

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 67    26 MARCH 2013    PAGES 7103 TO 7228

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 26 MARCH 2013]  
 2 [09:43] CHAIRPERSON: The National Commissioner  
 3 was delayed in the traffic, which is why we're starting  
 4 late. Mr Malindi, I was going to call on you to say  
 5 something this morning.  
 6 MR MALINDI: Thank you, Chairperson.  
 7 Chairperson, I'm unable to deal with that matter  
 8 immediately. May I be permitted to deal with it as soon as  
 9 I'm able to during the course of the day?  
 10 CHAIRPERSON: Yes, certainly.  
 11 MR MALINDI: Thank you, sir.  
 12 CHAIRPERSON: National Commissioner,  
 13 you're still under oath. Mr Madlanga, I think you're still  
 14 cross-examining.  
 15 MANGWASHI VICTORIA PHIYEGA: s.u.o.  
 16 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):  
 17 Yes, Mr Chairman, thank you. Commissioner, yesterday I  
 18 took you through what I said is material or matter that may  
 19 be gleaned from material received from SAPS. Now I want to  
 20 make certain propositions to you regarding that, the matter  
 21 that I say is gleaned from the SAPS material. General,  
 22 would you say that in a situation where some of the  
 23 protesters may have been killed when some SAPS members  
 24 might have been firing in response to "friendly fire" by  
 25 other SAPS members, would you say that such a scenario

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1 represents the best of responsible policing?  
 2 GENERAL PHIYEGA: My first response would  
 3 be that I'll give you the context of that statement because  
 4 I made it. The police, in my opinion, followed the  
 5 prescripts, the protocols of what they were supposed to  
 6 follow and that statement had nothing to do with the  
 7 deaths.  
 8 MR MADLANGA SC: What did that statement  
 9 deal with or what was it concerned with?  
 10 GENERAL PHIYEGA: It meant that the  
 11 police did their work according to police plans, according  
 12 to their protocols, according to their prescripts, it did  
 13 not make reference to the deaths.  
 14 MR MADLANGA SC: What work were you  
 15 referring to?  
 16 GENERAL PHIYEGA: The policing of the  
 17 public order and the processes that were followed  
 18 throughout. I mean I needed to talk to them about that.  
 19 MR MADLANGA SC: Policing of – you say of  
 20 the public order. Are you referring to the crowd  
 21 management at Marikana?  
 22 GENERAL PHIYEGA: My talk was related to  
 23 all the work that they'd been doing in Marikana.  
 24 MR MADLANGA SC: Including all of the  
 25 killings before and up to 16 August 2012?

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1 GENERAL PHIYEGA: I presume those are  
 2 part of what was happening there but I want to underscore  
 3 this more that my statement had nothing to do with those,  
 4 with the killings.  
 5 MR MADLANGA SC: Is it not so that the  
 6 protesters who were killed on 16 August 2012 were killed as  
 7 part of the police crowd management on the 16th, if I were  
 8 to just stay focused on the 16th for now?  
 9 GENERAL PHIYEGA: Yes, they were but I  
 10 requested when I led my evidence that the whole statement  
 11 be played because to cull out that alone and not read my  
 12 statement in context, narrows the engagement.  
 13 MR MADLANGA SC: To be sure I understand  
 14 you, so you say you made that statement saying you did very  
 15 well in the crowd management at Marikana on the 16th of  
 16 August but excise from what I'm saying the killings that  
 17 you committed? Do I understand you correctly, is that what  
 18 you are – is that the answer you are giving?  
 19 GENERAL PHIYEGA: No, you do not  
 20 understand me well.  
 21 MR MADLANGA SC: What are you saying  
 22 then? Make me understand.  
 23 GENERAL PHIYEGA: I have replied to say  
 24 the statement that you mentioned did not make reference to  
 25 the deaths. It made reference to the processes, to the

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1 prescripts, to the standard operating procedures that the  
 2 police followed in doing their work. I have also said that  
 3 it, the request to play this statement in its totality when  
 4 I led my evidence was important, so that the total context  
 5 be taken into account.  
 6 MR MADLANGA SC: Commissioner, let us not  
 7 run around in circles. You say –  
 8 CHAIRPERSON: Sorry, Mr Madlanga – just  
 9 on a housekeeping basis to interrupt you before you proceed  
 10 with the point you're making. We have on our tables, on  
 11 our table, and I take it others have as well, a three page  
 12 document which is headed "General Phiyega, alright, good  
 13 morning, good morning." Am I correct in assuming that  
 14 that's a transcript of the video clip which was shown to us  
 15 when the National Commissioner gave evidence-in-chief,  
 16 which is WW6? Is that correct? As far as I'm aware, this  
 17 transcript has not got an exhibit number, so if I'm wrong  
 18 on that I'd be pleased to be corrected. If I'm not, I  
 19 think we should give it an exhibit number because I take it  
 20 it's going to be referred to in what follows in your cross-  
 21 examination.  
 22 MR MADLANGA SC: Yes. Yes, Mr Chairman,  
 23 you are quite correct. It's a transcript of WW6.  
 24 CHAIRPERSON: Of WW6?  
 25 MR MADLANGA SC: Yes.

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

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

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

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

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

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

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

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

<p style="text-align: right;">Page 7115</p> <p>1 responsible policing in relation to prescripts, in relation 2 to processes, did it add value or not add value. 3 MR MADLANGA SC: General, I'm sure you 4 remember that yesterday the Chairman quite correctly raised 5 it with you whether you accept that what Mr de Rover says 6 in his statement with regard to the radio network and all 7 that happened in connection therewith, he received that 8 information from SAPS members. Do you remember that being 9 raised by the Chairman yesterday? 10 GENERAL PHIYEGA: Yes, I do. 11 MR MADLANGA SC: And do you agree that it 12 must be so because there's nowhere else you would have 13 gotten that from? 14 GENERAL PHIYEGA: Yes, I do. 15 MR MADLANGA SC: Coming to your response 16 that it's more the relevant commander who should respond to 17 the question that I am raising, General, I am not asking 18 you about whether indeed this radio network was in the 19 state that we are told it was in. What I'm asking you is, 20 based on the facts that appear from what Mr de Rover says, 21 which facts he must have received from SAPS members – based 22 on those facts, do you continue to say that if that radio 23 system was as has been described, do you continue to say 24 that that represents the best of responsible policing? 25 GENERAL PHIYEGA: I think I have given</p>	<p style="text-align: right;">Page 7117</p> <p>1 MR SEMENYA SC: Chair, the witness has 2 said to this battery of questions, I am giving you the best 3 answer I can on that subject. How far beyond that can a 4 witness be pushed? We may not like what the answer is, we 5 will argue on the strength of that if Mr Madlanga is so 6 inclined but can a witness be pushed beyond saying, I've 7 given you the best I have? 8 CHAIRPERSON: Mr Madlanga, I – 9 MR MADLANGA SC: This is my first 10 experience – 11 CHAIRPERSON: I thought you were – just 12 stop – I was, my understanding was, the question you asked 13 was intended to elicit from the witness further elucidation 14 as to what she meant by what she was saying. Mr Madlanga – 15 sorry, Mr Semenya puts a different emphasis on it. Perhaps 16 you can rephrase your question and I can listen carefully 17 this time and make sure I don't misunderstand it and then I 18 will decide on – 19 MR MADLANGA SC: Yes – 20 CHAIRPERSON: - further argument, whether 21 you may proceed. 22 MR MADLANGA SC: Yes. Mr Chairman, 23 speaking for myself I am in the dark, completely in the 24 dark as to what territory the witness is referring to. She 25 says that if she attempts to answer the question then she</p>
<p style="text-align: right;">Page 7116</p> <p>1 the best of my answer, trying any further would take away 2 from what I believe in and what I think is the best 3 response to your question . 4 MR MADLANGA SC: Are you suggesting that 5 you do not accept that Mr de Rover was given the correct 6 facts perhaps? 7 GENERAL PHIYEGA: I have answered you to 8 say I am aware that he got the information from us and I've 9 also agreed yesterday and today and you've asked me the 10 question that you've asked me and I've given you my answer 11 and I think that's the best answer I can give. Beyond this 12 really I would be getting into a territory that is not 13 giving you what I think is the best answer to give. 14 MR MADLANGA SC: What territory is that? 15 Is that a territory best left for the commander? 16 MR SEMENYA SC: Chairperson, the witness 17 requires protection, with respect. 18 CHAIRPERSON: - about protection. He 19 wants to know what kind of protection she means, I don't 20 think there's anything wrong with that question but – 21 sorry, I'm putting it wrongly. The question he was asking 22 her was a follow-up on an answer she gave, he's tried to 23 elucidate the meaning of it, as I understood the question. 24 If I understood it correctly, it's in order. If I didn't 25 understand it correctly, you'd better address me further.</p>	<p style="text-align: right;">Page 7118</p> <p>1 will stray into territory, I forget what territory she – 2 and what I was doing was to try to understand what 3 territory she's talking about. Perhaps my learned friend 4 Mr Semenya knows what territory she's talking about, I 5 don't and I'm seeking clarity on that and so far as I'm 6 concerned, so far as I'm concerned this witness has still 7 not answered the question but I will start by following up 8 on the clarification that I'm seeking, Mr Chairman. 9 CHAIRPERSON: I think to seek 10 clarification on the answer that was given is in order and 11 I allow that question, but there is force, of course, in 12 what Mr Semenya says also and that is if the witness says 13 something that you are going – which you say you will have 14 to show by argument to be incorrect, there isn't much point 15 in rehearsing the argument with her now. There are certain 16 – sometimes a witness will give an answer and that's the 17 answer. If the answer is wrong, it's a matter for argument 18 later. There I – but having said that, I'll allow you to 19 proceed with your question seeking elucidation as to what 20 is meant. 21 MR MADLANGA SC: Thank you, Mr Chairman. 22 I don't mean to be disrespectful but I disagree with what 23 you say. The rule about you stopping once you have been 24 given a response, I know that to apply when one is cross- 25 examining on matters that relate to credibility and that is</p>

