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 111 15 JULY 2013 PAGES 11817 TO 11948



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1	Page 11817 [PROCEEDINGS ON DATE]	1	Page 11819
2	[09:48] CHAIRPERSON: The Commission resumes.	2	that we've spent in recess were able to be used profitably. MR MADLANGA SC: And Mr Chairman, two
3	This morning before we began Mr Mpofu and the rest of his	2	things; I said protesters/strikers exactly because I know
4	team came to see the Commissioners in chambers and he	4	you like referring to them as strikers, and then secondly,
5	explained that he is awaiting instructions from his clients	4 5	may I say the T is inverted. The cross bar, as it were, is
	as to the way forward as to what they will do until the	6	at the bottom.
6 7	judgment of the High Court in their application for funding	7	CHAIRPERSON: Yes.
8	is known, and he will be able to inform us in the course of	8	
9	the morning what his instructions are. I indicated to him	。 9	
	5		looked at my little sketch, I understood your evidence to
10 11	that I didn't want to lose time, so my suggestion was that	10	be that the, as the strikers were walking through the
	the evidence should continue. He will have access to the	11	field, the police formed a line, a line that would be
12	transcript and also to the TV feed, so he did not object to	12	represented by the bottom bar of the inverted T, where I've
13	our proceeding in his absence at this stage. I think I	13	written "Police." Did I understand your evidence
14	should put all of that on the record, but the probability	14	correctly?
15	is that after the tea adjournment he will be in a position	15	MAJOR-GENERAL MPEMBE: Chairperson, in my
16	to inform us what his instructions are in the interim, as	16	evidence I did indicate that it's not directly going to be
17	to the way forward in the interim while they're awaiting	17	a straight line, but it will be, it will have the curving
18	the judgment of the High Court. Major-General, you're	18	also, but at a reasonable distance from the protesters.
19	still under oath.	19	MR MADLANGA SC: Can I ask you to do your
20	WILLIAM MPEMBE: s.u.o.	20	own depiction then, please? There are two pieces of paper
21	CHAIRPERSON: Mr Madlanga, I take it you	21	here; very quickly, General, if you can.
22	wish to proceed with your cross-examination?	22	CHAIRPERSON: I think you should put the
23	CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):	23	Major-General's depiction in as an exhibit so that those
24	Yes, I do. Thank you, Mr Chairman. Good morning, General.	24	who have to read the record in years to come will
25	MAJOR-GENERAL MPEMBE: Good morning,	25	understand what exactly is being covered.
	Page 11818		Page 11820
1	Page 11818 Advocate.	1	Page 11820 MR MADLANGA SC: Perhaps we should start
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1	Page 11821 CHAIRPERSON: Mr Madlanga set the	1	Page 11823 Anyway, who knows?
2	standard that you have to follow. The bar, the cross bar	2	[VIDEO RECORDING PLAYED]
3	is not very high. I've marked it – have you been given a	3	MR MADLANGA SC: Stop. General, is that
4	copy of it?	4	not you? The tallest man there, police officer there.
5	SPEAKER: Yes [inaudible] –	5	MAJOR-GENERAL MPEMBE: No, Chairperson.
6	CHAIRPERSON: Would you pass it around?	6	MR MADLANGA SC: Okay, please continue.
7	What he's done is he's instituted a correction, which I	7	[VIDEO RECORDING PLAYED]
8	think may help us, in regard to the position of the police.	8	CHAIRPERSON: May I say this? The same
9	MR MADLANGA SC: Perhaps another little	9	problem is going to arise as arose with the video clips
10	correction to mine, or the description you gave on record,	10	that Mr Ngalwana referred to. When you say "stop there," –
11	Mr Chairman, on mine as well it's not as though the line	11	MR MADLANGA SC: Yes.
12	representing the police is right against the line	12	CHAIRPERSON: - we've got to find a way
13	representing the – there's a gap there as well.	13	of recording the point or time, whatever it is, at which
14	CHAIRPERSON: The Major-General has	14	that stop takes place because otherwise when we read the
15	actually written "reasonable distance" to indicate that –	15	record ourselves later on, we're going to have difficulty
16	MR MADLANGA SC: Yes, yes, yes.	16	understanding it, and the historians of the future who are
17	CHAIRPERSON: - indicate that important	17	going to be studying all this will be totally baffled.
18	point.	18	MR MADLANGA SC: Yes, yes, Thank
19	MR MADLANGA SC: Yes, yes. Thank you, Mr	19	you very much. Just there, I don't see there. Is that
20	Chairman. And these are quite similar, General, except	20	? Mr Chairman, Commissioners, it's 03:16. I'm
21	that yours is curving and you indicate "reasonable	21	relying on Ms Pillay. I can't see that far.
22	distance." Would you accept that?	22	CHAIRPERSON: It looks to me like 15, but
23	MAJOR-GENERAL MPEMBE: Correct,	23	03, looks like a colon, 15.
24	Chairperson.	24	MR MADLANGA SC: Yes, on that video.
25	MR MADLANGA SC: And did I understand you	25	CHAIRPERSON: That was the first point at
1	Page 11822	-	Page 11824
1	to say that in the line that represents the police, you	1	which you paused.
2	to say that in the line that represents the police, you were more to the right of that line and Warrant-Officer	2	which you paused. MR MADLANGA SC: Yes, yes.
2 3	to say that in the line that represents the police, you were more to the right of that line and Warrant-Officer Kuhn as more to the left of that line? Did I understand	2	which you paused. MR MADLANGA SC: Yes, yes. CHAIRPERSON: And there's someone whose
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	Page 11825		Page 11827
1	started moving?	1	CHAIRPERSON: I'm sorry, it's not clear
2	MAJOR-GENERAL MPEMBE: I did change a	2	which line you're talking about. I take it you mean the
3	position, but I don't know when.	3	curved line on his sketch –
4	MR MADLANGA SC: Yes.	4	MR MADLANGA SC: The curved line –
5	CHAIRPERSON: If you're not sure that	5	CHAIRPERSON: - HHH16.2.
6	it's you, well then there's nothing we can do about it.	6	MR MADLANGA SC: Yes, the curved line.
7	MAJOR-GENERAL MPEMBE: Yes, okay.	7	CHAIRPERSON: The curved line
8	MR MADLANGA SC: Can you please –	8	representing the police?
9	MAJOR-GENERAL MPEMBE: I'm sorry, Chair.	9	MR MADLANGA SC: Yes, Chairperson.
10	MR MADLANGA SC: Yes.	10	CHAIRPERSON: So that, Major-General,
11	MAJOR-GENERAL MPEMBE: For the fact that	11	would I be correct in saying that if one looks at this,
12	the, I can see it's Colonel Merafe, it might be possible	12	just beyond the middle towards the right there's a
13	that it's me who was talking to Colonel Merafe.	13	policeman standing under a tree, and then there are four
14	CHAIRPERSON: So are you saying that the	14	other policemen to the left.
15	policeman who is facing the camera, speaking to the person	15	[10:08] Would that be the extreme right-hand side of the
16	to whom we referred earlier, who's back is to the camera,	16	curve that you put on your sketch, and presumably the curve
17	that is Colonel Merafe, and it's possible therefore that	17	then continued beyond what we can see in the frame, with
18	the person to whom he was speaking, whose back we can see,	18	further policemen. Is that correct?
