes, but – I hear that answer.

4 I'm afraid it's not – I don't think it's satisfactory. Let

5 me put it this way. From a neutral observer's point of

6 view, or from a citizen, to whom the police are finally

7 accountable, point of view, is that kind of activity, would

8 you think that it would represent the best of responsible

9 policing?

10 GENERAL PHIYEGA: Perhaps all I can tell

11 you, Advocate, is that police work is very difficult and

12 this situation represents some of those difficult

13 circumstances, whether they are in heists, whether they are

14 in shootings, and I would say that context always informs

15 how the police deal with situations, and I'd like to leave

16 the people who were in this scene to be able to talk to

17 that.

18 CHAIRPERSON: Mr Mpofo, it's now 5 past

19 1. I would have thought it might be sensible for us to

20 take the adjournment now and we'll resume at 25 to 2, and I

21 would then like to see this scene again with – if it's

22 possible to zoom in, so we can have an enlarged version of

23 the person's head and the boot and so on. That might help

24 us, but perhaps we can look at that -

25 MR MPOFU: We'll look at that, if

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1 possible. I don't know the technical –

2 CHAIRPERSON: If it can't be done, it

3 can't be done, but maybe –

4 MR MPOFU: Maybe slow it down or

5 something. We'll do what we can.

6 CHAIRPERSON: Perhaps you could enquire

7 then during the adjournment -

8 MR MPOFU: Thank you, Chair.

9 CHAIRPERSON: - whether that's possible.

10 MR MPOFU: Thanks, Chair.

11 CHAIRPERSON: We'll take the adjournment

12 now till 25 to 2, or soon thereafter as we can reassemble.

13 MR MPOFU: Thank you, Chair.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [13:45] CHAIRPERSON: The Commission resumes.

16 National Commissioner, you're still under oath.

17 MANGWASHI VICTORIA PHIYEGA: s.u.o.

18 CHAIRPERSON: Mr Mpofo, you indicated you

19 had some questions you still had to ask from the National

20 Commissioner.

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

22 Thank you, thank you, Chairperson. We're holding thumbs,

23 we have asked the operators, who are usually good, to try

24 and give us a better version. It looks like we can't do a

25 slow-down version, but we'll do stills, Chairperson, of the

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1 relevant areas here, thank you. Sorry, before we do that,

2 National Commissioner, you followed the discussion before

3 we took the break. I'd like you to, in viewing these still

4 versions, to look out specifically for the situation where

5 the boot is depressed against the body. I, myself am not -

6 that's why I'm saying the body, because it looks like it's

7 the face or the neck, but somewhere in that area, and the

8 pushing that we spoke about and the turning of the face

9 against the boot. Just look out for those kinds of things.

10 I'll question you around that. Thank you.

11 GENERAL PHIYEGA: Chairperson, whilst we

12 are viewing that, would it be possible for them to also

13 move up so that I can see the full scale of that person,

14 what he's doing, what he's carrying, because that would

15 help me to also understand the context?

16 MR MPOFU: No, obviously we can't get a

17 better picture than what we have, but I think you will see

18 enough to see that it's one of the policemen and that the

19 other one on the ground is one of the injured or deceased.

20 So look out for that as well if you - but we can't stretch

21 the picture more than what it is.

22 GENERAL PHIYEGA: No, maybe you don't

23 understand what I'm saying, because I think I need to

24 understand what the person is doing. Is he holding things?

25 Is he having hands sitting there, just kicking? I want to

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1 understand, that's why I'm saying -  
 2 MR MPOFU: Okay.  
 3 GENERAL PHIYEGA: - if it is possible. I  
 4 don't know if there's a full shot going up as that happens  
 5 so that one can have - can see the context -  
 6 MR MPOFU: Okay, one of my attorneys is  
 7 there and he is hearing, so if it's possible they'll do it.  
 8 [VIDEO RECORDING PLAYED]  
 9 MR MPOFU: Okay, thank you. We will play  
 10 it just one more time, but for now I'm going to ask you the  
 11 following questions. Can you observe that while one of the  
 12 policemen is depressing the boot against the face or neck  
 13 area, there's another policeman who seems to be searching  
 14 the person around his trousers area?  
 15 GENERAL PHIYEGA: I see a policeman  
 16 wearing a glove, using one hand, holding a gun, turning the  
 17 corpse. What I was asking, and what I don't see is what is  
 18 happening to the police that is, whose foot we're looking  
 19 at. I don't know what is in his hand and whether he's  
 20 wearing a glove or what he's wearing, because that's very  
 21 important and that's why I asking whether are we able to  
 22 zoom up that I can see what that other policeman -  
 23 MR MPOFU: Okay, well, the answer is no,  
 24 we can't, so we'll assume in your favour that he's wearing  
 25 a glove, whatever the importance of that is. But the issue

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1 that I'm putting to you now is that while the foot is  
 2 depressed against the body, a separate policeman is  
 3 searching the body and that's the one that you correctly  
 4 described as having a glove. Did you observe that?  
 5 GENERAL PHIYEGA: Chair, I already said I  
 6 saw a policeman wearing a glove, turning the body around.  
 7 It's going to be an interpretation issue. I've seen him  
 8 turning the body around.  
 9 MR SEMENYA SC: Chair -  
 10 MR MPOFU: Mr Semenya wants to say  
 11 something.  
 12 MR SEMENYA SC: Chair, given the fact  
 13 that we know that the National Commissioner of Police has  
 14 never been in police training, how arrests are effected,  
 15 can't we spare this type of investigation with a policeman  
 16 who will tell us what are the standard arresting  
 17 procedures, whether this is in line or it's not in line.  
 18 The answers of this witness are not going to assist us.  
 19 CHAIRPERSON: - about that Mr Mpofu?  
 20 MR MPOFU: What I say to that is that in  
 21 that case then I'll accept that. I'm asking her as a human  
 22 being, just as a citizen, a South African citizen -  
 23 CHAIRPERSON: Mr Mpofu, the problem -  
 24 sorry, Mr Semenya, the problem with that is she did express  
 25 an opinion that what was done was in accordance with the