<p style="text-align: right;">Page 7119</p> <p>1 not what I'm about here. If – may I continue, Mr Chairman?  2 Cross-examination is exactly meant to try to dislodge a  3 witness from a position that the cross-examiner believes  4 the witness should be dislodged from and until and unless  5 it shown why and how that attempt at dislodging the witness  6 from that position, I see nothing wrong with – yes, of  7 course one cannot, there are limits, one cannot do it ad  8 nauseam and at this stage I was nowhere near doing it ad  9 nauseam.</p> <p>10 CHAIRPERSON: Well, I have to give –  11 MR MADLANGA SC: This was the first  12 answer, this was the first answer to that question and the  13 witness gave what I daresay was in fact an evasive response  14 to my question.</p> <p>15 CHAIRPERSON: I haven't yet given a  16 ruling adverse to you, so you don't have to get excited and  17 address me further on the point. I've said I'll allow you  18 to ask a question by way of elucidation. The only point I  19 made was, a point is sometimes reached where further cross-  20 examination on a particular point takes the matter no  21 further and it can rather be left over for argument.  22 Whether that stage has yet been reached is a matter upon  23 which I've not yet given a decision and so I suggest you  24 proceed until you are faced with an adverse ruling or an  25 objection which would lead to an adverse ruling, in which</p>	<p style="text-align: right;">Page 7121</p> <p>1 else within SAPS, says that the analogue radio network of  2 SAPS was in such a state that it made it impossible for the  3 overall commander to make a crucial call which was to halt  4 the operation after the killings at scene 1. Now, based on  5 those facts that are stated – and not asking you to comment  6 on them in the sense of was it so or not so, was the radio  7 network indeed malfunctioning, I'm not asking you about  8 that. I'm saying accepting what Mr de Rover says, based on  9 what SAPS itself has told him, would you say that a radio  10 network that malfunctioned in that serious manner in a huge  11 operation of that manner, would you say that that  12 represents the best of responsible policing?</p> <p>13 GENERAL PHIYEGA: I'm not able to give  14 that judgment because, a) I have said the commander will  15 talk about the radio and 2), de Rover doesn't listen to us  16 and regurgitate what you are saying. He's an expert, he  17 must come and talk for his facts. On that basis I still  18 say the answer that I've given you is based on those issues  19 because I cannot answer for those two people and making an  20 inference and interpretation of that would be wrong of me.  21 I would be very remiss of my responsibility.</p> <p>22 MR MADLANGA SC: I will take you back to  23 paragraph 13, 1-3 of Lieutenant-Colonel Gaffley's statement  24 which I read to you yesterday. That is FFF10,  25 Commissioners. Again, National Commissioner, would you say</p>
<p style="text-align: right;">Page 7120</p> <p>1 case the matter can be dealt with fully. It may not – it  2 may perhaps not be necessary for us to do that but please  3 proceed with your cross-examination on the lines I've  4 indicated.</p> <p>5 MR MADLANGA SC: General, you referred to  6 some territory that you do not want to stray into. What  7 territory is that?</p> <p>8 GENERAL PHIYEGA: I'll give you two parts  9 of my question. I spoke about the radios and all those and  10 I've said that's an area that I think the commander should  11 come and ask and that's the territory I'm referring to in  12 my second part of the answer.</p> <p>13 MR MADLANGA SC: And about the commander,  14 are you talking about the commander coming here to address  15 whether or not there was indeed a malfunction with the  16 radio network or what exactly are we talking about in that  17 regard?</p> <p>18 GENERAL PHIYEGA: Yes, because you were  19 asking me a question in relation to that.</p> <p>20 MR MADLANGA SC: I'm not asking you about  21 whether or not there was in fact a malfunction, I'm not  22 asking you about that. Therefore your response about the  23 commander being the person suited to address that does not  24 come into the equation. This is what I'm asking you. Mr  25 de Rover, possibly informed by that commander or by whoever</p>	<p style="text-align: right;">Page 7122</p> <p>1 that in a situation where, according to Lieutenant-Colonel  2 Gaffley, SAPS members who were firing shots from different  3 directions could even have shot each other, would you say  4 that such a situation represents the best of responsible  5 policing?</p> <p>6 GENERAL PHIYEGA: I have answered you  7 yesterday on the very same question, indicating that the  8 statement of Gaffley does make reference to the fact that  9 there were people who were shooting who he could not  10 identify and that's where we discussed quite at length, the  11 "may" answer that I gave you yesterday and I still find it,  12 it's still the same facts. I'm not able to change my  13 position. I'm still saying may, with "may" underscored  14 because there are possibilities both ways.</p> <p>15 MR MADLANGA SC: Just to make sure I  16 understand you, so to you it would still have represented  17 responsible policing even if some of the SAPS members had,  18 as a matter of fact, shot other SAPS members, injured and  19 even possibly killed them. Would that still, according to  20 you, have represented responsible policing?</p> <p>21 GENERAL PHIYEGA: Because it is a  22 presupposition and particularly because of that "may," I'm  23 not able to give you a definite answer on that one and I  24 think it would be irresponsible of me to do so.</p> <p>25 MR MADLANGA SC: It's not a</p>

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

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

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

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

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1 injuries to people and loss of lives.”

2 MR MADLANGA SC: Success of the actions,

3 that's an obvious reference to actions of SAPS, not so?

4 GENERAL PHIYEGA: Yes.

5 MR MADLANGA SC: And because this is

6 about crowd management, this would be about the success of

7 a crowd management operation, not so?

8 GENERAL PHIYEGA: Yes.

9 MR MADLANGA SC: And as this says, that

10 success is measured to cost, damage to property, injuries

11 to people and loss of life.

12 GENERAL PHIYEGA: Yes.

13 MR MADLANGA SC: On 16 August 2012 we do

14 know that more than 70 people were injured, 34 were killed.

15 I want you, based on what we have read here, to make a

16 judgment and tell this Commission whether, based on SAPS's

17 own test set out in this paragraph, you would say that the

18 operation that resulted in more than 70 people being

19 injured and 34 being killed, would you say the operation

20 was a success?

21 GENERAL PHIYEGA: I think I'd need to be

22 responsible in answering you. If we look at the section

23 you're referring to, it would help us to read the entire

24 section on execution because I've already alluded to the

25 fact that I think we had a good plan, the plan was

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1 disrupted. And it is important therefore that when I

2 answer 3A, I take all those issues into context because

3 your pre-empted success is then disrupted. So it would be

4 narrow of me to just look at that and use it to read into

5 the outcome. The outcome was unintended because of the

6 disruption.

7 MR MADLANGA SC: Taking into account all

8 of the other factors that you referred to and you say are

9 also contained in paragraph, the rest of paragraph 11,

10 taking all of those into account and not just focusing on

11 clause 11.3A that I referred you to, I'm trying to make

12 sure that we are on the same plane, P-L-A-I-N or P-L-A-N-E,

13 I'm not sure.

14 CHAIRPERSON: Both apply.

15 MR MADLANGA SC: Thank you, Mr Chairman.

16 Taking all of that into account and obviously you cannot

17 disregard SAPS's own measure of success which is set out in

18 clear terms, would you say that the operation was a

19 success?

20 GENERAL PHIYEGA: In keeping with what

21 you explained as success, which included the plan, which

22 included the process, which included the outcome, I will

23 again say the plan was good, the plan was disrupted, the

24 outcome was unintended and you cannot have a very clean,

25 purified definition of success, it will be a relative

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1 definition of success. And as I say, the plan was good,

2 the plan was disrupted and the outcome was unintended.

3 CHAIRPERSON: National Commissioner,

4 wouldn't it be perhaps appropriate to say that regard being

5 had to the loss of life and the injuries and so on, it

6 can't be said that the operation was a complete success but

7 you would, of course, wish to add that insofar as it fell

8 short of a success, this was due to factors which

9 presumably you would say were beyond your, police, the

10 control of the police or unforeseeable or something of that

11 kind. Whether those points are correct would be a matter

12 for us to decide but I think looking objectively, it's

13 difficult to say the operation was a success but what would

14 be important to look at is why it wasn't a success, can the

15 police be blamed for the shortcomings as far as success

16 were concerned and that's obviously a wider question which

17 the Commission is concerned with. Would that not be a fair

18 summary of the –

19 GENERAL PHIYEGA: I think that's a fair

20 summary, Judge, because that disruption bothers me because

21 it really interferes with a definition of success.

22 CHAIRPERSON: Mr Madlanga, may I ask you,

23 have you finished with Colonel Gaffley's statement in

24 relation to the question of – either the question of the

25 best of responsible, professional policing or whatever the

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1 phrase was, or this question as to success, because if you

2 have finished with it there's a question I'd like to ask

3 but I don't want to ask a question that you're intending to

4 ask later.

5 MR MADLANGA SC: In fact what I forgot,

6 not only on the Gaffley issue but I was not going to ask a

7 question focusing on it but what I had intended was to –

8 and I forgot about it – was to indicate to her something

9 that we will argue or what we will argue, based on – and I

10 want to put it to her, I want to put it to her before I

11 come back to the question of success.

12 CHAIRPERSON: Yes, I was going to ask

13 her, if you didn't, about paragraphs 14 and 15 in

14 particular, the first part of 15. 14 and the first

15 sentence really of 15 seem to me here relevant in the

16 context with which you're busy but if you're going to ask

17 those questions then I won't do so.

18 MR MADLANGA SC: I was not going to ask

19 them, Mr Chairman. May I just perhaps make the proposition

20 I was going to make and then I'll leave it to the Chairman

21 to raise the issue?

22 CHAIRPERSON: Yes, do that.

23 MR MADLANGA SC: Thank you. National

24 Commissioner, my apologies for taking you back to the

25 subject that I dealt with at the beginning of the day



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

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

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

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

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1 heard, the cease fire that obviously wouldn't be the best  
2 responsible policing either.

3 GENERAL PHIYEGA: I would say probably  
4 the command - you see Judge I don't know what they shot,  
5 you know when they say cease fire it stops immediately or  
6 something still goes and I'm the wrong person to be asked  
7 that, I'm sure the commander can tell how it works whether  
8 you know this one that Gaffley is referring to is a normal  
9 process, dying down and hearing one or two and stopping, I  
10 can't talk to that.

11 CHAIRPERSON: When Gaffley comes I'm sure  
12 we can ask him those questions. But I understand if  
13 Gaffley says it was the people to whom the command had been  
14 addressed who went on firing and they could have stopped  
15 firing you don't seek to contend that that was the best of  
16 responsible policing because obviously it wasn't. That's  
17 fair isn't it?

18 GENERAL PHIYEGA: Yes. Sorry if I may  
19 just add this one to say if he could also say which ones  
20 because he refers to people he's not seen.

21 MR SEMENYA SC: Chairperson, for the  
22 record we intend to call an expert De Rover to explain  
23 empirically how that happens in multiple shooting  
24 incidents. National Commissioner, on 13 the crowd  
25 management operation that was conducted on 13 August 2012

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1 there five people died, three of them presumably being  
2 protestors and two being members of the South African  
3 Police Service.

4 CHAIRPERSON: I don't know that what  
5 you're saying necessarily applies to the third civilian, so  
6 it might be advisable, it's not vital for the point that  
7 you're making -

8 MR MADLANGA SC: Say civilians, it's  
9 safer to just say civilians.

10 CHAIRPERSON: There's doubt as I  
11 understand it as to whether the third civilian, he was  
12 found dead in front of the shack that we saw at inspection,  
13 was in fact one of the strikers.

14 MR MADLANGA SC: Thank you for that, Mr  
15 Chairman, thank you for that.

16 MR MPOFU: Chairperson, sorry I don't want to  
17 interrupt but that is a version of the police in terms of  
18 Exhibit L, that it was one of the protestors.

19 CHAIRPERSON: No, but it was already - I  
20 think we mentioned the fact that there was doubt on that  
21 one.

22 MR MPOFU: Thanks, Chair.

23 CHAIRPERSON: I don't want to hold things  
24 up but I didn't want us to proceed on what might turn out  
25 to be a partially incorrect premise.

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1 MR MADLANGA SC: Thank you, thank you for  
2 the correction, Mr Chairman. Three of the people being  
3 civilians and two being members of SAPS, so a total of five  
4 people dead. Would you say that that operation was a  
5 success?

6 GENERAL PHIYENGA: Again I would request  
7 to assist me in your definition of success.

8 MR MADLANGA SC: The same as before,  
9 General, this is ground that we traversed for quite a while  
10 around the operation on 16 August 2012 and indeed success  
11 as defined in the paragraph that I referred you to of  
12 Standing Order General 262.

13 GENERAL PHIYEGA: If it is the same  
14 answer, it's the same to say I do believe that the police  
15 in terms of what they did, what they planned, how they  
16 engaged, how they negotiated, all those processes and how  
17 they tried to assist those members to move towards the  
18 koppie, that was well done.

19 MR MADLANGA SC: Again, you refer to a  
20 plan, were you told that there was a plan or that a plan  
21 had been put together for the operation of the 13th?