19	is you?	19	COMMISSIONER HEMRAJ: Just before you
20	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	20	answer that, Mr Madlanga, is the answer to that question a
21	seeing that Colonel Merafe –	20	good many frames before this frame? That curved formation
22	MR MADLANGA SC: Please continue.	22	of the police line, doesn't that appear a good many frames
23	[VIDEO RECORDING PLAYED]	23	before this particular one on the video?
24	MR MADLANGA SC: Just go back to, go back	24	MR MADLANGA SC: Is there a suggestion
25	just a little bit, please. Ja, stop, stop, stop right	25	that we saw that just now, or –
20		20	that we saw that just now, of
-			
	Page 11826		Page 11828
1	Page 11826 there.	1	Page 11828 COMMISSIONER HEMRAJ: Yes, before we got
1 2		1 2	-
	there. Stop right there.	-	COMMISSIONER HEMRAJ: Yes, before we got
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1	Page 11829	1	Page 11831
1	MR NGALWANA: Sorry, Mr Chairman, I think	1	into the informal settlement, it would have made sense for
2	the frame does not show the whole scene. That could be the	2	the police to flank the protesters on the right-hand side,
3	problem.	3	not so?
4	CHAIRPERSON: Right, let's carry on with	4	MAJOR-GENERAL MPEMBE: I did indicate
5	the clip, but I think the Major-General wants to say	5	that there was a flank by using Nyalas.
6	something. He's the witness; it's his evidence and he was	6	CHAIRPERSON: I think we saw the Nyalas
7	the only one of us who was there, so perhaps he can help	7	actually on the TV footage. We didn't note the exact
8	US.	8	frame, if that's necessary, but that certainly was visible
9	MAJOR-GENERAL MPEMBE: Chairperson, as it	9	on the video clip, was it not?
10	can be depicted here, that's the curve that I'm talking	10	MR MADLANGA SC: I'm aware of that. I'm
11	about, and I also want to indicate to Adv Madlanga is that	11	aware of that too, Mr Chairman, yes, but it's just one
12	that was also part of my briefing to the officers, and	12	particular Nyala that I'm interested in and I'm going to
13	during the operation I expect that my officers who have	13	lead to that just now. Can you please play the video which
14	briefed members, should be keeping that line in the manner	14	is exhibit Z1?
15	in which I have briefed them.	15	[VIDEO RECORDING PLAYED]
16	MR MADLANGA SC: General, I understood	16	MR MADLANGA SC: Can you please fast
17	your evidence to be that besides your briefing of the	17	forward it to where the footage started of the railway
18	commanders, there wasn't any briefing of the rest of the	18	line? I'm told the time is 19:18. 19:18. Or 23:11,
19	members. Did I misunderstand your evidence? And now I	19	23:11.
20	hear you to be suggesting that there was actually a	20	[VIDEO RECORDING PLAYED]
21	briefing of the rest of the members by their commanders.	21	CHAIRPERSON: There was a dead body
22	Did I misunderstand your evidence?	22	there. We didn't give, I don't know if there was a person
23	MAJOR-GENERAL MPEMBE: Chairperson, I did	23	close to the deceased, sitting in the auditorium. If I'd
24	say the commanders did not confirm with me whether they	24	known that that was going to be seen, I would have given a
25	briefed their members, but I did brief members.	25	warning, but if there's any possibility of that in the
	Page 11830		Page 11832
1	CHAIRPERSON: Perhaps the next question	1	future, I'd be grateful if I could be told –
2	that flows from that is you briefed the commanders; did	2	MR MADLANGA SC: Mr Chairman, in fact
3	your commanders have the opportunity to brief their men?	3	perhaps I failed in describing what I was looking for to Mr
4	Whether they did or not is something you can't tell us, but	4	Wesley. What I'm looking for is – in fact, the version
5	did they have the opportunity after you'd briefed them, to	5	that I have in my hard drive, the protesters move past the
6	brief their men?	6	big rock and then my version changes, or switches onto the
7	MAJOR-GENERAL MPEMBE: Chairperson,	7	CCTV footage and it just get onto this at all, at all. So
8	looking at the time when I briefed them, yes I can say that	8	it's the part that has the CCTV footage that I would like
9	there was a time that they can brief their members.	9	to see. Ja, let's try Z3, please. Z3. 14:22:55.
10	MR MADLANGA SC: Mr Videographer, you can	10	CHAIRPERSON: - where on this video clip
11	get –	11	the frames that we're now seeing will be found, can be
12		12	found.
12	[VIDEO RECORDING PLAYED]		
13	MR MADLANGA SC: No, you can please just	13	MR MADLANGA SC: There seems to be no
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13 14	MR MADLANGA SC: No, you can please just get rid of it. I wanted to get an understanding on the	14	time, but – yes, but Mr Wesley tells me that it's from
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1	Page 11833	1	Page 11835
1	that just appeared on the screen roughly behind the	1	and this other video, which is on the left, was presumably
2	protesters, do you have any idea who the occupants of that	2	going in that direction to stop them veering off to the
3	were? Was Lieutenant Baloyi not one of the police who were	3	left, or some of them, and going to the shaft. Is that
4	in that Nyala?	4	what you're saying, or am I not understanding you
5	MAJOR-GENERAL MPEMBE: Correct,	5	correctly?
6	Chairperson.	6	MAJOR-GENERAL MPEMBE: Chairperson, it's
7	MR MADLANGA SC: As it is moving there,	7	correct. The only reason is that why they drove so close
8	do you have any idea where it was going to or what it was	8	to the protesters, because I said they should keep a
9	going to do?	9	reasonable distance, hence I mentioned also the extreme
10	MAJOR-GENERAL MPEMBE: No, Chairperson.	10	shaft.
11	The only identified point on the other hand, it was on the	11	MR MADLANGA SC: General, you answered my
12	extreme left-hand side. It was some, a shaft which we said	12	question based on what you see on the footage today, but
13	that maybe the protesters might not be going that side. So	13	surely if there was a shaft that you were concerned with on
14	but whether they were going there as they were moving now,	14	the day, you had an idea on the day which direction it was.