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1 highest prescripts of policing. Now what is suggested is  
 2 what we can see isn't in accordance with those prescripts.  
 3 Now it's all very well to say she doesn't know what  
 4 policing involves, in which case the point would be raised  
 5 well then why did she express the opinion. So I mean it's  
 6 not as easy as that, I'm afraid. Sorry Mr Semenya, I'm  
 7 just putting my difficulty to you.  
 8 MR SEMENYA SC: It may very well be that  
 9 a witness who is experienced with policing and arresting  
 10 will tell us this is how it is done. You don't go with  
 11 your firearm to somebody, put it next to them and lift them  
 12 up. That doesn't happen, and if we are convinced and  
 13 persuaded that evidence is acceptable, then it would not be  
 14 out of sync, the remarks that the National Commissioner has  
 15 made. But let's go seek proper answers and see whether  
 16 those answers validate or don't validate the remarks that  
 17 the National Commissioner has made.  
 18 MR MPOFU: Chairperson, the answer to  
 19 that is simply that Mr Semenya himself spent a considerable  
 20 amount of time leading this witness on the so-called  
 21 prescripts, and as you have pointed out, Chair, all I'm  
 22 doing under cross-examination, based on that evidence-in-  
 23 chief, is to trust the prescripts, (1). (2), She says that  
 24 she thanked the police members for following the  
 25 prescripts, a point that the Chair has already made, and

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1 obviously where I'm going - I can even play open cards with  
 2 the witness - is that at the end I'm going to ask her to  
 3 revise her gratitude and praises of the police.  
 4 CHAIRPERSON: How much longer is this  
 5 exercise going to take? And if it's just a couple more  
 6 questions, you've shown her the video -  
 7 MR MPOFU: Yes, I think we are just at  
 8 the end -  
 9 CHAIRPERSON: You've already revealed  
 10 what the last question is going to be.  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: I have the difficulty I put  
 13 to Mr Semenya that she did express an opinion, so therefore  
 14 she can't be heard now to say well I can't express an  
 15 opinion. She might wish to revise, she may give a variety  
 16 of answers. It's not for us to tell her what she must say.  
 17 MR MPOFU: Yes.  
 18 CHAIRPERSON: But I think I'll allow the  
 19 question, Mr Semenya, but on the basis that we're right  
 20 near the end of the topic -  
 21 MR MPOFU: Certainly, Chairperson.  
 22 CHAIRPERSON: Mr Mpofu, before you ask  
 23 the next question, there's a question that Commissioner  
 24 Hemraj has suggested to me that should be asked first  
 25 before we proceed.

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1 MR MPOFU: Yes.

2 CHAIRPERSON: And that is when you made

3 your speech that's been quoted, had you seen these videos,

4 these video clips?

5 GENERAL PHIYEGA: No, I hadn't.

6 CHAIRPERSON: There was a remark you made

7 about how - prescripts of policing and so forth, that

8 remark you made, what was that based upon? You hadn't seen

9 the video clips, so it must have been based on something.

10 What was it based on?

11 GENERAL PHIYEGA: I had said this

12 morning, Judge, that I have seen a lot of things. This is

13 just one of them that I hadn't seen at that point in time,

14 but I had seen many other footage on TV, on newspapers and

15 everything. Ja.

16 CHAIRPERSON: Yes, Mr Mpofu.

17 MR MPOFU: Thank you very much,

18 Chairperson. Yes, anyway let me - I'll move quickly to the

19 point. The point is exactly that I'm going to assume that

20 you had not seen these things and I'm going to ask you a

21 question based on now that you've seen them, now that I've

22 shown them to you, that's where I'm going. But just hang

23 on, give me two or three more questions.

24 GENERAL PHIYEGA: But maybe just to say

25 again, Adv Mpofu, what I've seen here is a man, a policeman

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1 that I've seen explicitly, the one who's holding a gun with

2 one hand, using one hand with a glove to turn one around.

3 The one that you're showing me with the foot, I have no

4 context of what he's doing up there. That's why I was

5 asking whether I could see what is happening up there. Is

6 he holding a gun, is he wearing a glove? I don't

7 understand, and the questions you are asking me, ask me,

8 knowing that I do not have the liberty of understanding

9 what is happening to that policeman.

10 MR MPOFU: Yes, fair enough. Yes, that I

11 appreciate, General. So from that answer I take it what

12 you are implying - and you'll correct me if I'm wrong - is

13 that there are circumstances that you can think of where it

14 is justifiable for a policeman to place a boot and push

15 against somebody's face who is prostrate on the ground, and

16 what you are saying is that those circumstances are not

17 clear on the video, whether they are present or not, but

18 they are conceivable. Is that what you are saying?

19 CHAIRPERSON: Mr Mpofu, I'm sorry to

20 interrupt you. I'm not sure one can say that he's pushing

21 his boot against the face.

22 MR MPOFU: Well you said -

23 CHAIRPERSON: My impression - I

24 originally said the face myself, but I've looked at it now

25 several times; my impression, for what it's worth, is it's

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1 either the neck or possibly the top of the torso, as it

2 were, just below the neck, you know, in line with the

3 shoulders. I'm not sure one can be more specific than

4 that, but certainly I think one can say it's not the face.

5 You put it on the basis of the face. I would imagine that

6 if it's the face then it's beyond any doubt, but you're

7 obviously still in argument even if it's below the face.

8 But anyway, proceed with your question.

9 MR MPOFU: Thank you, Chairperson, I

10 appreciate that. I think it's important that we get it

11 right, and I won't bore you, when we do the argument I can

12 tell you now we'll argue that it's at the very least the

13 bottom part of the face, but that's not for you to deal

14 with. Still my question, you must answer my question on

15 the basis that it's any part of the body, quite frankly.

16 It could be the ankle. Just the point I'm making to you is

17 that you are saying that it is - there are circumstances

18 under which it is considerably justifiable to push the boot

19 against somebody's torso, face, neck, whatever it is, who's

20 lying prostrate on the ground and obviously helpless.

21 GENERAL PHIYEGA: Advocate -

22 MR MPOFU: I'm sorry, I'm sorry, I'm

23 sorry, I really am sorry, General. Just in trying to save

24 time, I'm saying bear in mind that you have described the

25 person as a corpse, and I'm prepared to assume in your

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1 favour that the person may or may not be dead, but at the

2 very least that they're helpless.