22 GENERAL PHIYEGA: Just a sentence ago you  
23 referred to 262, I'm taking 262 into account to say - how  
24 police do their work in such circumstances. If I look at  
25 that execution they would have negotiated, maybe I should

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1 go through it. They would have negotiated, they would have  
2 spoken and the video does show that, that they were  
3 engaging with people who were meeting, who wanted to move,  
4 who were armed, who even refused to lay down their arms but  
5 they still continued to walk them towards where they were  
6 supposed to go. And I'm sure those who are going to talk,  
7 having been on the ground would explain that better because  
8 I think somewhere there's a disruption and the outcome is  
9 also unintended. It is almost like the one of the 16th.  
10 And therefore the definition of success becomes very  
11 relative and difficult to make.

12 MR MADLANGA SC: General, that long  
13 response does not answer my question. In response or your  
14 response that preceded this last one that you've just given  
15 made reference to a plan on the day, that is 13 August  
16 2012. What my question is were you told that a plan had  
17 been put together for the crowd management of operation of  
18 13 August 2012? Were you told that a plan had been put  
19 together for that operation?

20 GENERAL PHIYEGA: No.

21 MR MADLANGA SC: So are you simply making  
22 an assumption that there must have been a plan?

23 GENERAL PHIYEGA: I'm making no  
24 assumption. I have said to you that standing order 262 as  
25 you had talked the execution and I listened to what you're

<p style="text-align: right;">Page 7139</p> <p>1 saying about the 13th, if I look at that I would say there  2 would have been a process or some way of dealing with all  3 those issues that are raised there and I am also saying to  4 you that the person who did that will be able to answer you  5 more specifically on the details and nitty gritty of that.  6 And all I was saying was that you know the success as you  7 say you were using the old definition that you've given me,  8 I was saying that's what was done there and I think there  9 were negotiations. We saw people talking to each other, we  10 saw them walking people, we saw them, something else then  11 happened and the outcome is something very different.  12 MR MADLANGA SC: You keep - in response  13 to my question around the plan you keep referring to what  14 Standing Order General 262 says. Are you suggesting that  15 you would have expected the police to act in accordance  16 with Standing Order 262? I'm just trying to understand  17 you, I don't.  18 GENERAL PHIYEGA: Let me start off by  19 saying the events of the 13th we've all seen on the screen.  20 The same events are there in our presentation. My response  21 to you is when you asked me whether it was a success, I was  22 not at that scene, the response I'm giving you is based on  23 my observation on what is on our report, on what we've all  24 seen on the screen. You further assisted me by saying I  25 have defined success to you to mean what I have said when</p>	<p style="text-align: right;">Page 7141</p> <p>1 it's appropriate.  2 MR MADLANGA SC: Perhaps let's take the  3 adjournment, Chair.  4 CHAIRPERSON: We'll take the adjournment  5 at this stage.  6 [COMMISSION ADJOURNS COMMISSION RESUMES]  7 [11:31] CHAIRPERSON: The commission resumes.  8 You're still under, National Commissioner. Are we now  9 going to get the brief summary on what happened on the 13th?  10 MR MADLANGA SC: Thank you yes, yes Mr  11 Chairman. National Commissioner, I'm just going to refer  12 to what I want to call the skirmish and that is what I want  13 to give a brief description of. We have observed video  14 footage of what happened on the 13th and part of what we  15 see in that footage is a stage where you see smoke which I  16 assume is tear smoke and you also notice what appears to be  17 something dropping on the ground. I do not want to venture  18 and suggest what that is but it may well be a stun grenade  19 or two and after that you then see people moving in all  20 directions, some even running and there's a lot of smoke  21 and thereafter you then see some of the people that died on  22 the day. So what I'm referring to as the skirmish is that  23 scenario that I've just described. Were you told when you  24 received your briefing on 13 August 2012 what it is exactly  25 that triggered that skirmish?</p>
<p style="text-align: right;">Page 7140</p> <p>1 we were dealing with the 16th. Based on what I've said you  2 know in terms of what we've seen on TV, what we have seen  3 in our report I am saying there were processes that there  4 were negotiations, people talking to each other, people who  5 refused to put their arms down, people who were walked away  6 and I've said from a process point of view something  7 happened and I said also like the previous question the  8 outcome was unintended and therefore it is difficult for  9 one to say in categorical terms that you are asking whether  10 it was a success or not. It remains relative.  11 MR MADLANGA SC: As I understand you did  12 attend at Marikana on 13th August 2012, correct?  13 GENERAL PHIYEGA: Yes I was here in  14 Marikana on the 13th in the evening.  15 MR MADLANGA SC: Let me just briefly  16 define the unfortunate scene on the day, the 13th August  17 2012.  18 CHAIRPERSON: Mr Madlanga, forgive my  19 interrupting you, you say you're going to do it briefly but  20 I'm not sure, to be fair, knowing a little bit of what  21 happened on the 13th on the evidence we've had so far that  22 it's being done with the kind of brevity that one would  23 desire at 11 o'clock but if you can do it with the  24 appropriate brevity please proceed, if you can't then maybe  25 we must take the adjournment at this stage. Tell me if</p>	<p style="text-align: right;">Page 7142</p> <p>1 GENERAL PHIYEGA: You refer to a skirmish  2 and I would not be in a position to talk about - I know I  3 saw people sitting, people being spoken to and that's what  4 I saw on the video and that is also what I've been briefed  5 on to say. They came, they squatted, they was that  6 engagement, there was negotiation for them to put things  7 down. They needed to move, they were being moved to the  8 mountain. The skirmish and all those issues I really  9 cannot attest to talk to, I think I would be interpreting  10 things that I don't understand.  11 MR MADLANGA SC: I put it in that fashion  12 because I proceeded on the assumption that you would have  13 seen this on the footage as well but let me phrase the  14 question differently General. Were you told during the  15 briefing of 13 August 2012 what it is exactly that  16 triggered the events that resulted in five people being  17 killed? What it is exactly, at the exact point that the  18 events commenced resulting in the death of the five people,  19 were you told exactly what it is that triggered that?  20 GENERAL PHIYEGA: What I've been told is  21 that there was a group of armed protestors. The requests  22 were that they put their arms down, it appears there was an  23 agreement on that and I was reported - the report that was  24 given to me was also that there were some extended  25 negotiation around that. I also see those negotiations on</p>

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

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

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

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

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

3 GENERAL PHIYEGA: Yes.

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

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

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

18 GENERAL PHIYEGA: Yes.

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

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

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

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

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

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

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

25 MR MADLANGA SC: In your response before

<p style="text-align: right;">Page 7147</p> <p>1 this last one you said that you were in a position to take 2 the decisions that you took, so you were actually referring 3 to decisions that you took and not so much the question of 4 you being suited or not being suited to take decisions. 5 What I would like you to tell the Commission is what 6 decisions are you referring to? Just to be sure and you 7 said, you said you had people in Marikana and it was in 8 that context that you said and you took decision, it was in 9 the context of what was happening in Marikana. So what 10 decisions did you take in relation to what was happening in 11 Marikana? 12 GENERAL PHIYEGA: Remember I was 13 responding to your question about decisions. I was just - 14 you were talking about decisions in a generic perspective 15 and I was responding to tell you about my role, how I take 16 decisions, who I work with and what is happening and I 17 didn't mention decisions before you mentioned it. You 18 mentioned it and I was responding on the basis of that, so 19 I wasn't talking of any particular decision. 20 MR MADLANGA SC: Let me be direct then. 21 Did you take any decisions in respect of the crowd 22 management issues in Marikana starting from the time the 23 protests commenced in Marikana? 24 GENERAL PHIYEGA: Yes, there are. 25 MR MADLANGA SC: Can you tell us what</p>	<p style="text-align: right;">Page 7149</p> <p>1 that I'm supposed to do where it requires my decision 2 making, I would do similar such. 3 MR MADLANGA SC: Is it correct, and I'm 4 basing this on my understanding, just tell me if it's not 5 correct or if you do not know, is it correct that the 6 experience or expertise of General Mbombo, the Provincial 7 Commissioner, is in finance management or financial 8 management? 9 GENERAL PHIYEGA: General Mbombo is the 10 Provincial Commissioner of North-West. Like me, she's a 11 strategic general leader of a province such as North-West. 12 What you see in the National Commissioner and what you see 13 in a Provincial Commissioner is a microcosm of the macro 14 roles that I play and she is a strategic leader of this 15 province. And in spite of her being a police person, you 16 need to have general management skills in addition to any 17 other skills that you may be having, so that's the role she 18 plays here. Even the powers that she has are related to 19 that. 20 MR MADLANGA SC: But is it so, is it so 21 that within SAPS what she has done the most or what she has 22 expertise or experience in, by and large, is in financial 23 management. Is that so or not? 24 GENERAL PHIYEGA: General - 25 MR MADLANGA SC: By that I am by no means</p>
<p style="text-align: right;">Page 7148</p> <p>1 those are? 2 GENERAL PHIYEGA: I think what I can 3 remember, I mean the issue of capacity, I had to talk to 4 the other leaders in SAPS to say police whatever capacity 5 is required to assist the people in Marikana. That's a 6 decision. 7 [11:51] MR MADLANGA SC: Any other? 8 GENERAL PHIYEGA: A decision to look at 9 documents that we were producing, for instance the internal 10 communications that we sent, the statement that I gave to 11 the public, those are part of that. 12 MR MADLANGA SC: Any other? 13 GENERAL PHIYEGA: Resource mobilisation 14 funds, why, to ensure that the people are receiving 15 resources to be able to operate here because as you know 16 it's not Marikana police that were doing that, it was a 17 special joint - 18 MR MADLANGA SC: To avoid me saying any 19 other, can you just give us the comprehensive list of all 20 the decisions you took, besides those you've already 21 mentioned? 22 GENERAL PHIYEGA: I gave you examples 23 because really, I think I would be able to go sit down and 24 actually say, when we say decisions, what else did I do, 25 what else did I do, but ordinarily all strategic decisions</p>	<p style="text-align: right;">Page 7150</p> <p>1 detracting from the other attributes that you have 2 explained or described. 3 GENERAL PHIYEGA: What I know is that 4 General Mbombo is a police and she's a general manager. 5 MR MADLANGA SC: Do you know her to have 6 any expertise - I'm not asking about the support system 7 that she may have in this regard - do you know her to have 8 any expertise in crowd management? 9 GENERAL PHIYEGA: I said she's a police. 10 MR MADLANGA SC: General, there is the 11 public order policing where I assume expertise in public or 12 crowd management resorts and I take that to mean that it is 13 not each and every police person who has expertise in crowd 14 management. Now my question is, do you know General Mbombo 15 to have any expertise in crowd management? 16 GENERAL PHIYEGA: Maybe let me not do an 17 injustice to her. Perhaps what we should call for is for 18 her CV and also for her to talk about her own experience. 19 CHAIRPERSON: I think the question is 20 directed to what you know. 21 GENERAL PHIYEGA: Mm. 22 CHAIRPERSON: Whether you know whether 23 she has that expertise. I understand if we are going to 24 investigate the question whether, as a fact, she has such 25 expertise, we'd have to do the kinds of things you suggest</p>

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1 and I don't know whether that's going to be necessary but  
2 what Mr Madlanga wants to know, as I understand his  
3 question, is whether, to your knowledge, General Mbombo has  
4 that expertise in crowd management.

5 GENERAL PHIEGA: Judge, I'll start by  
6 saying she's a police and saying she is a general manager  
7 of this place. She would have some knowledge around public  
8 order policing but to what extent, to what depth, I'm not –  
9 I'm inarticulate in that. I would need her to be able to  
10 tell you of her various, you know, professional experiences  
11 but as a general manager and being a police, she would have  
12 some knowledge on that. That's how far I can go.