15	I really, that's the one that I don't know.	15	Is that so or not?
16	MR MADLANGA SC: Can you just repeat what	16	[10:28] MAJOR-GENERAL MPEMBE: Correct,
17	you said about the shaft? What about the shaft?	17	Chairperson, I did know where is it, and I also stated it
18	MAJOR-GENERAL MPEMBE: There is a point –	18	where now it is.
19	maybe I don't know whether it does appear on the video, a	19	MR MADLANGA SC: Now as they were walking
20	shaft on the extreme left-hand side of that place, which of	20	through that field on the day, were they proceeding towards
21	course it was one of the points which we said that we	21	that shaft? You knew where it was. You were looking at
22	should check that the protesters might not move there.	22	them, seeing which direction they were going. Were they
23	CHAIRPERSON: Is this one of the Karee	23	proceeding towards that shaft?
24	shafts? Is this one of the Karee shafts?	24	MAJOR-GENERAL MPEMBE: I did indicate
25	MAJOR-GENERAL MPEMBE: Chairperson, I'm	25	that there is a possibility that they were going to the
	Page 11834		Page 11836
1	not quite sure about the name, but -	1	shaft, but in my briefing it was said that they should keep
2	MR MADLANGA SC: But in the footage you	2	a reasonable distance.
3	see the direction they are taking, and even from memory you	3	MR MADLANGA SC: General, you have not
4	do recall which direction they were going. As they are	4	indicated that they might have been proceeding to the
		_	
5	going now and as you see them, and as you recall from	5	shaft. What you indicated rather in response to the
6	memory, were they in any way proceeding towards that shaft?	6	question by the Chairman is there was a possibility that
6 7	memory, were they in any way proceeding towards that shaft? MAJOR-GENERAL MPEMBE: No, I don't,	6 7	question by the Chairman is there was a possibility that they might have proceeded towards the shaft, and that there
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		1	
1	Page 11837	1	Page 11839
1	are saying, but now the witness is saying what he said was	1	proceeding towards the shaft or not?
2	they might have been going there, and he says that he has	2	MAJOR-GENERAL MPEMBE: No, Chairperson.
3	already said so, and what I'm saying is he has not said so.	3	We were acting on prevention, proactively.
4	In response to your answer the point he made is exactly	4 5	MR MADLANGA SC: Thank you, General.
5	what the Chairman is now saying, because to your question	5	Please play the video.
6	he said yes, which means that he exactly said what you are	6	[VIDEO RECORDING PLAYED]
7	now saying, Mr Chairman. But now in response to my	7	MR MADLANGA SC: Stop it there. Stop it
8	question he says that "I've already said that they might	8	there. Ms Pillay, I'm sorry, that's how many minutes now
9	have been proceeding there," and though it's maybe a subtle	9	into the video?
10	difference, but a difference there is, and I'm saying he	10	MS PILLAY: Chair, it's 2 minutes and 27
11	has not as yet said so.	11	seconds into the video.
12	CHAIRPERSON: Just give him a chance to	12	MR MADLANGA SC: Now General, is that –
13	say so if he wants to say so.	13	to your recollection, is that the same Nyala that we saw
14	MAJOR-GENERAL MPEMBE: Chairperson, in my	14	earlier?
15	earlier response to the question it was that there was a	15	MAJOR-GENERAL MPEMBE: Correct,
16	shaft which was supposed to be protected. I was indicating	16	Chairperson.
17	that the Nyala might have been going there, but for the	17	MR MADLANGA SC: Please continue.
18	reason of coming closer, that's one that was, I was also	18	[VIDEO RECORDING PLAYED]
19	explaining. Maybe the Advocate did not understand me well,	19	MR MADLANGA SC: Stop there.
20	otherwise I could not have included the shaft on the left.	20	MS PILLAY: That's 2 minutes and 58
21	CHAIRPERSON: I think that by, my	21	seconds into the video.
22	[inaudible] ambiguous. I think you meant to refer to the	22	MR MADLANGA SC: And General, is that
23	future. Am I correct? Yes. Mr Mathibedi, you turned your	23	still the same Nyala?
24	light on. Do you want to say something?	24	MAJOR-GENERAL MPEMBE: Correct,
25	MR MATHIBEDI SC: Mr Chairman, I think he	25	Chairperson.
	Page 11838		Page 11840
1	has given the answer because initially he said he did not	1	CHAIRPERSON: That's the Nyala on the
2	has given the answer because initially he said he did not know where the Nyala was going, but it might be going	2	CHAIRPERSON: That's the Nyala on the left, is it –
2 3	has given the answer because initially he said he did not know where the Nyala was going, but it might be going there, because you know, hearing that the protesters might	2 3	CHAIRPERSON: That's the Nyala on the left, is it – MR MADLANGA SC: Yes.
2 3 4	has given the answer because initially he said he did not know where the Nyala was going, but it might be going there, because you know, hearing that the protesters might go to the side of the shaft.	2 3 4	CHAIRPERSON: That's the Nyala on the left, is it – MR MADLANGA SC: Yes. CHAIRPERSON: - of the crowd?
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1	Page 11841 the shaft was, were the protesters moving in the direction	1	Page 11843 the Nyala. A little bit further back, please. When the
2	of the shaft?	2	person first emerged – there we are – from the Nyala.
3	MAJOR-GENERAL MPEMBE: No, Chairperson,	3	Perhaps we can be told what that reading is on the video.
4	as I testified earlier on –	4	MS PILLAY: 3 minutes and 11 seconds.
5	MR MADLANGA SC: Please continue.	5	CHAIRPERSON: Thank you.
6	[VIDEO RECORDING PLAYED]	6	[VIDEO RECORDING PLAYED]
7	MR MADLANGA SC: Stop there. Stop there.	7	MR MADLANGA SC: There's the smoke.
8	Stop there. Ja, right there. Right there. Or just go	8	CHAIRPERSON: - we can perhaps be told
9	back a little bit, just a little bit. Keep going back.	9	what the reading is when we see the smoke for the first
10	Ja, stop right there. Stop right there. What's the time	10	time?
11	now?	11	MS PILLAY: 3 minutes and 16 seconds.
12	MS PILLAY: It's 3 minutes and 12 seconds	12	CHAIRPERSON: Thank you.
13	into the video.	13	[VIDEO RECORDING PLAYED]
14	MR MADLANGA SC: General, there's	14	MR MADLANGA SC: You can stop now. I
15	somebody who emerged from the left-hand side of the Nyala,	15	take it, General, you wouldn't know who those three police
16	and you can see him now, I would say in front of the Nyala.	16	officers are, and what they did? Or do you know what they
17	Is that a policeman, or don't you know?	17	did after alighting from the Nyala, or do you know?
18	MAJOR-GENERAL MPEMBE: He alighted from	18	MAJOR-GENERAL MPEMBE: I don't know,
19	the Nyala, so it could be a police officer.	19	Chairperson.
20	MR MADLANGA SC: Please continue.	20	MR MADLANGA SC: Now can we play the
21	[VIDEO RECORDING PLAYED]	21	other CCTV footage that also shows the protesters on the
22	MR MADLANGA SC: Stop there, right there.	22	field. Mr Wesley, the other Z something, and please select
23	Right there, ja. Just forward a little bit so that the	23	the spot where they are on the field, not before.
24	second person – just stop there, stop there. What's the	24	MS PILLAY: That's exhibit Z2.
25	time now?	25	COMMISSIONER HEMRAJ: Before we get
1	Page 11842	1	Page 11844
1	MS PILLAY: That's 3 minutes and 17	1	there, can I just ask you, General, do you know who would
2	MS PILLAY: That's 3 minutes and 17 seconds into the video.	2	there, can I just ask you, General, do you know who would have instructed Lieutenant Baloyi to go in any particular
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1	MR MADLANGA SC: What's the time –	1	CHAIRPERSON: - given that reading, are
2	MS PILLAY: For purpose of the record,	2	we?
3	it's 42 seconds into the video.	3	MS PILLAY: 1 minute and 42 seconds.