3 GENERAL PHIYEGA: My answer remains

4 exactly what I answered you right at the beginning to say a

5 police who is in that space, who is in operations, will

6 tell you what they do when they get to that type of

7 environment. Whether they shift to look for armaments or

8 to look for whatever, whether they shift to check life, I

9 am saying the context is important, and I'd like those who

10 were there, in conjunction with our prescripts to answer

11 you on those questions because it is wrong for me, and it

12 is not possible for me, to judge that without that context.

13 MR MPOFU: Okay, that's an assurance that

14 those members of the police, at least those that are

15 identifiable in that footage will be called to explain what

16 they were doing.

17 GENERAL PHIYEGA: I think those are not

18 my powers, really. I think this Commission has the power

19 to call anybody.

20 MR MPOFU: No, that's not good enough,

21 I'm afraid, General. I'm asking you now as the boss, as

22 the National Commissioner of South Africa, having seen what

23 you have seen now, whether you will do whatever is within

24 your power to ensure that the people who have behaved in

25 the way that I have described will come and clarify exactly

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1 the issues that you are raising - whether they were wearing  
 2 a glove or what have you - so that I do not argue at the  
 3 end that they were violating a corpse, which is a crime by  
 4 the way. There is a crime in South Africa called violating  
 5 a corpse.  
 6 MR SEMENYA SC: Chair, as the legal team  
 7 we will get a witness to explain what, the visuals you see.  
 8 CHAIRPERSON: I think you've got the  
 9 information you want on that point.  
 10 MR MPOFU: Thank you, I'm indebted to my  
 11 learned friend. Sorry, Chairperson, we were busy  
 12 communicating with the team of the, BBM'ing them. Can you  
 13 play the Carte Blanche -  
 14 CHAIRPERSON: I'd like to see how this  
 15 ends, if possible.  
 16 MR MPOFU: Yes.  
 17 CHAIRPERSON: - what the end of the  
 18 particular video is -  
 19 MR MPOFU: Oh yes. Okay, can we finish  
 20 this segment and then play the other related video, thanks.  
 21 [VIDEO RECORDING PLAYED]  
 22 [14:04] MR MPOFU: Okay, just continue so that we  
 23 save more time. General, I just want to make one point  
 24 about the fact that at least from what we can see, at this  
 25 stage the paramedics have not yet arrived on the scene or

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1 started treating the people, and I'm just taking advantage  
 2 of the fact that one of the people - you might not know  
 3 this - one of the people that you can see on the video, the  
 4 one with the green top, if you look at the picture that is  
 5 still now, that person has testified here already and so we  
 6 know, (a), that he was one of the injured, that's is Mr  
 7 Magidiwana. We know that he was one of the injured and he  
 8 told us that at a later stage some Zulu-speaking policemen  
 9 phoned and the paramedics arrived thereafter. I'm sorry,  
 10 I'm just giving you the background. All I'm asking you now  
 11 is that at this stage, would you agree that if that person  
 12 is one of the injured, at least we can see that he is still  
 13 lying in the same way that he had been lying and he has not  
 14 yet been treated.  
 15 CHAIRPERSON: Mr Mpofu, I would like to  
 16 ask a question of you and Mr Semenya together. Our  
 17 recollection is that the so-called tampering with the  
 18 scene, the replacing the arms - or replacing is the wrong  
 19 word - putting the weapons back, possibly in incorrect  
 20 positions, did that happen at scene 2? I don't remember,  
 21 that's why I'm asking you both if I'm right, because if I'm  
 22 wrong I will be happy to accept what you say. I don't  
 23 recall the evidence being that there was any suggestion of  
 24 tampering at scene 1. They were taken, the arms were taken  
 25 away, I think virtually immediately as we can see on the

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1 video, but there is no suggestion that they were put back.  
 2 The photographs that we saw, which originally were  
 3 presented to us as if these were the original undisturbed  
 4 positions of the firearms, which later turned out - not  
 5 firearms, of the weapons - which later turned out to be  
 6 inaccurate. Those all I think were in relation to the  
 7 bodies at scene 2. So if that is so, I'm not quite sure,  
 8 if you can confirm that is correct, I'm not sure the  
 9 relevance of these questions about the paramedics at scene  
 10 1.  
 11 MR MPOFU: Thank you. Thank you,  
 12 Chairperson, I'm glad you have given me this opportunity  
 13 because I think this point was misunderstood on the 5th of  
 14 April as well. Firstly, yes, you are right, Chairperson,  
 15 that both the alleged tampering and the report of people  
 16 like Breedt and so on, relates to scene 2. That's why I  
 17 said to the witness this morning, the only issue I have  
 18 been making about this point is a simple one, which is that  
 19 if the removal on, at scene 1 that we have seen here was  
 20 not at the request of the paramedics at scene 1, I will  
 21 argue later that it is unlikely that the reason for the  
 22 removal of the weapons at scene 2 was at the instigation of  
 23 the paramedics. That's the only purpose. I accept without  
 24 any debate that both the report and the so-called  
 25 allegations of tampering, strictly speaking relate to scene

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1 2. So that's the only purpose for which, thank you,  
 2 Chairperson. And in addition, Chairperson, in addition put  
 3 aside now the issue of the paramedics, what have you; I  
 4 will also argue at the end that what was done at scene 1 in  
 5 its own right amounted to tampering with the scene, full  
 6 stop. In other words there is a separate point as to  
 7 whether the comparison that I have spoken about earlier on,  
 8 so those are the only two purposes for which -  
 9 CHAIRPERSON: That you say is the reason  
 10 why you say this, these questions are relevant?  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: Mr Semenya turned on his  
 13 microphone now; I think he is going to say something.  
 14 MR SEMENYA SC: Well in response to your  
 15 invitation, Chair, yes, the alleged tampering is in  
 16 relation to scene 2, but it cannot be sequitur, it doesn't  
 17 follow that if the removal of weapons in scene 1 was so as  
 18 to render the environment conducive for arrests, that  
 19 therefore those that were removed in scene 2 were for the  
 20 same reason, if I follow the reasoning of Mr Mpofu.  
 21 CHAIRPERSON: Well, isn't that an  
 22 argument that we must allow him to represent at the end -  
 23 MR SEMENYA SC: That's precisely -  
 24 CHAIRPERSON: - and he can ask questions  
 25 to lay a factual foundation for the argument. I understand