13 MR MADLANGA SC: From what you are  
14 saying, must I infer that you, you as General Phiyega, do  
15 not know whether General Mbombo has expertise – and I'm not  
16 talking about some knowledge or any knowledge – expertise  
17 in crowd management, you do not know.

18 GENERAL PHIEGA: I would not want to  
19 answer this question in a straitjacketed fashion. I said  
20 she is a police, she has led this environment as a general  
21 manager and for the years that she's had in leadership I'm  
22 sure there is something that she can tell about expertise  
23 or whatever. I'm the wrong judge.

24 MR MADLANGA SC: Why can't you answer the  
25 question, General? I'm not asking, I am – the Chair, the

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1 different angle. Would it be correct if I were to say that  
2 I get the impression that you don't actually yourself know  
3 what expertise, if any, General Mbombo has in the field of  
4 crowd management but you assume, based on the fact that  
5 she's been a police, a member of the police service for a  
6 number of years and the fact that she's a general manager,  
7 you assume that she has got some expertise in the field.

8 Would that be a fair summary of what you're saying?

9 GENERAL PHIEGA: Yes, Judge.

10 CHAIRPERSON: Thank you.

11 MR MADLANGA SC: Do you know – again,  
12 emphasis on your own knowledge – do you know if General  
13 Mpembe has any expertise in crowd management? General  
14 Mpembe being the police officer who was the C-JOC during  
15 the operations?

16 GENERAL PHIEGA: My answer is going to  
17 be consistent with the last one so that I don't waste your  
18 time.

19 MR MADLANGA SC: Just remind me again,  
20 because I suggested –

21 CHAIRPERSON: The answer was, the answer  
22 that I suggested to her was my understanding of what she  
23 was saying, namely that she assumed that General Mbombo had  
24 some expertise in the field of crowd management based upon  
25 the fact that she'd been a member of the police service for

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1 Chairman explained to you that I'm asking you about your  
2 knowledge. Why do you keep referring to something else?  
3 Why can you not answer that question? It's a simple  
4 question.

5 GENERAL PHIEGA: I know that you're an  
6 SC, let me make an example, but I don't know whether you  
7 know notaries and all those types of things but I know you  
8 know the law. And that's where I'm coming from –

9 MR MADLANGA SC: The short -

10 GENERAL PHIEGA: I don't want to really  
11 make it difficult for you but I cannot – you know, you're  
12 asking for specificity, I can't give that.

13 MR MADLANGA SC: You are making it  
14 difficult for yourself, General.

15 GENERAL PHIEGA: No, I'm not.

16 MR MADLANGA SC: Because if I'm asking  
17 you, do you know whether I have any expertise in the things  
18 that you referred to, notaries and so on, and because you  
19 say you do not know, the short and simple answer is for you  
20 to say you do not know. What's difficult with that?

21 GENERAL PHIEGA: But I do know that  
22 you're a lawyer.

23 CHAIRPERSON: General – sorry, National  
24 Commissioner, can I ask a question – certainly the same  
25 question Mr Madlanga's asking you but from a slightly

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1 a number of years and she was the general manager in charge  
2 of the North-Western Province and she said yes, that was  
3 the basis of the assumption which she made. Well, she said  
4 yes but that amounted to an acknowledgement that she'd made  
5 the assumption and that was the basis of the assumption.  
6 And what she's now telling you is that the same answer  
7 applies in the case of General Mpembe. I think that's  
8 correct. If I'm wrong, she'll correct me.

9 MR MADLANGA SC: Did the South African  
10 Police Service ever consider what it is that went wrong, if  
11 they are of the view that anything went wrong at all, what  
12 it is that went wrong that resulted in the death of 44  
13 people at Marikana? Did SAPS ever sit down to consider  
14 that, besides sitting down to prepare for the Commission,  
15 which I understand what was done at Potchefstroom was  
16 about? Did SAPS ever sit down and say now, as SAPS, let us  
17 consider what is it exactly that went wrong that resulted  
18 in the death of 44 people at Marikana?

19 GENERAL PHIEGA: To the best of my  
20 understanding this Commission is going to assist us to  
21 synthesise a diversity of inputs and to assist us going  
22 forward as SAPS, to understand what might have gone wrong.  
23 There are bits and pieces of issues probably, but we are  
24 hoping that the synthesis that comes out of here would  
25 inform all of us in terms of what went wrong.

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

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

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

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

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



<p style="text-align: right;">Page 7163</p> <p>1 philosophical points of departure. You also, as you were  2 reading, alluded to concepts such as perception and I can  3 also say that being an aspiration that is looking at a 2030  4 vision, it is the plan that looks at various sectors,  5 whether it's education, whether it's arts, whether it's  6 health, to start saying if we want to be a country that we  7 aspire to be, how do we navigate towards that. I also read  8 from what you were reading and my reading of the NDP  9 outside this process, that it also presupposes that this is  10 not going to be an event but a process. It also recognises  11 the genesis of the journey and the destiny we are working  12 towards and the issues that you are raising really are part  13 of that process, are part of that journey, are part of the  14 history, are a part of where we are going. And I would  15 also say, if I just look at where we come from and refer to  16 some of what I said in my statement, to say if I just look  17 at maybe one example that one can pick up to say if you  18 look at the issue of how public order policing, in the past  19 three years we've handled 33 000 of those and of those  20 33 000, 31 000 or so were very peaceful, well-handled  21 without incident and that shows that the police continues  22 to grow, to develop and to try and do their work in a  23 manner that shows that their experience has carried them in  24 a number of areas. Whilst I'm still talking about the  25 peaceful ones, it also shows that the community and the</p>	<p style="text-align: right;">Page 7165</p> <p>1 [12:31] MR MADLANGA SC: I will read that part  2 again. I understand what you say about certain  3 aspirational matters and so on and so on. That may well be  4 so in respect of certain matters, perhaps even certain  5 matters insofar as SAPS is concerned but what I'm going to  6 read seems to suggest something else about the  7 demilitarisation of the South African Police Service. I  8 will proceed to read it again. "The commission therefore  9 recommends that the South African Police Force be  10 demilitarised. This is" and I emphasise "a short-term  11 objective which should happen in the immediate term." So  12 that does not appear to be something that must happen way,  13 somewhere way into the future, by for example the 2030 that  14 you referred to. The recommendation seems to emphasise  15 immediacy. I will go back to my question, do you agree  16 with that recommendation?  17 GENERAL PHIYEGA: I think you're asking  18 me a binding and difficult question because I note the  19 recommendation, I've said it's a journey and we, as SAPS,  20 like all the other sectors, we are engaging the NDP and  21 looking at how we can embrace the recommendations that we  22 have been given.  23 CHAIRPERSON: I'm afraid you haven't  24 answered the question, National Commissioner. The question  25 was, do you agree with that recommendation?</p>
<p style="text-align: right;">Page 7164</p> <p>1 people that were protesting were also being responsible,  2 they understood their rights to say we have the right to  3 protest and we have to, we are able to do it without a  4 manner that is adversarial, we can express our rights and  5 police support us in doing so. And there are others where  6 we would say about maybe 2 000 plus of those were maybe  7 having unrest, where there could have been damage to  8 property and all those. Even those, we tried as police to  9 manage in a professional manner and I think this is why in  10 my statement I talk about an unprecedented event. And it  11 is our aspiration as police also to continuously improve  12 ourselves and that holds for all the sectors that the NDP  13 is talking about and what you have been reading, I hear  14 aspiration and a journey and where we are positioning a  15 destiny for this particular sector and there are other  16 issues that are being aspirational in many other sectors.  17 So I understand and I think it's a journey that we all will  18 try and travel.  19 MR MADLANGA SC: General, let us again  20 look at page 393, the column on the right hand side. There  21 is a sentence that starts from the previous column, which  22 says "Charged for allegedly executing," let's skip that  23 portion of the paragraph and go to the very next paragraph.  24 "The commission therefore recommends," do you see that?  25 GENERAL PHIYEGA: Yes.</p>	<p style="text-align: right;">Page 7166</p> <p>1 GENERAL PHIYEGA: Judge, I am saying we  2 have noted the recommendations.  3 CHAIRPERSON: Noted, but that's not an  4 answer to the question. Do you agree with that  5 recommendation? I'm sorry to pester you on the point but  6 it's a direct question that Mr Madlanga asked you and I  7 think he's entitled to a direct answer.  8 GENERAL PHIYEGA: The recommendation,  9 Judge, and I will again try to explain myself, the starting  10 point of militarisation for me is a point of discussion and  11 therefore it would be difficult for me to say I agree  12 without dealing with that.  13 MR MADLANGA SC: General, I don't –  14 CHAIRPERSON: No, no, I'm sorry. I can  15 understand you may say you don't agree with it or you don't  16 agree with it entirely and you're entitled then to motivate  17 your answer, but the question has not yet been answered.  18 GENERAL PHIYEGA: Maybe let me go to that  19 military - are we saying militarisation because of the  20 rank, because of what, and that's the discussion that we  21 are having as SAPS and that is the discussion that makes it  22 difficult for me to say I agree or don't agree. I think  23 with certain reservations, with certain discussions, we  24 will embrace the recommendation. It's a recommendation and  25 we must embrace it and we must find a way of working around</p>

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

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

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

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

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

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1 [12:51] GENERAL PHIYEGA: I saw it yesterday on  
 2 the table.  
 3 CHAIRPERSON: Mr Madlanga, I don't know  
 4 what questions you're going to ask her but if she only saw  
 5 the book on the table yesterday, I take it you haven't  
 6 really – have you had a chance to read it?  
 7 GENERAL PHIYEGA: Mm-mm.  
 8 CHAIRPERSON: Well, it may be, depending  
 9 on the questions you're going to ask, that we should give  
 10 her an opportunity to read it, alternatively to read  
 11 particular passages before you question her because  
 12 otherwise it wouldn't be fair just to take a sentence and  
 13 ask her about it. I don't know how you're going to handle  
 14 this document.  
 15 MR MADLANGA SC: I propose doing  
 16 something similar to what I did with the National  
 17 Development Plan, Mr Chairman, which is -  
 18 CHAIRPERSON: Alright, you're going to  
 19 read passages and then you'll ask for comment.  
 20 MR MADLANGA SC: Yes.  
 21 CHAIRPERSON: I see, no, it's alright.  
 22 May I make one comment? It appears that this book or e-  
 23 book has got relevance in the context we're busy with. I  
 24 must say I'm surprised that you hadn't heard about it  
 25 before. I would've expected you to have had a division in

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1 the police that, you know, monitors publications that come  
 2 out that have relevance and draws your attention to  
 3 material passages in them, but is there such a division in  
 4 the police because I think if you haven't got one I suggest  
 5 you start one pretty soon.  
 6 GENERAL PHIYEGA: I think, Judge, we have  
 7 libraries, we have research divisions but I may not  
 8 personally have looked at it, there could be others who –  
 9 CHAIRPERSON: I wouldn't expect you to  
 10 deal with the research yourself, but anyway you've answered  
 11 my question, you have got –  
 12 GENERAL PHIYEGA: Ja.  
 13 CHAIRPERSON: - a research division. So  
 14 I take it we can accept as a matter of high probability  
 15 that somebody in one of your research divisions –  
 16 GENERAL PHIYEGA: Could be.  
 17 CHAIRPERSON: - would have accessed this  
 18 e-book and read it but obviously if that happens, they  
 19 failed to draw your attention to any passages in it which  
 20 Mr Madlanga seems to think may be relevant.  
 21 GENERAL PHIYEGA: Mm.  
 22 CHAIRPERSON: Anyway, that'll be done to  
 23 you now. Yes Mr Madlanga, please proceed.  
 24 MR MADLANGA SC: Thank you, Mr Chairman.  
 25 National Commissioner, at the foot of the page you will see