4	MR MADLANGA SC: Are you able to tell, or	4	MR MADLANGA SC: Please continue.
5	not, General?	5	[VIDEO RECORDING PLAYED]
6	MAJOR-GENERAL MPEMBE: Chairperson, I'm	6	MR MADLANGA SC: Stop when the smoke
7	not quite sure because that one was close to the	7	starts coming out and give us the reading. Exactly there,
8	protesters.	8	what's the time?
9	MR MADLANGA SC: If I'm not mistaken,	9	MS PILLAY: 2 minutes and 2 seconds.
10	they are going to emerge somewhere there at the front.	10	MR MADLANGA SC: Continue.
11	Perhaps we should play on. Please continue.	11	[VIDEO RECORDING PLAYED]
12	[VIDEO RECORDING PLAYED]	12	MR MADLANGA SC: Just stop there. Just
13	MR MADLANGA SC: Or behind, rather;	13	stop there. Ja, now what's the time where we are now?
14	behind.	14	MS PILLAY: 2 minutes and 7 seconds.
15	[VIDEO RECORDING PLAYED]	15	MR MADLANGA SC: Yes, General, where we
16	MR MADLANGA SC: Stop right there. Stop	16	are now, do you accept that the protesters are continuing
17	right – there is the protesters that I mentioned, just –	17	to walk, or go the same way as they were before, despite
18	[VIDEO RECORDING PLAYED]	18	the fact that there's already smoke around? Do you accept
19	MR MADLANGA SC: Ja, stop right there.	19	so? And perhaps for you to see it better, let's just go
20	Right there. What's the time now?	20	back to exactly the point where the smoke starts and then
21	MS PILLAY: 1 minute and 5 seconds.	21	we just continue watching, General.
22	MR MADLANGA SC: And may I just give a	22	[VIDEO RECORDING PLAYED]
23	description, as the protesters that are appearing at that	23	MR MADLANGA SC: You see there's smoke
24	time, the Nyala is not quite at 90 degrees in relation to	24	there, they are walking. They are walking. They are
25	them, but roughly at that and slightly at an angle, but it	25	walking. They are still walking. Stop there. Do you
	Page 11846		Page 11848
1	Page 11846 has sort of cut, or gone in front of them. Please	1	Page 11848 agree with me, General?
1 2		1 2	5
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24MR MADLANGA SC:Can you go back just a24the worldwide web what exactly it is the25bit and stop where the Nyala stops?25this particular frame that's significant?

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Marikana Commission of Inquiry

	Page 11849		Page 11851
1	MR MADLANGA SC: General, would that not	1	Mathibedi's objection. How do you respond to it?
2	be a stun grenade what we just saw now? We'll go back a	2	MR MADLANGA SC: Let me ask the question
3	bit maybe for you to see what happens exactly there. Just	3	this way. General, when there is – when one sees the smoke
4	go back before it starts and then – ja, now play forward.	4	that you say is teargas smoke, do we see any people
5	Just stop there. Stop there. You saw there were two poofs	5	running? I'm not asking about whether or not there might
6	that were poof-poof – I don't know how to describe what I	6	well be people running, but from what we see on the
	think –	7	footage, do you see any people running before the stun
7 8	CHAIRPERSON: I think "puff" is a more	8	
	•	9	grenades explode?
9	elegant pronunciation.	,	MAJOR-GENERAL MPEMBE: Chairperson, I'll
10	MR MADLANGA SC: Thank you. Thank you,	10	request that maybe it starts where the smoke was, what is
11	Mr Chairman. I'm a third language English speaker. Would	11	teargas was used until to the stun grenade.
12	those two puffs there, quick ones, boof, would those not be	12	MR MADLANGA SC: Can you please rewind to
13	stun grenades perhaps?	13	a point just before we see any smoke, and then start
14	MAJOR-GENERAL MPEMBE: Correct,	14	playing.
15	Chairperson.	15	MS PILLAY: It's at 1:58, 1 minute and 58
16	MS PILLAY: Chair, the stun grenades	16	seconds.
17	start at 2:26.	17	[VIDEO RECORDING PLAYED]
18	MR MADLANGA SC: Please continue.	18	MR MADLANGA SC: Just stop – just go back
19	[VIDEO RECORDING PLAYED]	19	a bit; I think I see police, or people that I think, just
20	MR MADLANGA SC: Just stop there. Stop.	20	play; I want you to stop just before, on the extreme right-
21	The people are beginning to run. The people are beginning	21	hand side of the frame, more to the front, to the right of
22	to run around, and can you give us the time when they start	22	the protesters there are some people there and they start
23	running?	23	running. I want you to stop as those people begin to run,
24	MS PILLAY: It's 2:27.	24	or start running.
25	MR MADLANGA SC: Now just continue. I'll	25	[VIDEO RECORDING PLAYED]
	Page 11850		Page 11852
1	tell you to stop shortly.	1	MR MADLANGA SC: Right there. Right
2	tell you to stop shortly. [VIDEO RECORDING PLAYED]	2	MR MADLANGA SC: Right there. Right there. Right there. Just before they start running. Is it there? And
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Marikana Commission of Inquiry

Pretoria

1	Page 11853	1	Page 118
1	It will, it will move twice, as it happened there.	1	One of the ways in which we dealt with that was to adopt a
2	CHAIRPERSON: That means you can	2	comprised position of not interdicting the commission but
3	differentiate on the video between teargas smoke and smoke	3	asking for interim relief pending the final determination
4	from a stun grenade. Is that right?	4	of the rights of the parties. And that was always meant to
5	MAJOR-GENERAL MPEMBE: Correct,	5	make sure that whatever happens the work should continue
6	Chairperson.	6	and that's the order ultimately that we amended the notice
7	CHAIRPERSON: We'll now take the tea	7	of motion to. If we get that order, Chairperson, from the
8	adjournment for 15 minutes.	8	point of view of the commission at least we would have
9	[COMMISSION ADJOURNS COMMISSION RESUMES]	9	achieved the intended result which is that while the big
10	[11:30] CHAIRPERSON: The Commission resumes.	10	constitutional issues are debated in good time, on an
11	Before I ask, before I remind the Major-General he's still	11	expedited basis but at least that the commission is
12	under oath I want to thank, I think it's Ms Pillay who has	12	insulated from that process.