<p style="text-align: right;">Page 10463</p> <p>1 your point that the relevancy becomes substantially weaker  2 in the sight of the point you have made, but I'm not sure I  3 can stop him. He wants to argue it at the end and he wants  4 to lay a factual foundation for the argument. I would have  5 thought that provided he proceeds fairly expeditiously with  6 the point, it will be safer to let him do it, rather than  7 have him complain at the end that he was hampered and  8 treated unfairly, which we wouldn't want to do, would we?  9 MR SEMENYA SC: Yes.  10 CHAIRPERSON: So carry on, but bear that  11 in mind. Short point.  12 MR MPOFU: Chairperson, even less than  13 short. I'm not going to proceed further. All, I'm just  14 grateful that the opportunity has been given for me to  15 explain this. I will leave it at that and one day Mr  16 Semenya and I will debate as to whether it says what I say,  17 or it says what he says. Thank you. Ja, okay just carry  18 on.  19 [VIDEO RECORDING PLAYED]  20 MR MPOFU: Stop. Once again, General,  21 I'm just going to ask you one question, to whether you  22 observed what we can observe that the policemen are  23 standing next to the bodies on the ground and the bodies  24 are not being attended to by anybody, whether it's the  25 policemen or anyone else.</p>	<p style="text-align: right;">Page 10465</p> <p>1 register the objection. The witness has repeatedly told us  2 she was not there. We know through the evidence of other  3 witnesses that the medics were at forward holding area 1, a  4 distance away from where the scene happened. This witness  5 can't be able to tell us why the medics were not there,  6 when the pictures you are shown, where they were and what  7 they were doing.  8 MR MPOFU: No, with great respect, Mr  9 Semenya is running ahead of me. I have not up until now  10 asked the witness why the medics were not there. I'm not  11 interested in that, by the way. Neither am I suggesting  12 that she was there. I know, I started this cross-  13 examination by saying I know she was not there. I was also  14 not there. All I'm asking her is whether simply whether,  15 from what she is observing here - she is here now - from  16 what she is observing here, is it correct that the people,  17 the injured people - at least I have said the one who was  18 injured because he testified so, the others I'm saying are  19 injured because they were moving - were not being attended  20 to by the policemen who were standing next to them, nor  21 anybody else. Full stop.  22 CHAIRPERSON: You don't have to ask her  23 that, we can all see that they weren't being attended to by  24 anybody.  25 MR MPOFU: Ja, but obviously that's</p>
<p style="text-align: right;">Page 10464</p> <p>1 [VIDEO RECORDING PLAYED]  2 MR MPOFU: Okay. Sorry, I just played  3 the tape before you answered. Do you agree with that  4 proposition that I put and, ja, let's do it one by one.  5 GENERAL PHIYEGA: Advocate, I'd once more  6 say, a picture is one thing, a context is another. There  7 are time aspects there and you do mention that some people  8 are still alive today. You also mention that somebody in  9 Zulu called the paramedics. So I think it's important to  10 take all those issues into account. It can't just be a  11 straight simple explanation.  12 MR MPOFU: Ja, now I accept that, and I'm  13 sure you haven't had an opportunity to look at the evidence  14 of Mr Magidiwana. All I'm asking you, General, is whether  15 you as yourself, upon observation of this video, would  16 agree with me or disagree with me that from what we see  17 there, there are bodies lying down, and I can assure you  18 that at least one of those people is injured and not dead,  19 and I will take you, the next point I'm going to take you  20 is to say you must observe the movements of some of the  21 people on the ground, whether you agree that those people  22 lying down there, the policemen are standing next to them  23 and neither the policemen nor anybody else is attending to  24 the injured people, from what you observe?  25 MR SEMENYA SC: Chair, I must still</p>	<p style="text-align: right;">Page 10466</p> <p>1 leading to a question, Chair.  2 CHAIRPERSON: Well, I would have thought  3 the simple way of doing it is to say, without asking can  4 you see, to say as we see, they are not being attended to  5 by policemen or anybody else -  6 MR MPOFU: Yes.  7 CHAIRPERSON: - and in the circumstances,  8 then boom, ask your question.  9 MR MPOFU: Ja, that's the same thing as  10 saying do you agree with me, this is how I phrased it.  11 CHAIRPERSON: It's a bit shorter the way  12 I suggest it. Carry on with the shorter way.  13 MR MPOFU: Okay. General, as you can see  14 from the part of the clip that we have just seen, the  15 people are lying on the ground, some of whom are injured -  16 because one has testified that he was lying there injured  17 and also because we can see some of them moving - are not  18 being attended to by the policemen who are standing around  19 them, nor are they being attended to by anybody else. I  20 have to say it the way I said it originally, do you agree -  21 CHAIRPERSON: Or you could come to the  22 question. As you can see this, ask the question.  23 MR MPOFU: Ja.  24 CHAIRPERSON: Her answer is, I can't see  25 that, or she answers the question directly.</p>

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1 MR MPOFU: Ja, so do you agree, so the  
 2 difference is now do you agree at the end, not at the  
 3 beginning?  
 4 CHAIRPERSON: You have got a question  
 5 your building up to. I don't know what it is. But so, the  
 6 way you do it, is you say as you can see this, boom, then  
 7 you ask your question, and then you don't have to go  
 8 through the tedious business, can you see this, do you  
 9 agree -  
 10 MR MPOFU: The record will show you, I  
 11 said what the Chair is advising me to say is exactly what I  
 12 said.  
 13 CHAIRPERSON: Alright, let's carry on.  
 14 MR MPOFU: Do you agree with me, General?  
 15 GENERAL PHIYEGA: I will not agree  
 16 because I said to you there are context issues. I don't  
 17 know whether some, you spoke about somebody calling. When  
 18 did that person call? So to say they are doing nothing, do  
 19 I agree, it's too straightforward and it doesn't take all  
 20 the issues you have mentioned into account. I said the  
 21 context is important.  
 22 MR MPOFU: I will move on. I'm going to  
 23 argue once again that you are evading or failing to answer  
 24 a simple question about what everybody can observe,  
 25 whatever the explanation might be, and you are right, there