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1 an asterisk in the big gap there. Do you see it?  
 2 GENERAL PHIYEGA: Yes, I do.  
 3 MR MADLANGA SC: I'm going to start  
 4 reading from below the asterisk. "How widely the term  
 5 'maximum force' is used in the SAPD is not clear." I  
 6 assume that to be the Afrikaans version of the South  
 7 African Police Service, Suid-Afrikaanse Polisiediens.  
 8 GENERAL PHIYEGA: Mm.  
 9 MR MADLANGA SC: "One revealing piece of  
 10 information are some notes, made by a SAPS member,  
 11 distressed by a new 'Firearms in law enforcement' course  
 12 that he attended early in 2011. The notes make no  
 13 reference to 'maximum force'. But, he says, "The trainer  
 14 kept saying, 'Shooting in the SAPS has been neglected for  
 15 many years and they're finally encouraging people to shoot  
 16 again.'" And in relation to the theory section where  
 17 members were supposedly instructed in the legal framework  
 18 that should determine when and whether officers use lethal  
 19 force or not, he notes that despite being given "about  
 20 1 000 pages to read" the instructor "would just mark those  
 21 pages on which we would be tested and the rest would be  
 22 ignored." The police officer says of his course that, "We  
 23 were given a two hour lecture on the use of lethal force,  
 24 half of which I'm pretty sure was incorrect. For example,  
 25 the instructor told us that if a member is being assaulted

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1 by a big man, they have the right to shoot him dead  
 2 immediately. Someone asked, 'But why not use pepper  
 3 spray?', at which the instructor laughed and made a joke  
 4 about 'you've obviously never been donnered'. He then  
 5 reiterated that police could shoot at the slightest hint of  
 6 threat." About his exam at the conclusion of the course,  
 7 the police officer says, "We were given a mound of paper  
 8 work to go through. We were given the questions and  
 9 answers to a test on the Firearms Control Act and told to  
 10 copy word for word the answers out. We then marked 200 out  
 11 of 200 in red pen at the top of the pages and put it in our  
 12 official file. We went through a number of other tests for  
 13 which the instructor gave us the answers without even  
 14 reading the questions and we then marked ourselves 100% for  
 15 each of these two. We were also instructed to sign various  
 16 forms which stated that we had been informed of things we  
 17 hadn't been informed of. This was a classroom including a  
 18 brigadier, quite a few colonels and captains and then all  
 19 the rest and nobody paused for a second to question our  
 20 participating in this giant organisationally sanctioned  
 21 lie." And I end there. Do you see all of that?  
 22 CHAIRPERSON: Mr Semenya, I see you  
 23 turned your microphone on but it's now 1 o'clock. I take  
 24 it that the point you want to make you can make after we've  
 25 taken the lunch adjournment.

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1 MR SEMENYA SC: I can, Chair.  
 2 CHAIRPERSON: We'll take the lunch  
 3 adjournment at this stage.  
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 5 [14:02] CHAIRPERSON: The Commission resumes. Mr  
 6 Malindi, are you in a position yet to enlighten us further  
 7 on the matter that we debated yesterday, or discussed  
 8 yesterday?  
 9 MR MALINDI SC: Chairperson,  
 10 unfortunately I will ask for further indulgence. I may be  
 11 able to address the issue tomorrow morning.  
 12 CHAIRPERSON: National Commissioner,  
 13 you're still under oath.  
 14 MANGWASHI VICTORIA PHIYEGA: s.u.o.  
 15 CHAIRPERSON: Sorry, Mr Semenya, I  
 16 reminded the National Commissioner she's still under oath.  
 17 Yes, Mr Ntsebeza?  
 18 MR NTSEBEZA SC: Thank you. It's  
 19 something in relation to which, Mr Chairman and members of  
 20 the Commission, I just want to take advantage of everybody  
 21 being here so that we can get clarification in relation  
 22 thereto going forward. During lunch I was involved in what  
 23 I would have thought was mild altercation between a police  
 24 captain and I. I brought a pamphlet titled "Socialism from  
 25 below" and I had it in my hands and I was approached by a

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1 police captain. He grabbed it from my hands and it  
 2 appeared that generally there was an objection to placards  
 3 that were displayed by some of the workers, that have got  
 4 some uncomplimentary remarks about the police officers, and  
 5 I think the mistake was that even this document is part of  
 6 that, and I tried to reason with the police captain to find  
 7 out what exactly was the position, even in relation to the  
 8 placards, is the offence, as they saw it, the mere  
 9 possession of the placards, or is it in displaying them, in  
 10 which case even if it is the two of those, it would appear  
 11 that certainly during lunch as the people are sitting  
 12 there, holding their placards in their hands, there didn't  
 13 seem to be any offence to me, and therefore, before  
 14 emotions could get out –  
 15 CHAIRPERSON: Where were they sitting?  
 16 You say –  
 17 MR NTSEBEZA SC: They were sitting  
 18 outside here where we usually have lunch.  
 19 CHAIRPERSON: I see.  
 20 MR NTSEBEZA SC: Some of them were  
 21 displaying the placards from quite a distance from where we  
 22 were sitting, and it seemed to me – and I've just conferred  
 23 with my learned friend Mr Semenya – that perhaps if we had  
 24 some rules of engagement, my sense is that, and people are  
 25 standing up saying things, which may even be things that

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1 are not acceptable or uncomplimentary to one of the  
 2 parties, to the extent that they seem to be exercising  
 3 their democratic right to do so they should be allowed to  
 4 do so, because my sense was that it was a peaceful  
 5 demonstration and then at a venue like this, Mr Chairman, I  
 6 thought that we should try by all means to keep our tempers  
 7 as cool as we can manage to do so. So I thought maybe  
 8 taking advantage of the National Commissioner of Police  
 9 being on the stand and the Chairman and the Commissioners  
 10 being here, this might probably be the right place for some  
 11 accord to be arrived at as to how we conduct ourselves  
 12 relevant to placards and stuff like that.  
 13 CHAIRPERSON: Mr Semenya, you were going  
 14 to say something before the adjournment in relation to the  
 15 passage that was read from the book by Mr Bruce, but I take  
 16 it before we get there, you would wish to say something in  
 17 response to what Mr Ntsebeza said?  
 18 MR SEMENYA SC: Chair, Mr Ntsebeza has  
 19 just raised the matter with me and my immediate response  
 20 was to say the right of protest freely in this country is a  
 21 constitutional right about which I don't think if his facts  
 22 are correct, should be condoned. I will investigate the  
 23 matter and raise it with those members that they have no  
 24 right to prevent anybody making their public protest for as  
 25 long as it remains peaceful.

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1 CHAIRPERSON: Thank you. In regard to  
 2 the suggestion about rules of engagement, I'm not sure that  
 3 engagement is quite the right word in this context, but may  
 4 I suggest that you and Mr Ntsebeza might have at least a  
 5 preliminary discussion to see whether it is desirable that  
 6 rules of that kind should be drawn up, and possibly even  
 7 prepare a draft which we could then give to the evidence  
 8 leaders and the other parties, before the Commission is  
 9 called upon to add its imprimatur, as it were, to them.  
 10 But it's the sort of thing which I would think could be  
 11 sorted out cordially and harmoniously among the parties.  
 12 We've had a very harmonious atmosphere here up to now. I  
 13 think I must commend all the parties for the way that  
 14 they've conducted themselves, and cordial relationships  
 15 have been established and it's important for the work that  
 16 we're called upon to do that that atmosphere should  
 17 continue. But there are various aspects to it. The  
 18 public's confidence in the Commission mustn't in any way be  
 19 eroded or diminished, but if everyone continues the way  
 20 they've been continuing up to now, I've no doubt it will  
 21 help us substantially to achieve what the President has  
 22 asked us to do. But if in the meanwhile you and Mr  
 23 Ntsebeza could have preliminary discussion at least on  
 24 that, I'd be grateful.  
 25 MR NTSEBEZA SC: Mr Chairman, may I just

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

<p style="text-align: right;">Page 7187</p> <p>1 read and I prefaced my question by saying if correct, would  2 this be a matter that concerns the National Commissioner,  3 or not. I do not believe that I have to indicate whether  4 or not the evidence will be led before the witness can be  5 required to answer the question that I have put to her. It  6 is in proceedings of this nature, that is proceedings  7 before a commission, it is not correct to suggest that in  8 respect of every and any piece of material that is  9 presented to the commission, the person responsible for the  10 existence of that piece of material must actually come  11 before the commission to testify to the content of that  12 which they are responsible – for the existence of which  13 they are responsible. That, as I understand the position,  14 is not the law. I understand the law in commission  15 proceedings to be that any commission of inquiry like this  16 one can inform itself, and can admit evidence of whatever  17 nature it considers acceptable, and that is not the same  18 legal position that finds application in courts of law.</p> <p>19 Let me again refer to authority that I referred  20 to quite early on, but I think then I referred to it off  21 the top of my head. Let me now refer to it, and I'll  22 actually read a passage from the relevant judgment. The  23 version of the judgment that I have here is a JOL judgment,  24 but I do know that this judgment is also reported in the  25 South African Law Reports. I'll ask Ms Pillay to find me</p>	<p style="text-align: right;">Page 7189</p> <p>1 between a court of law and a commission at 961 C, 'A court  2 of law is bound by rules of evidence and the pleadings, but  3 a commission is not. It may inform itself of facts in any  4 way it pleases, by hearsay evidence and from newspaper  5 reports, or even through submissions or representations on  6 submissions without sworn evidence.' In this matter the  7 regulations under which the commission operated made it  8 clear that it was not intended to be regarded as a court of  9 law," and then it goes on. I will skip and go to paragraph  10 25, and I would submit that obviously this Commission also  11 was not intended to be a court of law.</p> <p>12 [14:22] "Furthermore," this is paragraph 25, "I am  13 satisfied on the authority in De Beer supra that the  14 commission was not required to follow and apply rules of  15 evidence applicable to courts of law. The fact that it had  16 the power to set aside contracts, did not change it from  17 being a commission to a court of law. It remained a  18 commission with a procedure dissimilar to the ordinary  19 court procedure, and the legal rules applied therein. It  20 was not bound by the rules regulating the admission of  21 evidence of evidentiary material in a court of law, nor was  22 it obliged to adopt the approach of analysing and  23 evaluating evidence which is usually followed in a court of  24 law. Its regulations indicated that it will be improper  25 for it to act as if it was a court of law when it was not.</p>
<p style="text-align: right;">Page 7188</p> <p>1 the South African Law Reports report, or citation rather.  2 It's the matter of Bongoza, that's B-O-N-G-O-Z-A, versus  3 Minister of Correctional Services &amp; Others, [2006] JOL  4 16653 –</p> <p>5 CHAIRPERSON: Sorry, JOL?  6 MR MADLANGA SC: JOL 16653. It's a  7 judgment of the Transkei High Court. The citation in the  8 South African Law Reports is 2002 (6) SA 330, Transkei  9 Division. This is what appears at paragraph 17 of the  10 judgment, and there the commission is referring to  11 submissions that were made by counsel. "It was argued that  12 the commission was not bound by the rules of evidence  13 applicable to a court of law. It was entitled to adopt its  14 own procedure, including the receipt of evidence or  15 information relevant to the issues before it. In fact,  16 counsel contended further that the commission was  17 responsible for collecting evidence and obtaining  18 statements from witnesses. It could consider information  19 of any nature, including hearsay evidence, newspaper  20 reports, or submissions made without sworn evidence. For  21 these submissions counsel relied on Bell versus Van  22 Rensburg," and the citation is given, S versus Mulder,  23 citation given, and S versus Sparks NO &amp; Others, citation  24 given. "In the latter case, Human J, (with whom Theron AJP  25 and Franklin J concurred) gave the following distinction</p>	<p style="text-align: right;">Page 7190</p> <p>1 For example, cross-examination was subject to the  2 chairperson's permission, which could be granted only if he  3 was convinced that such cross-examination would be in the  4 interests of its functions. Consequently I find that the  5 commission has competently reviewed the information and  6 evidence placed before it, and that it was entitled to rely  7 thereon for the purposes of its decision, and of the  8 quotation."</p> <p>9 Now that said, I am in my submission by no means  10 suggesting that once the evidence has been admitted, it  11 then holds that it must be of – a certain level – once the  12 evidence has been admitted, what weight the Commission will  13 then attach thereto is a totally different matter, but that  14 does not say the same thing as just because it's evidence  15 of a particular nature, then it becomes inadmissible. That  16 is not the law, and I am submitting that there is nothing  17 wrong in putting that excerpt to this witness. There is  18 nothing wrong in that excerpt being admitted as evidence  19 before this Commission, but what weight will then attach  20 thereto, totally something different, and I would submit  21 that there is no substance in the objection and I will ask  22 to be allowed to continue.</p> <p>23 CHAIRPERSON: Thank you, Mr Madlanga.  24 Yes, Mr Semenya.  25 MR SEMENYA SC: Chair, clearly the law as</p>