13	kindly prepare artistically improved sketches, depictions	13	So where are - and we made the remarks to the
14	of the positions of the strikers and the police which have	14	judge to say irrespective of the outcome, even if the
15	handed in and made available to us, thank you. Mr Mpofu, I	15	outcome had come yesterday, as professionals we have a de
16	understand you wish to make an announcement to us.	16	to come here and explain to the Commission. We couldn't
17	MR MPOFU: Thank you very much,	17	just disappear, whatever the instructions would be which is
18	Chairperson, and I hope everyone had a good break. Some of	18	what we are doing, thank you, with your leave, Chairperson
19	us didn't. Chairperson, if you remember the remarks I made	19	The position now is that while we are waiting or maybe
20	on the 21st of June regarding the then intended application	20	before, let me correct something that has been badly or
21	for the funding of the applicants or the victims as we	21	incorrectly reported in the media. They have said that the
22	prefer to call them. What I want to do now is quickly just	22	judge said his judgment will be on Thursday. The judge did
23	to report back as to what happened and then to address what	23	not say that and we can understand how that confusion
24	- the position of our plans. Thank you, Chairperson.	24	arose. The judge simply said he'll his judgement during
25	Chairperson, indeed the matter was set down for the 9th of	25	this week. What the Thursday issue was about, the
1 2 2	July, by agreement between the parties it was held on the 11th. The 11th, the 12th and the 13th, which is the Thursday, the Friday and the Saturday of last week. On all these	1 2 3	postponement of the separate application of Baloyi and I think the media then conflicted the two things. So in reality the judgment could be in the part two hours. It
3	the Friday and the Saturday of last week. On all those		reality the judgment could be in the next two hours. It
4 E	three days the matter finished after dark so it was quite a	4	could be tomorrow, it could be anytime this week, we don
5	lot of argument and a lot of paper indeed. I think before	5	know, but that situation then left us with the problem of
6	- I want to preface my remarks by thanking the Commission	6	what do we do now, between now and the time of the
7	for the support and understanding of the fact that we tried	7	judgment. And as we indicated and as you also indicated
8	as much as possible not to disrupt the work of the	8	the forum, Chair, what then happened is that a small
9	commission by firstly setting the matter down. The reason	9	delegation of the victims was sent to consult with us whic
10	why it was set down on the Tuesday because we anticipated	10	is what we have been doing now. We're still going to
11	the judge might want until about Friday so that by the	11	consult with the larger groups and our instructions are to
12	Monday there would be a judgement. But we do understand	12	await the judgment and at that point to receive further
13	because of the volume of work that the judge had to - he	13	instructions from them. In the meantime we'll not be
4	needed more than just a day to make a judgement. And when	14	participating, the victims that are affected, at least
15	we thank the Commission we're not - the support doesn't	15	those that we represent and hopefully as the Chairperson
	mean you supported the application, indeed what the	16	remarks were, if we are back later in the week then
		17	obviously we'll have to take the burden of catching up wit
16	commission did was to file a notice that it would abide by		what has happened which is not a major crisis. I think, a
16 17		18	
16 17 18	commission did was to file a notice that it would abide by	18 19	I was saying, the only difference is we are not here to be
16 17 18 19	commission did was to file a notice that it would abide by the decision but we think that even that speaks volumes.		I was saying, the only difference is we are not here to be
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		I	
1	Page 11857 thank you, Chairperson. So that seems to be an elegant way	1	Page 11859 Mpofu and his team an opportunity to leave before we
2	to deal with the situation that we find ourselves in. We	2	continue with the cross-examination. I should have said
3	do - well there's no need for me to reveal what our	3	before but let me say it now before you leave, we trust
4	instructions are if we don't come back but once again we'll	4	that your recovery from the assault that you were the
5	communicate that one way or the other. So that's the	5	victim of is continuing and that you are almost back to
6	situation, Chairperson, and we want to make it very clear	6	100% condition.
7	that this is what - all the steps that we are taking,	7	MR MPOFU: I -
8	including this morning for which we are very grateful that	8	
9	you gave us the time, is to make sure that the progress but	9	proceed without a response from Mr Mpofu to the state of
10	also the integrity of this commission is preserved. And	10	his health perhaps you can carry on with your cross-
11	everything we did in court we made sure because it would	11	
12	not make sense for us to be saying our client's rights are	12	CROSS-EXAMINATION BY MR MADLANGA SC (CONT.):
13	in jeopardy and they need to be exercised here and yet	13	Thank you, thank you, Mr Chairman. General just on the
14	damage the very institution to which they are to exercise	14	last response you gave to Commissioner Hemraj, so it means
15	those rights.	15	what I saw which was - or we all saw the two puffs which I
16	So we were very careful about that and it's	16	thought were two stun grenades, so you are saying that's
17	important that even the media must be very clear that these	17	one stun grenade. I'm not suggesting that throughout there
18	are positions that are taken as comprises because of a	18	was only one stun grenade but at the point to which I drew
19	situation that no-one could foresee but it doesn't reflect	19	your attention that was one stun grenade. Is that so?
20	anything whatsoever, if anything that they were grateful	20	MAJOR-GENERAL MPEMBE: Chairperson, I was
21	that the commission took the view of not opposing the	21	not referring to the number but I was referring to the way
22	application. As we say that speaks volumes on its one.	22	I could identify a difference between a stun grenade and a
23	Thanks. Sorry, Chairperson, before you respond insofar as	23	CS teargas.
24	the practical issue of what is happening at the commission	24	COMMISSIONER HEMRAJ: The question you
25	is concerned, the commission will be aware that we are	25	put to him, Mr Madlanga, was in the plural, are those stun
1	Page 11858 scheduled the next cross-examiner after Mr Madlanda That	1	Page 11860 grenades and be said yes
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		1	
1	Page 11861 visible yes it's true.	1	Page 11863 CHAIRPERSON: As I see it your statement
2	MR MADLANGA SC: So it's true those that	2	which is GGG12 would deal with it if it were dealt with in
3	you can see are not running and they only start doing so	3	paragraph 18. It doesn't appear to be and in Colonel
4	when the stun grenade goes off?	4	Merafe's statement, Lieutenant-Colonel Merafe's statement,
5	MAJOR-GENERAL MPEMBE: Chairperson, I	5	I'm not sure what the exhibit number is, but oh sorry it's
6	said it's correct except the point where there are a number	6	GGG15, exhibit GGG15 Lieutenant-Colonel Merafe's statement,
7	of people who were protestors or strikers that are covered	7	he would deal with the matter if he dealt with it at all in
8	by tear smoke.	, 8	para 18 also. In neither of those statements is that is
9	MR MADLANGA SC: General, the story that	9	that point mentioned at all.
10	the police also wanted to protect some shaft as I	10	MR MADLANGA SC: Yes, yes but if he were
11	understand it, somewhere to the left of the frame that if	11	to want to satisfy himself, thank you very much, Mr
12	I'm not mistaken, I'm hearing for the first time today is	12	Chairman. Perhaps we'll just give him time and maybe when
13	that correct? Are you mentioning that for the first time	13	we resume even tomorrow morning the General can indicate
14	today	14	whether he has been able to find anywhere where he
15	MAJOR-GENERAL MPEMBE: No, Chairperson.	15	pertinently deals with this issue, protestors walking
16	MR MADLANGA SC: Where do you mention it	16	through this field and the General's concern or SAPS'
17	for the first time? I might be wrong altogether, General.	17	concern about some shaft somewhere to the left of the
18	Just remind me.	18	frame. Will you please do that, General? Oh, you can stop
19	MAJOR-GENERAL MPEMBE: I once spoke about	19	the footage now, thank you.
20	it and I think it was the day when we were on the scene	20	CHAIRPERSON: I think I must also point
21	showing the shaft there. And also in my evidence in chief	21	that in the supplementary statement which is HHH3 I think,
22	I said that there were certain places which of course I was	22	you deal with what is said in para 18 of your original
23	briefed on my arrival that those places have been	23	statement in paragraph 8 of that statement and you also
24	identified. I mentioned informal settlement and also any	24	don't mention the point there either.