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1 might be a thousand explanations. I'm simply asking you  
 2 about what you observe or what you don't observe. But  
 3 let's move on, so that we don't waste time. I just want to  
 4 relate this scene that we have just seen to a situation  
 5 which you may or may not be aware of, where there were  
 6 policemen injured on the 13th, at least one of them,  
 7 Lieutenant Baloyi, and there was one chopper, not four, and  
 8 where they rushed to assist and lift that injured person,  
 9 correctly so, to the hospital; here we had four choppers  
 10 circling and there were people severely injured and nothing  
 11 was done. I'm just, I know that you were briefed about the  
 12 13th, you were not there as well, but just, if that  
 13 happened, would you agree that that is different treatment  
 14 for different folks?  
 15 GENERAL PHIYEGA: I'm sure that record  
 16 can be put straight by some of the generals that are coming  
 17 to talk to you, because my information is that there were  
 18 other people who were airlifted to other hospitals even on  
 19 the 16th.  
 20 [14:24] MR MPOFU: Yes, that happened much later  
 21 than what we are discussing now. I am saying to you that  
 22 at the point of what you've observed on the video, while  
 23 there are choppers circling up there, none of them saw the  
 24 situation with enough emergency kind of eyes to do what  
 25 they had done on the 13th, even though this time the injured

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1 were much more – at least 30 times more than on the 13th.  
 2 CHAIRPERSON: Mr Mpofo, I'm not sure  
 3 that's a fair question, if the comparison is fair. I tell  
 4 you why, so you can deal with it if I'm wrong. If you look  
 5 at slide 142 of exhibit L, you'll see that on the 16th of  
 6 August in forward holding area 1, there were ambulances and  
 7 there were also five – it doesn't say how many, but there  
 8 were ambulances, and there were five medical personnel.  
 9 Now, on the 13th, in the field by the railway line on the  
 10 way to the Karee shaft, there were no ambulances, there  
 11 were no medical personnel, and so if there was an emergency  
 12 and someone required treatment, the only way to deal with  
 13 it was for the person to be put into the helicopter and  
 14 taken to hospital. On this occasion, in view of the fact  
 15 that there were ambulances at forward holding area 1 and  
 16 medical personnel there, the same degree of urgency which  
 17 arose on the 13th clearly didn't arise. So I think that you  
 18 can ask the question, but you've got to put it fully by  
 19 explaining what I've explained.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: - which you don't have to  
 22 do, because the witness already heard me.  
 23 MR MPOFU: Fair enough, thank you,  
 24 Chairperson. Well, let's put it this way; would you agree  
 25 that if there's someone who has been severely shot and

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1 might be dying, and the means of rushing them as soon as  
 2 possible to hospital, it would be strange to, when those  
 3 means are available, meaning the choppers are available, to  
 4 wait for some ambulance at forward area 1, which was 1.5  
 5 kilometres away, before that person, who is probably dying,  
 6 is assisted.  
 7 GENERAL PHIYEGA: Not having the benefit  
 8 of timing, I would still just say the critically injured,  
 9 if the means is there, should be airlifted and I have  
 10 information that people were airlifted and taken to  
 11 hospital.  
 12 MR MPOFU: Yes, well, I've said to you  
 13 that that happened subsequently. Do you agree that the  
 14 ones you see on the photo were not airlifted, but lying on  
 15 the ground?  
 16 GENERAL PHIYEGA: Advocate, I've said the  
 17 context and the benefit of time is what I don't have, and  
 18 those that were at the operations would be able to deal  
 19 with that, but what I can say is that I know that the  
 20 critical – some of the critical people were airlifted.  
 21 MR MPOFU: As part of their training, are  
 22 the police expected, at the very least, to assist with  
 23 first aid assistance to people who are injured, seeing that  
 24 they had already tampered with the scene anyway?  
 25 CHAIRPERSON: Mr Semenya?