1 outlined is one with which we have absolutely no quarrel.  
 2 We also are not alarmed that a commission in law is able to  
 3 take any form of information. The exercise of a discretion  
 4 though in the – and the probative value is a completely  
 5 different thing. I'm not even addressing that. The  
 6 exercise of that discretion is aimed at establishing  
 7 whether the interests of justice so require it, and has to  
 8 be measured against the prejudice that a party may suffer  
 9 in relation to its admission, and it is the prejudice about  
 10 which you're addressing the Commission.

11 If an excerpt of that nature is given under an  
 12 authority of somebody who is speaking about the conduct of  
 13 this very Commission, about which the police conduct is a  
 14 direct issue under focus, and we are given that the police  
 15 are not even given any training – if this is anything to go  
 16 by – they are made to pass exams without doing anything,  
 17 they have not been “donnered,” that's why that's not  
 18 happening, we say the prejudice is manifest, and the  
 19 Commission cannot in the proper exercise of a discretion  
 20 admit this evidence to stand, whatever its probative value.

21 CHAIRPERSON: Sorry, I don't understand  
 22 your submissions about prejudice. I understand Mr  
 23 Madlanga's question to be if these facts are correct, is  
 24 that a serious matter. Now obviously the answer must be,  
 25 it must be a serious matter. If it's true - it's not

1 suggested it is, but if it's true that trainers, or a  
 2 particular trainer at a particular course went through the  
 3 motions, pretended to train people about the use of  
 4 firearms in law enforcement situations in the way  
 5 described, that is a serious matter which I take it the  
 6 Commissioner would wish to do something about, to  
 7 investigate if it's true; if it is true, take certain  
 8 steps; if it isn't true, then be able to say it's untrue.

9 So I don't understand the prejudice – what prejudice the  
 10 police service can suffer from the fact that the  
 11 Commissioner's being asked if these things are true, is it  
 12 a serious matter, and I take it she – or I mustn't say what  
 13 she will say, but depending on what she will say, I can't  
 14 see the prejudice to the police. But if there is some  
 15 point that I don't understand, please enlighten me.

16 MR SEMENYA SC: May I try my last  
 17 attempt, Chair? The issue is if there is no basis for the  
 18 hypothesis, and there won't be a basis for the hypothesis  
 19 if it is not going to be even an effort at making that  
 20 evidence come about, it's like asking if South Africa is  
 21 corrupt, then what? But you can't make a proposition if it  
 22 has no basis in law in the first place. That's the  
 23 objection, Chair.

24 CHAIRPERSON: Mr Madlanga, you were  
 25 replying to Mr Semanya, but he's now raised a new point,

1 well not quite a new point, but I think he's emphasised on  
 2 a particular aspect of the matter that you didn't deal with  
 3 in your argument, namely that the police service will  
 4 suffer prejudice if you are permitted to ask this question,  
 5 and would you like to deal with that submission?

6 MR MADLANGA SC: Thank you, Mr Chairman.  
 7 Let me deal with the very last point my learned friend  
 8 made. My learned friend refers to a lack of basis in law  
 9 for the question. I do not understand that. I do not know  
 10 what law he is referring to for saying that there is no  
 11 basis in law. I would understand if, as he says, there are  
 12 no facts that tend to – except for the excerpt, there are  
 13 no facts that tend to support what has been said, I would  
 14 understand he - and by saying I would understand, I'm not  
 15 suggesting that I would accept – I would understand if he  
 16 were saying that there is no basis in fact, not law. What  
 17 is that law? I do not know what law he's referring to in  
 18 this regard. I have referred to the law as I understand  
 19 it, and I understand that to be applicable to this very  
 20 scenario, and my learned friend says that he's not  
 21 quarrelling with that legal position, then what law he's  
 22 referring to, I do not know.

23 Now that said, on the question of prejudice, I  
 24 agree wholeheartedly with what the Chairman says. The  
 25 question is in so many words prefaced by saying if correct

1 - and those are the operative words, if correct, would this  
 2 be a matter of concern for the National Commissioner. It  
 3 is not saying this, the content of this excerpt is correct.  
 4 It's not saying so, but Commissioner, National  
 5 Commissioner, if this were correct, would it be a matter of  
 6 concern. Where is the prejudice? I do not see it.

7 But in any event, in any event, I would have  
 8 expected quite the opposite from the South African Police  
 9 Service. I would have expected a reaction that says an  
 10 allegation of this nature that on the use of force by the  
 11 police there is in actual fact, according to what this  
 12 writer says, there is a “fraud” of this nature on police  
 13 training on the use of firearms, we as SAPS must  
 14 investigate this, see if there is any truth in this. So I  
 15 would have expected an opposite reaction, not from my  
 16 learned friend, Mr Semanya, but from SAPS. So I don't  
 17 quite follow, I do not quite follow why my question on this  
 18 subject should be found to be objectionable, and I  
 19 emphasise the point that I would have expected them to say  
 20 let us see if we cannot get to the bottom of what Mr David  
 21 Bruce is saying, and see whether or not they come to a  
 22 conclusion that there is any truth in it.

23 MR SEMENYA SC: Chair, that's precisely  
 24 the difficulty. We can't even investigate this thing for  
 25 as long as the SAPS man is, must, is not going to be



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

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1 colonels and captains? Say how many they had. They say  
 2 right, please send us the examination papers which were  
 3 completed by the people who attended. They look at them;  
 4 they find none of them have got passages from the notes  
 5 copied out; none of them have got 200 out of 200. They say  
 6 well, this is obviously a false allegation. On the other  
 7 hand, the courses that they find a whole batch of alleged  
 8 exam papers with things copied out of the manual, with 200  
 9 out of 200 in red, then it's clearly true. Then they say  
 10 right, this is a serious - well, I would hope they would  
 11 say it's a serious matter. Something has got to be done to  
 12 the trainer. Those people who received that "training" had  
 13 better come back immediately, and immediately in the  
 14 literal sense, so that they can be retrained in Public  
 15 Order Policing because they obviously need it. I don't  
 16 understand the prejudice. I don't think your objection is  
 17 a good one, and I disallow it, and Mr Madlanga may  
 18 continue.  
 19 I just might stress that if these had been  
 20 generalised allegations of a kind which could not  
 21 reasonably have been investigated on the information  
 22 available, then the position might well have been different  
 23 and there might well have been prejudice incapable of being  
 24 remedied, and then I would have allowed the objection, but  
 25 in the particular circumstances of this case, whether I'm

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1 applying the law or applying some broader doctrines which  
 2 are allowed to be imported from the Transkei I'm not sure,  
 3 but I'm satisfied that even sitting as judge in a court of  
 4 law I would in these particular circumstances allow the  
 5 question.  
 6 MR MADLANGA SC: Thank you, Mr Chairman.  
 7 Three other judgments that are not from the Transkei are  
 8 referred to, and -  
 9 CHAIRPERSON: No, I know that, and it  
 10 sounded from what you said as if they were given by eminent  
 11 judges as well.  
 12 MR MADLANGA SC: Yes, and lastly -  
 13 CHAIRPERSON: But to be fair, the big  
 14 point which Mr Semenya makes is correct, that if there is  
 15 prejudice incapable of being remedied, then that would have  
 16 formed a basis even for a commission to reject the  
 17 evidence.  
 18 MR MADLANGA SC: Yes.  
 19 CHAIRPERSON: It's only because I've  
 20 found that there wasn't such prejudice that I allowed the  
 21 question.  
 22 MR MADLANGA SC: Lastly - thank you, Mr  
 23 Chairman. Lastly -  
 24 MR SEMENYA SC: Chair, I'm not  
 25 countermanding the -

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1 MR MADLANGA SC: Just the -  
 2 MR SEMENYA SC: Sorry. Sorry, Mr  
 3 Madlanga. Would we be - in fairness then in this  
 4 Commission, because it is at the core of the conduct of  
 5 policing - would we be given an opportunity to bring all  
 6 those witnesses who'd offered those lectures so that we  
 7 refute this, and those students who were given lectures to  
 8 come and say what those lectures were? Because we'll have  
 9 to meet it in full, otherwise there would be a lingering  
 10 thought that there may be some mote of weight about these  
 11 allegations which would be damaging to our position.  
 12 CHAIRPERSON: Well, we'll cross that  
 13 bridge when we get there, but I would have thought if you  
 14 called someone who gave evidence to say I investigated this  
 15 allegation, I found there was no such course early in 2011,  
 16 or I found there was no such course attended by a  
 17 brigadier, colonels and captains, or I found there were  
 18 such courses, I looked at the examination papers and I  
 19 found what were obviously original essays written by all  
 20 the examination candidates, and I found none, nobody who  
 21 got 200 out of 200, then that evidence would be accepted  
 22 without more, but we will deal with that matter as and when  
 23 it arises. We may find of course that an investigation  
 24 produced the opposite results, and that it is found that  
 25 these allegations are substantiated, and you would then be

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1 able to lead evidence to say we accept this is a serious  
2 matter and this is what we've done to remedy the situation.  
3 But all these things are, lie in the future. We will deal  
4 with them as and when we get there. Please proceed, Mr  
5 Madlanga.

6 MR MADLANGA SC: Thank you, Mr Chairman.  
7 I go back to the question that I asked, National  
8 Commissioner. If true, would the content of the excerpt  
9 that I read to you be cause for concern to you?

10 GENERAL PHIYEGA: I would start off by  
11 saying you've asked me a lot of hypothetical questions, and  
12 this is one of those, because indeed when I look at the  
13 statement, just gleaning through it, the author does make  
14 reference to dates, to names, to particular months, to  
15 particular years. On this piece of articulation it is  
16 interesting that there is no date, there is no name, and  
17 that bothers me, and having said so, I don't know whether  
18 it's just a statement or whether it's innuendo, and I would  
19 like to say I do not believe it is true.