25	place that belongs to Lonmin mine that can be made to be	25	MR MADLANGA SC: Thanks again, Mr
	Page 11862		Page 11864
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1 2	disrupted. [11:50] MR MADLANGA SC: General, you do not	1 2	0
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	Demo 110/5		D 440/7
1	Page 11865 planning and - do you see that?	1	Page 11867 MAJOR-GENERAL MPEMBE: I am not a
2	Do you see the line starting "however, at all	2	commander of the POP unit but I am in charge of POP units
3	times?"	3	in the province. The commanders are reporting to me.
4	MAJOR-GENERAL MPEMBE: Yes, I see it.	4	Chairperson, I need also maybe to say last time I said I
5	MR MADLANGA SC: Yes, now the sentence	5	went there still as a CJOC and Brigadier Calitz was at the
6	starting towards the right-hand margin. "The planning and	6	JOC but I went there as a CJOC.
7	operational command of public order operations must always	7	MR MADLANGA SC: General, this is not as
8	be entrusted to commanders of POP units in consultation	8	I read it, saying that a CJOC may also do this. It says
9	with the Provincial Commissioner as they are trained and	9	"because commanders of POP units are trained and usually
10	usually experienced in such matters." Do you see that?	10	experienced in such matters." For that reason they must be
11	MAJOR-GENERAL MPEMBE: Correct,	11	the one who are in charge of, or rather, yes in charge of
12	Chairperson, I can see it.	12	an operation. They must be operational commanders. It
13	MR MADLANGA SC: Mr Chairperson,	13	says nothing about a CJOC who may not necessarily also be a
14	Commissioners, Ms Pillay has just drawn to my attention the	14	POP commander. So the simple question, General, is are you
15	fact that the transcript of the inspection in loco is	15	a POP commander? Do I understand your answer to be that
16	available and the General will be given a copy for him to	16	you are not? Or rather a commander of a POP unit, do I
17	have a look at where he refers to the shaft that needed to	17	understand your answer to be that you are not?
18	be protected.	18	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
19	CHAIRPERSON: Thank you.	19	and I indicated that all POP commanders are reporting to
20	MR MADLANGA SC: Thank you. General,	20	me. And, Chairperson, I need also to add that I did not go
21	what I read refers to the planning and operational command.	21	on the 13th alone, I was surrounded by POP commanders.
22	For now I will not bother about the planning. You said	22	MR MADLANGA SC: Are you suggesting an
23	because this was spontaneous and there was no time for	23	exception to what 4.3.2 says which is that a person to whom
24	planning you would have - in the circumstances you would	24	POP commanders report may, regardless of what 4.3.2 says be
25	have required three days to plan but I emphasise the part	25	in charge of a public order policing operation even if that
-			
	Dago 11966		Dago 11060
1	Page 11866 that says "operational command of public order operations	1	Page 11868 person is not himself or herself a commander of a POP unit?
1 2	Page 11866 that says "operational command of public order operations must always be entrusted to commanders of POP units in	1 2	5
	that says "operational command of public order operations		person is not himself or herself a commander of a POP unit?
2	that says "operational command of public order operations must always be entrusted to commanders of POP units in	2	person is not himself or herself a commander of a POP unit? Are you suggesting that exception to 4.3.2?
2 3	that says "operational command of public order operations must always be entrusted to commanders of POP units in consultation with the Provincial Commissioner as they are	2 3	person is not himself or herself a commander of a POP unit? Are you suggesting that exception to 4.3.2? MAJOR-GENERAL MPEMBE: Chairperson, as I
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1	Page 11869 is not what I'm saying. I'm saying that POP commanders as	1	Page 11871
			planning and operational command of public order operations
2	a general they are reporting to me and on that day I was	2	must always be entrusted to commanders of POP units, in
3	with them but I'm also not saying that it's an exception.	3	consultation with the Provincial Commissioner" – and now
4	But what I'm saying if Chairperson will allow me to	4	the reason is given – "as they are trained and usually
5	demonstrate with the previous policy that we also dealt	5	experienced in such matters." Now I've looked through your
6	with, that is standing order 262, paragraph 11.5. And in	6	CV, looked through the document that you put before us,
7	terms of that policy which I also admitted that what is	7	your record, and the work you've done at various stages in
8	written there I cannot change but practically when you are	8	your career. I couldn't see any evidence that you've been
9	on the ground in answering this question, when an	9	trained and were experienced in public order operations.
10	operational commander is leading the forces of 600 or even	10	If there is something that I did not see, or something
11	1000 on the 16th of - you could not be able maybe to give a	11	that's not there that I should have been told about, now is
12	command of a teargas because of the varsity(?) of the	12	your time to tell me, but the whole idea of this document
13	place, because of the number of people, and yet the policy	13	is that operation command for public order operations must
14	only depicts the two people, the operational commander as	14	always be entrusted to people who are trained and
15	well as the CJOC commander, and the CJOC, the same policy	15	experienced in such matters. Now the question is, were you
16	expect them to be in the JOC.	16	trained and were you experienced in such matters, in public
17	[12:09] So at the end of the day it does – and this is	17	order operations? I can understand being assistant
18	what I'm indicating to the Commission – it does have an	18	commissioner, the people, the Public Order Policing
19	impact in the operation, and as a matter of fact, Brigadier	19	commanders are under you and subject to your orders, and so
20	Calitz is coming as an operational commander, a POP	20	forth. I can understand that, but that's not the point.
21	commander, that he will also say what did he experience on	21	The point is whether the reason given in the sentence I
22	the 16th of August.	22	read afforded justification for you being in charge of the
23	MR MADLANGA SC: General, you did testify	23	execution of this particular operation. I think that's the
23	how many commanders, or POP commanders, or commanders of	23	question counsel is putting to you.
24	POP units there were on the 13th. Can you just –	24	MAJOR-GENERAL MPEMBE: Chairperson, I
20		23	
	Page 11870		Page 11872
1	Page 11870 unfortunately I don't remember how many you said there	1	Page 11872 would say I'm experienced in crowd management, in Public
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1	Page 11873	1	Page 11875
1	Chairperson, may I please respond to this?	1	practicable, I'm at the level of interpretation purely. Do
2	CHAIRPERSON: You may.		you agree that what I'm proffering as a possible interpretation is the correct interpretation, or don't you
3	MAJOR-GENERAL MPEMBE: Chairperson, I	3	
4	don't dispute the fact that I'm trained in a basic Public	4 5	agree?