<p style="text-align: right;">Page 10471</p> <p>1 MR SEMENYA SC: Chair, the other comment 2 to the question is completely unfounded. 3 MR MPOFU: Okay, I'll leave the last 4 part. As part of their training and as part of this 5 compassionate and caring service, are the police expected 6 to assist injured people with first aid or any other such 7 assistance, while waiting for the more professional 8 assistance? 9 GENERAL PHIYEGA: I think I would like to 10 say Adv Semenya has indicated that they will call somebody 11 who will come and testify how such issues are treated, and 12 I'd like to leave that question to that environment. 13 MR MPOFU: General, I'm sorry, I cannot 14 accept that answer, and please understand where I'm coming 15 from. I've just told you that I represent, among other 16 things, Mr Magidiwana, who was lying there prostrate, who 17 might have died because of any delay, and for all I know 18 other people might have died because of the delay, so this 19 issue of a delay in assisting people is important. I'm 20 asking you not as a commander, not even as a health 21 professional, but, as I say, as a human being, would you 22 expect your policemen, who are part of a caring and 23 compassionate service, to attend somehow with first aid to 24 people who are squirming down there, rolling and are 25 obviously in pain, because they had been shot by them,</p>	<p style="text-align: right;">Page 10473</p> <p>1 GENERAL PHIYEGA: I think the question 2 you are asking me, I've answered you. I've told you, 3 Advocate, because you asked me about people who were 4 standing there, I told you that context matters. You, in 5 your own, asking me the question, asked me about the people 6 who were standing. You've also indicated to me that there 7 were calls made by the very people that you say were 8 standing there, to help some of the members. You 9 indicated, in the statement, one of the statements that I'm 10 reading, I read that those people did get help. You asked 11 about the helicopter. I tell you that I am informed that 12 there were people who were airlifted. So I don't know 13 which part of your question I haven't answered. 14 MR MPOFU: Fine, I'll leave it for 15 argument. Thank you very much. Okay, I think this is this 16 is the last segment. Can we just finish the video and then 17 play the Carte Blanche? 18 [VIDEO RECORDING PLAYED] 19 MR MPOFU: Okay, sorry, just pause. 20 Okay, just one question, General. From what you've 21 observed there, can you see that the police members are 22 still standing in the area around the bodies and that some 23 of the people on the ground are moving, indicating that 24 they were injured, but still alive – at least those that 25 were moving?</p>
<p style="text-align: right;">Page 10472</p> <p>1 before the medical staff arrive? 2 GENERAL PHIYEGA: I think, Advocate, what 3 confuses me in this line of questioning that we are going 4 through, at one level you are asking me what I think, what 5 my opinion is, which really doesn't help in terms of some 6 of these issues that are happening here. What I think is 7 not the science of policing. And at one level you ask me 8 about the protocols and whatever, and I've said to you that 9 the advocate has clearly indicated that we would like a 10 person who's trained in operations, who will tell you about 11 those protocols, to do so. What I think as a person really 12 doesn't matter. I'd like the science of policing and the 13 actual operations to inform this Commission. 14 MR MPOFU: Yes, General, you can accept 15 that I am indebted to hear that that person will be called, 16 and I will question that person, but I'll be questioning 17 that person from a different angle. That person, I will 18 not be questioning them from the point of view that that 19 person thanked the police for following the prescripts and 20 for practising the best of responsible policing. That 21 person I will be questioning for a different purpose. I'm 22 questioning you, because you are the only person who 23 thanked the police for following prescripts and for 24 practising the best of responsible policing. There's no- 25 one else. I'm asking you the question; please answer it.</p>	<p style="text-align: right;">Page 10474</p> <p>1 GENERAL PHIYEGA: I was hearing about NUM 2 and AMCU people being shot; I didn't see those pictures. 3 MR MPOFU: Yes, I won't ask for a rewind. 4 Hopefully there'll be more movement. Let's just play on. 5 Can you now watch it with that in mind? 6 [VIDEO RECORDING PLAYED] 7 MR MPOFU: Okay, stop. Again, one 8 question, and this might – the relevance of this might come 9 later when we speak to other witnesses, but do you, would 10 you agree that at least as at the time of arrival of the 11 Mounted Unit – I think that's what it's called, the people 12 on horses – the situation apropos the people on the ground 13 and the policemen standing around them and them not being 14 attended was still prevailing? 15 GENERAL PHIYEGA: I would want to say, 16 Advocate, these police that you see here are from different 17 units, and they play different roles. The Mounted Unit 18 plays a different role, the Dog Unit play a different role, 19 and I believe those that are in operation will explain 20 precisely why those that are doing whatever, why the 21 Mounted Unit is coming in, why the Dog Unit is coming in, 22 timing issues, context, and I believe when you have that 23 explanation, probably it will answer a number of your 24 questions. 25 MR MPOFU: Yes, thank you, General, I</p>

<p style="text-align: right;">Page 10475</p> <p>1 accept that, and once again, I think you are running ahead 2 of me. I'm not at this stage suggesting that the people on 3 the horses should've gotten off and assisted the people or 4 anything like that. It's just a simple timing issue. 5 Would you agree, from what you observed that as at the time 6 of the arrival of the Mounted Unit, the people lying on the 7 ground were still not attended to and the police members 8 were still standing around them, and they were unattended, 9 yes or no? 10 GENERAL PHIYEGA: Advocate, I'll say once 11 more that what you see through your eyes and what a police 12 person would tell you what is happening there would be two 13 different things, and this is why I'm saying give them the 14 opportunity to be able to explain precisely what is 15 happening there. Those people are playing different roles. 16 MR MPOFU: General, I'm going to argue at 17 the end that you are evading this question. I know that 18 you are intelligent enough to understand that I'm not 19 asking you about the different roles that the police play 20 and so on. I've gone out of my way to explain that to you. 21 I'm asking you a simple question of whether you observed 22 from the video that the arrival of the horses, at that 23 stage the people were still lying in the same position and 24 the police were still standing in the same position. It's 25 a simple thing. If you didn't observe it, I'll play the</p>	<p style="text-align: right;">Page 10477</p> <p>1 from the video? 2 MR MPOFU: From this particular video. 3 GENERAL PHIYEGA: Perhaps this is a 4 suitable stage for us to take the tea adjournment, don't 5 you think? 6 MR MPOFU: Yes, Chairperson, it is, 7 because there is another small clip related, thank you. 8 [COMMISSION ADJOURNS COMMISSION RESUMES] 9 [15:05] CHAIRPERSON: The Commission resumes. 10 National Commissioner, you're still under oath. 11 MANGWASHI VICTORIA PHIYEGA: s.u.o. 12 CHAIRPERSON: Mr Mpofo. 13 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 14 Thank you, Chairperson. General, before I play the next 15 footage on which I'm hoping we'll spend the remaining time, 16 I just want to confirm if I'm correct that when you gave 17 your, when you addressed the media conference on the 17th, 18 you told the world - as you put it - you told South Africa 19 and the world of what had occurred, admittedly as it was 20 told to you by your commanders, but that you did not 21 qualify those statements about this having been done in 22 self-defence and so on, with these qualifications that you 23 are putting today about context and so on, correct? 24 GENERAL PHIYEGA: The sum total of what I 25 said is in that statement, because I read it as scripted.</p>
<p style="text-align: right;">Page 10476</p> <p>1 video again. 2 GENERAL PHIYEGA: And my response to you 3 is that you add an interpretation to say they were doing 4 nothing and that's the problem, because what we see, we've 5 both seen and it's common. 6 MR MPOFU: Okay, let's continue. I give 7 up. 8 [14:44] [VIDEO RECORDING PLAYED] 9 MR MPOFU: Okay. Okay, one more 10 question. Did you see that, at this stage now after 11 everything that we have seen, that the videos portray the 12 arrival of the medical personnel and that there is writing 13 to that effect on the video as well? 14 GENERAL PHIYEGA: Yes, I see. 15 [VIDEO RECORDING PLAYED] 16 MR MPOFU: Okay, Chairperson, I don't - 17 there is nothing more of significance. General, you 18 observed the, what I might call the casual arrival, slow 19 arrival of the emergency vehicles. No sirens. No big 20 rush. Apart from that, that's the - 21 GENERAL PHIYEGA: I have noted the 22 arrival, but I also note that the terrain there is 23 something else, and again, Advocate, I would say let's take 24 that into account. 25 CHAIRPERSON: Is this where we move away</p>	<p style="text-align: right;">Page 10478</p> <p>1 MR MPOFU: Okay, well I'll take that as a 2 yes again, because that, what I have put to you does not 3 appear in the script. Okay, now can we play the next clip? 4 Chairperson, I'm almost certain that this is not an exhibit 5 and I don't have the technical pathway, but it's on the 6 SAPS hard drive of the 16th of August 2012 and it's a Carte 7 Blanche video. We'll get the technical pathway from Ms 8 Pillay. 9 MS PILLAY: Chair, this isn't an exhibit, 10 so it would be FFF28. 11 CHAIRPERSON: So designated. I've simply 12 described it in my notes as "Video clip Carte Blanche," but 13 the relevant other information will be provided later. 14 MR MPOFU: Yes, thanks, thank you, 15 Chairperson. Thank you. 16 [VIDEO RECORDING PLAYED] 17 MR MPOFU: Okay, just where it is paused, 18 can you observe, General, once again, somebody's foot - I'm 19 going to assume that it's a boot but let's say foot, so 20 that we are on neutral zone - being placed on the face of 21 the person wearing the red T-shirt. Sorry, I think they're 22 trying to pause it at the right place. Okay, I think let's 23 play, this is the kind of thing I want you to look out for, 24 we'll play the videos to save time and then we'll, I'll ask 25 you one or two questions. Okay, carry on.</p>