20 MR MADLANGA SC: The matters that you  
21 raised before you said you don't believe the content of the  
22 excerpt to be true, are matters that would go into the  
23 investigative process, if that is a matter that SAPS would  
24 find warranting investigation at all. I repeat my  
25 question, what you have said does not answer it, not even

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1 she doesn't believe it, but she said she's going to  
2 investigate it. That's a fair answer. You can ask her  
3 what she will do if her investigation finds out things  
4 which you can elaborate perhaps, but I don't think it's  
5 necessary to ask her the question you've asked. It is  
6 sarcastic, and which I don't think is worthy of you.  
7 MR MADLANGA SC: My apologies to the  
8 Commission and to General Phiyega.  
9 [14:42] CHAIRPERSON: Mr Madlanga, are you not  
10 going to ask her what will happen if she investigates and  
11 finds some of the allegations to be true? Because if  
12 you're not going to ask it, I will. You say you're going  
13 to have it investigated, which is a very proper approach.  
14 If the investigation shows that these allegations are  
15 without substance, as Mr Semenya said, that will be brought  
16 to this Commission and this allegation will be exposed to  
17 be a lie. If on the other hand your investigation proves  
18 that the allegations are correct, then that would mean that  
19 some of the training that's been given has been a farce, as  
20 had been described, a fraud. If that is so, what would you  
21 do? I know that's a hypothetical question, but I think  
22 it's a question that you can be asked.

23 GENERAL PHIYEGA: Judge, I definitely  
24 shall bring sanctions to the trainers, and secondly I shall  
25 remedy that because it is my responsibility and duty as a

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1 the latter portion that says you do not believe the content  
2 of the excerpt to be true. My question is, if true, that's  
3 not saying that excerpt or the content of the excerpt is in  
4 fact true, but if true, would the content of that excerpt  
5 be cause for concern to you, General?

6 GENERAL PHIYEGA: I still say I do not  
7 believe it is true.

8 MR MADLANGA SC: General, are you going  
9 to say that you honestly believe that - that is the  
10 question that I'm asking you, that is whether or not this  
11 excerpt is true? Are you telling this Commission that you  
12 believe that that's the question I'm asking you, or are you  
13 deliberately being evasive?

14 GENERAL PHIYEGA: I am not being  
15 deliberately evasive. You've presented to me that, you've  
16 read to me that thing on page 26 to page 27. I say I don't  
17 believe it is true, because your question is if it is true,  
18 I say I do not believe it is true.

19 MR MADLANGA SC: I will leave it. Are  
20 you going to investigate it at all?

21 GENERAL PHIYEGA: I definitely shall.

22 MR MADLANGA SC: If you do not believe  
23 that it's true, why would you even want, why would you even  
24 bother to investigate it?

25 CHAIRPERSON: - the question. She said

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1 leader to ensure that the training that we offer does  
2 deliver what it's supposed to deliver for the citizens of  
3 this country.

4 CHAIRPERSON: Thank you.

5 MR MADLANGA SC: May the Commission just  
6 bear with me, please. Now, Commissioner, let me take you  
7 back to something that we have debated, but the context now  
8 will be different. You said that the SAPS expert on Public  
9 Order Policing must have received his information on the  
10 problems with the analogue radio system of SAPS from SAPS  
11 commanders or SAPS members. What I would like to find out  
12 is, are you in a position to explain why we only see this  
13 in Mr De Rover's statement, why it is not in the SAPS  
14 presentation, why it is not in the SAPS opening statement.  
15 Are you in a position to explain that or not?

16 GENERAL PHIYEGA: I'm not sure whether  
17 this question is coming for the first time because I do  
18 know that an issue was raised much, much earlier, where we  
19 even got our TMS division to write a short statement to  
20 explain the radio functioning of SAPS. Much earlier when  
21 the Commission was starting we were asked that question as  
22 SAPS and we submitted something.

23 MR MADLANGA SC: I will agree with you,  
24 National Commissioner, that in their interaction with  
25 members of SAPS the evidence leaders have spoken to some

<p style="text-align: right;">Page 7203</p> <p>1 members of SAPS about the radio network. So probably that 2 is what you are referring to, but I'm asking you a 3 different question, and the question is why do we not see 4 the problem about that radio network in exhibit L, the SAPS 5 presentation, as also in the SAPS 6 opening statement? 7 CHAIRPERSON: I think you should ask her 8 whether she's able to tell us, because it may be a matter 9 of which she has no knowledge. 10 MR MADLANGA SC: Yes, yes, yes. Thank 11 you. Thank you, Mr Chairman. Are you able to tell us why 12 it is not in those two documents? Perhaps for context and 13 for you to understand why I'm asking that question, 14 according to Mr De Rover, this, the malfunctioning of that 15 radio system – 16 MR SEMENYA SC: Chair, I object again. 17 Can we go to paragraph 81 of Mr De Rover's statement? The 18 problems with the analogue radio network is not a 19 malfunctioning, it is how a analogue radio works. He says 20 its problems are those. He's not saying it's 21 malfunctioning. 22 MR MADLANGA SC: I will substitute – 23 MR SEMENYA SC: By contrast he's saying – 24 MR MADLANGA SC: I will – 25 CHAIRPERSON: I think Mr Semenya is</p>	<p style="text-align: right;">Page 7205</p> <p>1 in writing at our request. We initiated that process, not 2 so? 3 GENERAL PHIYEGA: You would recall that 4 there was even an article in the press which concerned us 5 and it was important for us to also correct that. 6 MR MADLANGA SC: But would it be fair to 7 suggest to you that SAPS must have been aware of this 8 problem prior to the press, the article, and also prior to 9 the enquiry by the evidence leaders? 10 GENERAL PHIYEGA: I am sure that when you 11 talk to the commanders that are going to present to you, 12 they will mention that. 13 MR MADLANGA SC: Are you not aware, are 14 you yourself not aware whether or not SAPS was already 15 aware of the problem prior to the article in the press that 16 you are referring to, and also prior to the enquiry by the 17 evidence leaders? 18 GENERAL PHIYEGA: I think the important 19 thing to mention is that our responding to you was not a 20 back-footed matter. We responded because we were able to 21 tell you that Petra is not here, Petra is in Eastern Cape. 22 We needed to do that because we were aware that there is an 23 issue around radios, and that's why we did what we did. 24 MR MADLANGA SC: I understand that and I 25 appreciate the response that we received from SAPS, but I'm</p>
<p style="text-align: right;">Page 7204</p> <p>1 right, because it doesn't follow from what he says that 2 there was a malfunction. It may be that there was a 3 problem not caused by malfunctioning, but caused by 4 something else, so the objection is well taken. 5 MR MADLANGA SC: I'm a layperson – thank 6 you, Mr Chairman. I'm a layperson in matters analogue 7 radio systems. Let me phrase the question differently, and 8 substitute "problems" for "malfunctioning." Are you in a 9 position to tell this Commission, National Commissioner, 10 why the problems with the analogue radio network that 11 resulted in the overall commander not being able to call a 12 halt to the operations, are you able to tell why it is that 13 we do not see that in exhibit L, the SAPS presentation, and 14 in the SAPS opening statement? 15 GENERAL PHIYEGA: I'm not able to do so, 16 but I will also say we have addressed you in particular on 17 the radio matter. The TMS note that we sent you did talk 18 about the radios. 19 MR MADLANGA SC: But do you accept that 20 it was such a crucial matter that it ought to have had some 21 importance in the case that SAPS presented before this 22 Commission? Would you agree with that? 23 GENERAL PHIYEGA: Yes, I regard it as 24 important, and this is why we responded to you in writing. 25 MR MADLANGA SC: And that was a response</p>	<p style="text-align: right;">Page 7206</p> <p>1 asking you a different question. Were you as the National 2 Commissioner of Police, were you aware prior to the article 3 that you are referring to, and also prior to the enquiry by 4 the evidence leaders, that there were on the day in 5 existence the problems that we have been talking about 6 around the analogue radio system of SAPS? Were you aware? 7 That is the question, and also prior to the article that 8 you are referring to, as also prior to the enquiry by the 9 evidence leaders. 10 GENERAL PHIYEGA: Yes, the issues of 11 communication and radios have been part and parcel of this 12 process from beginning to today. You have said in response 13 to an earlier question that the commanders would have been 14 aware as well. Now the question that I want to ask is – 15 no, no, no, I asked that. I will now take you to a 16 different subject, the tampering report. I hope that it 17 has been placed before you. That is the report that was 18 commissioned by you after you became aware that there had 19 been a tampering – 20 GENERAL PHIYEGA: I have it. 21 MR MADLANGA SC: - with the crime scene 22 at scene 2. Do you have a copy there, General? 23 GENERAL PHIYEGA: Yes. 24 MS PILLAY: Chair, this exhibit should be 25 marked FFF15. FFF15.</p>

<p style="text-align: right;">Page 7207</p> <p>1 CHAIRPERSON: The possible tampering 2 report. Exhibit FFF15. 3 MR MADLANGA SC: General, when did you 4 first become aware of the possible tampering with the crime 5 scene at scene 2 in Marikana? 6 GENERAL PHIYEGA: I think it was the 24th, 7 or the 23rd of October. 8 MR MADLANGA SC: Now are you aware that 9 the Commission only became aware – or perhaps, yes, the 10 Commission, including the evidence leaders, became aware of 11 the investigation that you had instituted after evidence on 12 the crime scene, evidence of Captain Mohlaki had been led 13 before this Commission? Are you aware of that, or not? 14 GENERAL PHIYEGA: I'm not aware, but I 15 can say that my becoming aware was because of Captain 16 Mohlaki's presentation here. 17 MR MADLANGA SC: I will just look at – or 18 perhaps so long let me ask this question. You will accept 19 if I suggest to you that Captain Mohlaki's evidence on this 20 subject was on 5 November 2012? You accept that? Ms 21 Pillay has just looked at the record for me on this. 22 GENERAL PHIYEGA: Ja, I think, I may be 23 wrong. During the presentation of Captain Botha and 24 Captain Mohlaki, that's when I became aware of that. I was 25 here.</p>	<p style="text-align: right;">Page 7209</p> <p>1 bit of time, Commissioners. 2 CHAIRPERSON: I see it's after 3 – Mr 3 Madlanga, after 3 o'clock, so we can give you the time and 4 take the tea adjournment at the same time. 5 MR MADLANGA SC: Thank you, Mr Chairman. 6 CHAIRPERSON: I just want to see 7 something before we do. Yes, the Commission will now 8 adjourn for tea. We'll resume just after quarter past 3. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [15:25] CHAIRPERSON: The Commission resumes. 11 You're still under oath, National Commissioner. Mr 12 Madlanga? 13 MANGWASHI VICTORIA PHIYEGA: s.u.o. 14 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.): 15 Thank you, Mr Chairman. National Commissioner, you were 16 quite correct, Colonel Botha started testifying on 23 17 October 2012, and he was indeed, as you say, still 18 testifying even the following day. There's a matter that I 19 would like to get clarity from you on, and it is this. You 20 have already instituted an investigation on the possible 21 tampering on 24 October 2012. Captain Mohlaki comes to 22 testify before this Commission on 5 November 2012 and he 23 gives his evidence-in-chief based on his, on the 24 photographs that he had taken, which in and of themselves 25 did not show that there had been tampering before he took</p>
<p style="text-align: right;">Page 7208</p> <p>1 MR MADLANGA SC: Just to be sure what 2 exactly you are referring to, in particular insofar as 3 Captain Mohlaki is concerned, are you talking about when 4 Captain Mohlaki's evidence actually addressed the 5 tampering, where for instance two pictures would be shown 6 on the screens and the position of the weapons would be 7 different, or in some pictures there would be none, and 8 then a picture of the same person would actually have a 9 weapon when it wasn't there earlier? Are you talking about 10 that evidence when you refer to the evidence of Captain 11 Mohlaki? 12 GENERAL PHIYEGA: In fact the person who 13 was presenting I think was Botha, because I was here when 14 they broke for lunch, when he was coming to show his 15 pictures. I was alerted to that and we looked at them and 16 I saw that, and it was on the basis of that, that I said I 17 want to understand what is sitting behind these 18 differences. 19 MR MADLANGA SC: Well, I'm told by my 20 colleague in the evidence leading team, Mr Wesley, that 21 Lieutenant-Colonel Botha testified on 24 – or I'm sorry, 26 22 October 2012. 23 GENERAL PHIYEGA: And he was here for 24 many days. I mean he was here for many days. 25 MR MADLANGA SC: I'd like just a little</p>	<p style="text-align: right;">Page 7210</p> <p>1 the photographs that he presented before this Commission as 2 part of his evidence. I know this is long, but I'm just 3 setting a scene. Then when he is being re-examined – it 4 seems that I have my wires crossed when it comes to the 5 dates. I'm being told that he was re-examined on the 5th of 6 November, so his testimony must obviously have commenced 7 before that. 8 CHAIRPERSON: His testimony went on for a 9 quite a long time, you remember, much longer than we 10 anticipated. 11 MR MADLANGA SC: Yes, yes. Thank you, Mr 12 Chairman. Let me take one step back then. So he's been 13 cross-examined on the 5th of November. He would have 14 started testifying before that, but one thing sure is that 15 he testified after Colonel Botha had testified, which would 16 mean that he testified after you had instituted the 17 investigation. What I want to find out from you, are you 18 as the National Commissioner and as the head of SAPS in a 19 position to explain why it is that SAPS let this Commission 20 listen to and view – listen to the evidence of Captain 21 Mohlaki and view photographs taken by him, photographs 22 taken at a time when the tampering had already taken place? 23 Why was this Commission not alerted beforehand that that in 24 fact does not represent the scene; the scene had already 25 been tampered with? Are you in a position to give an</p>