5	Order Policing training, which I do agree with Adv		MAJOR-GENERAL MPEMBE: Chairperson, yes I
6 7	Madlanga. The experience that I am talking about is an experience through that training and having a practical	6 7	agree, and I see that it was done in terms of when I was there.
8	experience for 13 years of a deputy operations in the	8	
9	Northwest Province.	9	MR BIZOS SC: Mr Chairman, I can't help noticing that there are less than six people in the
10	MR MADLANGA SC: Can I now, General, take	10	audience. Should we not ask them, with respect, whether
11	you to paragraph 5.3.4 of this same document, the policy on	11	they understand English, and if so, we can dispense for the
12	Public Order Policing. You testified that this was – what	12	time being, if they don't want a translation and insist on
13	happened there was spontaneous and your reaction also	13	it, that we may expedite matters if we give the interpreter
14	therefore was a spontaneous reaction. Now if you look at	14	a rest?
15	paragraph 5.3.4, in fact if you look at 5.3, it deals with	15	CHAIRPERSON: - how do you react to that
16	a spontaneous gathering, and then there's 5.3.1 all the way	16	suggestion Mr Bizos has made?
17	down to 5.3.4, and this appears after the policy has	17	MR MADLANGA SC: I'm agreeable to that,
18	referred to what is expected of SAPS, that is all of the	18	if we may perhaps –
19	things that SAPS must do, including briefing, planning, and	19	CHAIRPERSON: Anyone who –
20	so on and so on. Now if you look at 5.3.4 it says, "The	20	MR MADLANGA SC: - the Commission to –
21	situation should be managed by applying the procedures	21	CHAIRPERSON: Anyone representing the
22	indicated in this policy document." Would I be correct,	22	parties opposed to Mr Bizos' suggestion? Perhaps the
23	General, if I suggest to you that even in circumstances	23	sensible thing to do is to suggest that the parties are
24	where a gathering is a spontaneous one, SAPS must still do	24	going to speak to their clients over the lunch adjournment,
25	the best they can to strive for upholding the principles	25	and depending on the feedback we get, we can then adopt \ensuremath{Mr}
	5 44674		
1	Page 11874 that are set out in this policy? Isn't that what 5.3.4	1	Page 11876 Bizos' suggestion in the light of the feedback. I think
1	that are set out in this policy? Isn't that what 5.3.4	1	Bizos' suggestion in the light of the feedback. I think
1 2 3	that are set out in this policy? Isn't that what 5.3.4 means? As far as that would be practical, of course.	1 2 3	Bizos' suggestion in the light of the feedback. I think there are people watching on a screen, or screens,
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2 3	that are set out in this policy? Isn't that what 5.3.4 means? As far as that would be practical, of course. CHAIRPERSON: - to be fair, you answered	2 3	Bizos' suggestion in the light of the feedback. I think there are people watching on a screen, or screens, elsewhere in this building. Of course there are people
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1	Page 11877 them, within the two hours that you had, should you not at	1	Page 11879 the meeting. It's the police that initiated the leaders to
2	the very least have had a very brief, very brief briefing	2	go and address there, and Chairperson, that was also in
3	session at which you indicated what you required to be done	3	compliance with the policy.
4	on the day, as opposed to simply just walking there and	4	With regard to establish the perpetrator,
5	only having a briefing once everything was unfolding, the	5	Chairperson, you will also know that in terms of the
6	briefing being with the commanders, as you were talking to	6	exhibit OO4 I repeatedly asked even those leaders who are
7	the protesters gathered next to the railway line? Was the	7	the people that they should help me to beat this elephant
8	proper thing to do, in the light of 5.3.4, and in the light	8	bit by bit. I'm just also explaining in terms of the
9	of the need for role players to know what is expected of	9	actions that emanated from the 13th.
10	them, was the proper thing to do not at the very least to	10	CHAIRPERSON: Yes, yes, I understand
11	have a very brief briefing session so that the role players	11	that, but I think Mr Madlanga is more concerned not with
12	should be aware of what is expected of them?	12	what you did on the 15th, which you've explained was
13	MAJOR-GENERAL MPEMBE: Chairperson, my	13	entirely in accordance with the policy document, but what
14	understanding of 5.3 does not only refer to the briefing.	14	you did on the 13th. Am I correct, Mr Madlanga? That's
15	It refers to the number of actions that the police should	15	what he's focusing on at the moment, but anyway, we have
16	take with regard to a spontaneous gathering. In answering	16	your answer in respect of the other points, which is on
17	the question I will also state maybe the paragraph and	17	record and we'll obviously bear it in mind, but perhaps
18	indicate the action that we did – identify the leadership	18	you'd like to proceed, Mr Madlanga, when the interpreter
19	element in order to establish communication and	19	has been given a chance to interpret the response.
20	negotiation; Chairperson, the video is very clear, I was	20	COMMISSIONER HEMRAJ: Mr Madlanga, the
21	personally talking to them.	21	brief briefing that you referred to is his briefing the
22	[12:29] The only problem that we couldn't establish is	22	other POP commanders and the police, not other role
23	that what are their names, where are they staying, but the	23	players; it's the briefing of the police personnel present?
24	follow-up action that I personally did, it was exactly to	24	MR MADLANGA SC: Yes, but which then,
25	do that. Coming to set up a mobile joint operational	25	Commissioner Hemraj, should have led to those commanders in
	······································		
	Page 11878		Page 11880
1	centre, Chairperson, I can confirm that it was set up.	1	turn –
2	Inform the local authority of the gathering and, if	2	COMMISSIONER HEMRAJ: Yes.
3	possible, the reasons or purpose of the gathering;	3	MR MADLANGA SC: - briefing the other
4	Chairperson, that is the responsibility of the authorised	4	role players.
5	officer, that is Captain Govender of Marikana Police	5	COMMISSIONER HEMRAJ: Yes.
6	Station, which he did confirm with me that he did inform	6	MR MADLANGA SC: Because as I suggest to
7	the local authority.	7	the witness, the policy expects all the role players to
8	The situation should be managed by applying the	8	know what is expected of them. That is the briefing.
9	procedures indicated in this policy document. Chairperson,	9	COMMISSIONER HEMRAJ: That's how I
10	I did testify a difference between a spontaneous gathering	10	understand the question.
11	and a gathering intended in section 3 of the Regulation of	11	MR MADLANGA SC: Yes, yes, you're quite
	Cathorings Act that over the use it is a sussiance of		
12	Gatherings Act, that even though it is a spontaneous	12	correct, Commissioner.
13	gathering, we should manage it as if it is done in terms of	13	CHAIRPERSON: It also might be relevant
13 14	gathering, we should manage it as if it is done in terms of section 3 of – the video is clearly there; my negotiation,	13 14	CHAIRPERSON: It also might be relevant to look at 5.1.1, which deals with ordinary crowd
13 14 15	gathering, we should manage it as if it is done in terms of section 3 of – the video is clearly there; my negotiation, the approach to the situation, we wanted really to legalise	13 14 15	CHAIRPERSON: It also might be relevant to look at 5.1.1, which deals with ordinary crowd gatherings. I take it in the case of spontaneous ones you
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	Page 11881		Page 11883
1	MR MADLANGA SC: Yes, thank you, Mr	1	the video, it is with regard to the situation where I
2	Chairman. That's why I took him to 5.3.4, saying within	2	expected how the police to respond.
3	reason, and insofar as practical, you must do your best to	3	MR MADLANGA SC: General, let me take you
4	comply, and indeed complying even with 5.1.1, as the	4	to a different issue. I have touched on it, but from a
5	Chairman is saying, if practical. Now General, I do hear	5	different angle, and it's -
6	your response, but as I understand them, all of the things	6	CHAIRPERSON: Are you moving away from
7	that you itemised seem to be matters that related to	7	the policy document?