<p style="text-align: right;">Page 10479</p> <p>1 [VIDEO RECORDING PLAYED]  2 MR MPOFU: Thank you, Chairperson, we'll  3 deal with this video in more detail, I think, at a later  4 stage. At this stage, General, I just want to ask you if  5 you observed the policemen moving into the area where the  6 injured persons and pointing firearms at them.  7 GENERAL PHIYEGA: Yes, I do.  8 MR MPOFU: Okay, and the, as it were,  9 then an unsuccessful attempt to show the area of the foot  10 that I was referring to, but in the earlier still photo,  11 did you see the, what I was referring to as the foot on the  12 person with the red T-shirt or not? If you haven't, we'll  13 deal with it later.  14 GENERAL PHIYEGA: Maybe when it's clearer  15 I'll be able to see it better.  16 MR MPOFU: No, that's fair enough. I  17 think it's clearer to me because I have seen it many times,  18 so we'll just play it again. Right, now there is evidence  19 - to save time I won't play a video for this, unless if  20 it's necessary. There is evidence, which is common cause  21 because it was confirmed by Captain Mohlaki when I put  22 questions to him, that at scene 2 some of the members of  23 the police could be heard on the video laughing loudly  24 around the dead bodies, and Captain Mohlaki said he didn't  25 know why they were laughing, but at least he confirmed the</p>	<p style="text-align: right;">Page 10481</p> <p>1 laughter into them. Human emotions are very diverse and  2 therefore I can't judge out of a vacuum. On the issue of  3 pictures, again you say it's a statement that was made. I  4 haven't seen anything that tells me that there were people  5 just going around willy-nilly, happy, taking pictures of  6 the dead.  7 MR MPOFU: We've also discovered in some  8 of the material that has been transcribed by the evidence  9 leaders - and I'm raising this deliberately so that if  10 there's any difference between you and I, we can deal with  11 it on Monday. In some of the material that has been  12 transcribed by the evidence leaders, I will quote to you  13 part of what has been transcribed, but there's also  14 additional material which was not transcribed, presumably  15 because it was spoken in the vernacular, specifically in  16 Sesotho, which I know you understand. I'm sorry, I don't  17 have it with me now, but it's quite simple. I promise you  18 I'll give you, I think it's GGG36. The part that I want to  19 quote - and you'll forgive me, I might not be quoting it  20 verbatim - is where one of the people says, "It is this  21 'muti'," and he uses a four-letter word, S-H-I-T, "it  22 doesn't work here, Baba." And then at that stage the  23 Sesotho-speaking person says "Kena, kena, kemotobela" which  24 I'm sure you can agree can be loosely translated as, "It  25 was me, it was me, I've blown him apart," or words to that</p>
<p style="text-align: right;">Page 10480</p> <p>1 laughter. Assuming that to be so, would you regard that  2 conduct as responsible, best of responsible policing? I'm  3 sorry, before you answer it, I know it's a long question.  4 Also bear in mind that there's evidence from Mr Magidiwana,  5 which was undisputed, that the members of the police, while  6 he was lying down there, were laughing and taking pictures  7 with their cellular phones, so it covers both scene 1 and  8 scene 2.  9 GENERAL PHIYEGA: Advocate, I shall again  10 say sincerely, like Mohlaki I don't know what the laughter  11 was about and judging that would be inopportune for me.  12 MR MPOFU: Sorry, once again I'll ask the  13 question as follows; does that answer suggest that you can  14 conceive of circumstances under which, because of the  15 context, members of the police can be laughing near, at or  16 near a scene such as the one we witnessed in these videos,  17 and laughing and taking pictures of injured people and not  18 assisting them, that conceivably, because of the context,  19 can be justified?  20 GENERAL PHIYEGA: I again, Advocate,  21 would just say, to avoid issues of subjectivity, I really  22 do not know what the members were laughing at and I  23 wouldn't just want to assume that they were there laughing  24 at the situation. I don't know, and I don't know whether  25 somebody cracked a joke or there was something that brought</p>	<p style="text-align: right;">Page 10482</p> <p>1 effect, or "I've destroyed him." Would you agree with that  2 loose translation, or rather, if you don't, give us your  3 own? Firstly, would you agree with that loose translation,  4 and if you do, rather if you don't, give us your own; if  5 you do, is that the best of responsible policing that using  6 that kind of language or that behaviour?  7 GENERAL PHIYEGA: Advocate, what would  8 assist me really is to look at those transcripts. I'd like  9 to read them and have a considered view of the statements  10 you're mentioning. And I'm asking for that because I  11 really am avoiding just to deal with anecdotal pieces of  12 the whole piece. I want to have a full context.  13 MR MPOFU: Okay. This is the deal. I'm  14 going to read out to you the material that has already been  15 transcribed, and then I'm going to arrange for the Sesotho  16 part, which was not transcribed by the evidence leaders, I  17 will arrange that during the break you are given a copy and  18 you can listen to it at your own time. I'll arrange that  19 with your legal representatives. So for now, let's just  20 confine it to what is here. Can you please turn to GGG36?  21 I'm sorry, Chairperson, page 6 of GGG36, and you can read  22 from the beginning, from line 1. Read it aloud, please,  23 General.  24 GENERAL PHIYEGA: Oh, you want me to read  25 it?</p>