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1 explanation?

2 CHAIRPERSON: Yes, Mr Semenya?

3 MR SEMENYA SC: Chair, I think at the

4 heart of the question is probably why did we as SAPS legal

5 representatives allow the leading of evidence to happen in

6 the way it did, without alerting the Commission to the

7 investigation. If it is any –

8 MR MADLANGA SC: May I, even before my

9 learned friend proceeds, may I say for now let us hear what

10 the answer will be and only if it does turn on what my

11 learned friend says, will what my learned friend says

12 perhaps come into the equation. For now I just want to

13 know why the National Commissioner as the National

14 Commissioner and as the head of the South African Police

15 Service, why they as that organisation let evidence proceed

16 on a basis that was in fact not correct.

17 CHAIRPERSON: Mr Semenya, do you persist

18 in your objection?

19 MR SEMENYA SC: Let the witness answer,

20 correct, I'll give you the information just now.

21 CHAIRPERSON: Alright.

22 GENERAL PHIYEGA: I'm going to try and

23 deal with some chronology which may miss certain things.

24 If I do so, please pardon me. On the 23rd/24th when that

25 thing was happening, was, remember we had submitted our

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1 preliminary presentation. Botha and Mohlaki were, even

2 though they work for us, were coming from the LCRC and

3 whatever information they were giving was coming to the

4 evidence leaders, not to us. So the discord that we

5 noticed, because all those documents were already with you,

6 and correct me, were discovered at that point in time,

7 that's how we managed to get your document that was

8 different from ours. I was alerted to that because I was

9 saying if this is the document that is with the evidence

10 leaders, and what we have submitted as our own submission

11 and whatever, I wanted to understand why the difference,

12 and it was on the basis of that that I said please

13 investigate for me and tell me what is happening, and

14 through - I'm sure our lawyers will talk to that – through

15 our lawyers we didn't wait to be asked; we brought the

16 information to yourselves to say this has happened, we are

17 doing the following, and that's my understanding of what

18 has happened here.

19 MR MADLANGA SC: By the information being

20 brought to us, to the attention of us evidence leaders, and

21 also us being advised as to what SAPS was doing, I trust

22 that you are not suggesting that that was done prior to the

23 re-examination of Captain Mohlaki on 5 November 2012?

24 GENERAL PHIYEGA: The specifics of the

25 telling of the Commission I don't have and I'm sure my

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1 lawyers would be able to talk to that. All I know is that

2 when we discovered this, we did ask them to actually talk

3 to the Commission about what we are doing, because we

4 wanted to understand, and we've been open. I think you've

5 met a number of people who have been investigating, who

6 we've engaged. You've met with the - because we wanted to

7 be open and transparent about what we were doing.

8 MR MADLANGA SC: General, who drafted

9 your press statement? Did you do it yourself, or did

10 somebody do it for you?

11 MR SEMENYA SC: Chair, I -

12 MR MADLANGA SC: The press statement of

13 17 –

14 MR SEMENYA SC: Is Mr Madlanga moving

15 away from that?

16 CHAIRPERSON: Mr Semenya wants to say

17 something.

18 MR SEMENYA SC: Are you moving away?

19 MR MADLANGA SC: Yes. Yes, Mr Semenya.

20 MR SEMENYA SC: Chair, just for the

21 record, might we look at the very document, FFF15.

22 CHAIRPERSON: FFF15, the so-called, the

23 possible tampering report.

24 MR SEMENYA SC: Indeed, Chair, at page 8.

25 The date of the document is 2012/11/21. We could not have

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1 known anything about how this investigation is positioned.

2 That's the first point. The second point is, we did not

3 even lead the evidence of Captain Mohlaki ourselves.

4 MR MADLANGA SC: May I move on, Mr

5 Chairman?

6 CHAIRPERSON: Yes.

7 MR MADLANGA SC: Thank you. National

8 Commissioner, who drafted your press statement of 17 August

9 2012?

10 CHAIRPERSON: That's FFF5, I think?

11 MR MADLANGA SC: Yes, Mr Chairman.

12 GENERAL PHIYEGA: I – may I request a

13 copy of that, because I don't have it with me.

14 CHAIRPERSON: Does the witness need a

15 copy of FFF5? To save time, she can have mine.

16 GENERAL PHIYEGA: Oh, is it this one? My

17 apologies, I thought you were talking about another

18 statement. Are we going back to this one? Then you can

19 have yours back.

20 MR MADLANGA SC: Yes, we are going back

21 there, General, but I don't think we are going back to any

22 previous question. The question was, who drafted it,

23 General? Did you do it yourself, or did somebody do it for

24 you?

25 GENERAL PHIYEGA: You've asked me that

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1 question yesterday and I did say that that was a joint  
 2 operation committee output and we also had our  
 3 communications people in that environment. We had the team  
 4 that were there, the commanders, as well as the COMS  
 5 people.  
 6 MR MADLANGA SC: I asked you about the  
 7 briefing on the 16th and the update on the following day,  
 8 not about the authorship.  
 9 GENERAL PHIYEGA: You asked me.  
 10 MR MADLANGA SC: Are you saying the  
 11 people concerned all sat down around a table and they all  
 12 drafted the document? There wasn't a single person who  
 13 actually took responsibility for the drafting?  
 14 GENERAL PHIYEGA: Yes, I am saying the  
 15 people that – remember the process of putting this  
 16 together, you asked me this question and I did say to you  
 17 the JOC was responsible for – because these facts come from  
 18 various people. You asked who was in the field, who was  
 19 where, and I think everybody was sitting there, that these  
 20 are the facts coming from this environment and the  
 21 communications people for instance would not have been in  
 22 the field, they'd be sitting there as communication  
 23 scribes. Mashego was there and Ria was there and they were  
 24 writing, being fed information to do that. So it's a  
 25 collaborative output.

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1 MR MADLANGA SC: So that collaborative  
 2 process, the actual scribes were the communications people?  
 3 GENERAL PHIYEGA: Yes.  
 4 MR MADLANGA SC: And who drafted the  
 5 internal briefing note that was sent to the Department of  
 6 International Relations; that is exhibit FFF4?  
 7 GENERAL PHIYEGA: It was the same  
 8 process.  
 9 MR MADLANGA SC: General, did you have a  
 10 written text when you addressed the police parade on 20  
 11 August 2012?  
 12 GENERAL PHIYEGA: No.  
 13 MR MADLANGA SC: Commissioners, those are  
 14 all my questions. Thank you very much. And thanks to the  
 15 National Commissioner as well.  
 16 GENERAL PHIYEGA: Thank you.  
 17 CHAIRPERSON: Thank you, Mr Madlanga. Mr  
 18 Bizos, I understand you're going to cross-examine next. Is  
 19 that correct?  
 20 MR BIZOS SC: That's correct.  
 21 CHAIRPERSON: Yes, we'll go on till just  
 22 about 4 o'clock, which means you've got 20 minutes, unless  
 23 you want me to adjourn now for tomorrow morning, but I'm  
 24 happy if you wish to proceed.  
 25 CROSS-EXAMINATION BY MR BIZOS SC: I'll

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1 try to use the time, Mr Chairman. May I ask you, do you  
 2 prefer to be called General or Commissioner?  
 3 GENERAL PHIYEGA: Anything is fine.  
 4 MR BIZOS SC: I prefer to call you  
 5 Commissioner, for reasons which may become clearer to you  
 6 during the course of our conversation.  
 7 GENERAL PHIYEGA: I'm comfortable.  
 8 CHAIRPERSON: It might be helpful if you  
 9 called her National Commissioner, because otherwise –  
 10 MR BIZOS SC: National Commissioner.  
 11 CHAIRPERSON: - there may be confusion  
 12 between her and us.  
 13 MR BIZOS SC: And the provincial, yes.  
 14 National Commissioner, very well. You were asked by one of  
 15 the people, the journalists that sit around here day in and  
 16 day out, Redi Tlhabi, whether the conduct of the police in  
 17 shooting criminals encouraged the criminals to become  
 18 brazen. Did you say that to her?  
 19 GENERAL PHIYEGA: She spoke about brazen.  
 20 I responded to the brazen –  
 21 MR BIZOS SC: Yes.  
 22 GENERAL PHIYEGA: - the statement she  
 23 made.  
 24 MR BIZOS SC: What did you say?  
 25 GENERAL PHIYEGA: I wouldn't recall

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1 precisely. If you have –  
 2 MR BIZOS SC: Let me remind you.  
 3 CHAIRPERSON: Sorry, can you tell us on  
 4 what occasion did this take place?  
 5 MR BIZOS SC: It's on the 16th of March  
 6 2013, according to my notes.  
 7 CHAIRPERSON: Thank you.  
 8 MR BIZOS SC: "They are absolutely brazen  
 9 because we have the most beautiful Constitution that allows  
 10 rights." Then that was in inverted commas. It was shown  
 11 on television. It was picked up, it wasn't denied by you.  
 12 Do you concede that that is what you have said?  
 13 GENERAL PHIYEGA: I do not deny that.  
 14 MR BIZOS SC: Perhaps you can explain to  
 15 us why you chose to use the word "beautiful," which is  
 16 usually used in relation to cosmetic and fashion matters.  
 17 What is it that they consider, or you consider "beautiful  
 18 Constitution?" Please explain.  
 19 GENERAL PHIYEGA: Perhaps being a Mopedi  
 20 girl that I am, I took "busi," which may mean beautiful,  
 21 which may mean wonderful, which may mean good. I probably  
 22 made it a direct translation. I did not pay particular  
 23 attention to the language, but all I was saying, was that  
 24 we have a very good Constitution.  
 25 [15:45] MR BIZOS SC: You were not asked whether

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

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

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

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

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



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

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

[COMMISSION ADJOURNED]



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