<p style="text-align: right;">Page 10483</p> <p>1 MR MPOFU: Yes, I'm sorry, I didn't make 2 it clear. 3 GENERAL PHIYEGA: Okay, thank you for the 4 homework. 5 MR MPOFU: No, this is class work, read 6 it now, please. 7 CHAIRPERSON: It's not homework, it's 8 office work. It's office – 9 GENERAL PHIYEGA: That's correct, ja, 10 it's class work. 11 MR MPOFU: It's class work, if you can 12 read it now, please, thanks. 13 GENERAL PHIYEGA: Thanks, Prof. 14 "Speaker: There's muti there. There's muti," and it's 15 inaudible. "Leave it, leave it, leave it." Ja – this is 16 another speaker – "Ja, that's a muti shit." The other 17 speaker says, "Ja." The other one says, "It doesn't work 18 here, Baba." The other one says, "Yes, stay forward, stay 19 forward." 20 MR MPOFU: Thank you. And the part that 21 you jumped is where the other speaker is inaudible, 22 correct? 23 [15:25] GENERAL PHIYEGA: I beg your pardon? 24 MR MPOFU: You jumped to the part where 25 it says "inaudible" on the other sticker. "Before, or</p>	<p style="text-align: right;">Page 10485</p> <p>1 GENERAL PHIYEGA: Yes. 2 MR MPOFU: Right, okay, I can assure you 3 we're not going back into that whole thing now. All I want 4 to, in the context of what we're discussing, you remember 5 that what Warrant-Officer Myburgh said, or rather reported 6 was said by the person who allegedly executed someone else, 7 was, there were the words, "They deserve to die." 8 GENERAL PHIYEGA: Mmm. 9 MR MPOFU: You remember that? 10 GENERAL PHIYEGA: Yes. 11 MR MPOFU: Now if that was said, then 12 would that represent the best of responsible policing, 13 compassion, caring and professional police service? 14 GENERAL PHIYEGA: I've already answered 15 that one on Myburgh because Myburgh could not tell us who 16 said so and where, and I mean you are saying if that was 17 said, again it's, I still say it was, it's a supposition. 18 MR MPOFU: General, please, you know, if 19 we continue at this pace on Monday, I'm going to appeal to 20 the Chairperson to assist me. Please just answer my 21 questions. Do you know that according to Myburgh, whoever 22 the person who said those words were, that person was a 23 policeman from NIU? 24 GENERAL PHIYEGA: Advocate, if I knew 25 that there was somebody who said that, I would have been</p>
<p style="text-align: right;">Page 10484</p> <p>1 rather after doesn't work here, Baba, there's another 2 sticker, inaudible." 3 GENERAL PHIYEGA: Yes. 4 MR MPOFU: Yes, that's the part which I 5 say is, which I said to you in Sesotho, but I don't expect 6 you to comment on that, (a), because it's not on the 7 transcript yet, and (b), because as I've said, that's the 8 homework part. I will arrange with your lawyers that you 9 listen to where the person says [African language]. 10 CHAIRPERSON: Mr Mpofo, it's half past 3, 11 just after, and in as much as you've now reached the stage 12 where effectively the witness has to listen to the piece in 13 Sesotho before she goes further, when you reach a 14 convenient stage, would you let me know and we can take the 15 adjournment? 16 MR MPOFU: Yes, Chairperson, I will. In 17 fact what I – thank you, Chairperson. I just want to put 18 one more proposition so that there's nothing new. Now 19 whatever we'll be doing is just to come back to this. You 20 remember the evidence of – or rather, yes it is evidence, 21 that's contained in the statement of Myburgh, remember 22 Myburgh, the – 23 CHAIRPERSON: Warrant-Officer. 24 MR MPOFU: Warrant-Officer Myburgh that 25 Mr Madlanga and you discussed extensively.</p>	<p style="text-align: right;">Page 10486</p> <p>1 able to answer that, but the discussion around Myburgh 2 remained inconclusive, and this is why I say it's a 3 presupposition. 4 MR MPOFU: Okay, I think we'll have to 5 take the weekend now, but I'm going to give it one more 6 try. If at the end of the day Myburgh comes here and he 7 says that he heard a member of the NIU, before shooting at 8 one of the people who were on the ground with a jersey 9 around his arm, say, and when Myburgh asked him, "What are 10 you doing?" the answer was, "They deserve to die," and if 11 the Commission accepts the evidence of Mr Myburgh, Warrant- 12 Officer Myburgh, would you say that what he witnessed, or 13 what he was, that answer that he got represents or does not 14 represent the best of responsible policing? 15 GENERAL PHIYEGA: At that point, 16 Advocate, it would not be a presupposition I'd be willing 17 to answer. 18 MR MPOFU: I'm going to take my chances. 19 I know the Chairperson doesn't want to make us comment, but 20 I must say, you are the most evasive witness I've ever had 21 to talk to – 22 CHAIRPERSON: Mr Mpofo, that's not a 23 proper thing for counsel – 24 MR MPOFU: Well, I'm going to argue that 25 –</p>

1 CHAIRPERSON: You can argue at the end of  
2 the day –

3 MR MPOFU: I will.

4 CHAIRPERSON: You don't have to tell her  
5 that now, and it's not an appropriate thing to say at this  
6 stage, but at this stage let's rather take the adjournment  
7 until 10 o'clock on Monday.

8 MR MPOFU: Yes, thank you, Chairperson,  
9 and General, I'll speak to your attorneys about the  
10 homework.

11 [COMMISSION ADJOURNED]

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