8	planning on the Marikana events as a whole, and the manner	8	MR MADLANGA SC: Yes, Mr Chairman.
9	in which the police were approaching that the Marikana	9	CHAIRPERSON: Okay, I'd like to ask a
10	events, as a whole, and what the police operation thereon	10	question about that before you do that, before you move
11	was, as a whole, all of the things that you itemised seem	11	away. I take it 5.3.4 means you apply everything in the
12	to relate to that, and as the Chairman quite correctly	12	policy document that you can in the time available.
13	indicated, my focus is something pops up unexpectedly;	13	Clearly if it's absolutely spontaneous, then you can't.
14	protesters go to Karee and you get an instruction, please	14	Now if you look at 5.1.1, this deals with an ordinary crowd
15	attend to that. It's something spontaneous, I agree with	15	gathering. There it says, "Members of the SAPS POP are to
16	you, 100%. You have two hours from the time that you are	16	be structured, organised, well trained, and provided with
17	instructed to attend to it, and I'm asking you now in the	17	suitable protection and equipment before being deployed. A
18	face of 5.3.4, were you not at the very least, or was it	18	detailed briefing, during which the line of demand is
19	not incumbent upon you at the very least to have a very	19	clearly defined, must be given to all the members involved.
20	short briefing session with the commanders, who in turn	20	During this briefing," and now come words underlined, "the
21	should have had a very short briefing session with all the	21	level of force must be pre-determined and clearly explained
22	role players, so that everyone should be in a position to	22	to all members, and that it can only be effected by
23	know what was expected of them, spontaneous as it was,	23	instruction of the operational commander." Now there was
24	rather than what in fact happened, which is just you all	24	time to give that briefing, I take it, on the 13th. Is that
25	walked in there – and please excuse this – blind as it	25	correct?
	Page 11882		5 44004
			Page 11884
1	were, and the only briefing that takes place is when your	1	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
1 2	5	1 2	•
	were, and the only briefing that takes place is when your		MAJOR-GENERAL MPEMBE: Yes, Chairperson.
2	were, and the only briefing that takes place is when your attempt at managing the process is already afoot. So	2	MAJOR-GENERAL MPEMBE: Yes, Chairperson. CHAIRPERSON: Warrant-Office Kuhn could have been told that force could only be effected by instruction of the operational commander, who for practical
2 3	were, and the only briefing that takes place is when your attempt at managing the process is already afoot. So question is, would it not have been incumbent of you within	2 3	MAJOR-GENERAL MPEMBE: Yes, Chairperson. CHAIRPERSON: Warrant-Office Kuhn could have been told that force could only be effected by
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1	Page 11885	1	Page 11887
1	CHAIRPERSON: What are you saying?	1	CHAIRPERSON: - on the right.
2	MAJOR-GENERAL MPEMBE: What I'm saying	2	MAJOR-GENERAL MPEMBE: I was on the
3	is, Chairperson, in any normal situation in a practical	3	right, Chairperson.
4	way, and this is what I'm explaining, even in the operation	4	CHAIRPERSON: So couldn't you have seen
5	where the Chairperson, the paragraph is referring, if you	5	whether - if it did happen is another matter we won't go
6	have briefed the commanders, the commanders themselves are	6	into now, but if it was true that some of the strikers
7	the ones that they go and brief their own members, and then	7	started veering towards the informal settlement, they would
8	they submit a certificate to you to say that the people are	8	have done so on the right side; surely you could have seen
9	being briefed. So this is what I'm saying to say with	9	that from where you were?
10	regard to the normal operation and that one, I don't see	10	MAJOR-GENERAL MPEMBE: Correct,
11	myself having deviated because I did brief the commanders,	11	Chairperson. With regard to this I was referring to the
12	and I did explain that the commanders should have briefed	12	command that was given to Warrant-Officer Kuhn –
13	their members, and Warrant-Officer Kuhn as a member, he had	13	CHAIRPERSON: If one was.
14	that knowledge.	14	MAJOR-GENERAL MPEMBE: - not the command
15	CHAIRPERSON: - the point, he had the	15	that he heard.
16	knowledge anyway. But despite that, on the material before	16	CHAIRPERSON: If one was. – like I
17	us he appears to have fired off a teargas canister without	17	thought this was relevant in this context. You said you
18	having received an instruction from the operational	18	were moving on to another point.
19	commander. Is that correct? That's right, isn't it? He	19	MR MADLANGA SC: Thank you. Thank you,
20	admitted to you that he didn't know – he said he got a	20	Mr Chairman. General, the subject of the protesters
21 22	command; whether that's true or not we don't know, but	21 22	suddenly changing direction and veering towards the
22	certainly he never suggested he got a command from you, and you were functioning as the operational commander that day.	22	informal settlement, I've dealt with it in one context.
23 24	That's correct, isn't it?	23 24	Now what I would like to find out from you, you've already accepted that in your handwritten statement of the 13th of
24	MAJOR-GENERAL MPEMBE: It's correct,	24 25	August you do not know this. Now what I would like to
20		25	August you do not know this. Now what I would like to
	Page 11886		Page 11888
1	Chairperson, but Chairperson, I need also to add that based	1	establish from you is whether you are aware of any
2	on paragraph 11.5, practically speaking, not deviating from	2	statement made before the Potchefstroom meeting that talks
3	the policy, practically speaking, if the operational	3	about a change of direction and heading towards the
4	commander could, operational commander will not be able to	4	informal settlement.
5	cover the whole area and in that case I indicated	5	[12:49] Are you aware of any, prior to the Potchefstroom
6	operational speaking, not policy wise, and that's,	6	meeting? I am aware that after the Potchefstroom meeting
7	Chairperson, I did indicate to this Commission that in a	7	there are a few statements, yours, GGG12 – is it 12? –
8	very big and wide space the operational commander, will it	8	being one of them, and another one by Lieutenant-Colonel
9	be impossible to see everything and to give command in	9	Vermaak being one of them - I'm not sure if it's an exhibit
10	advance in order for the members to act.	10	- although Colonel Vermaak does have an earlier statement
11	CHAIRPERSON: Would it have been possible	11	which does not say this, but after Potchefstroom he has one
12	for you to have – if it's true that the strikers veered off	12	that does say this. You too, you earlier before the
13	towards the informal settlement, if that's true, would it	13	Potchefstroom meeting, you do not say this; after
14	have been possible for you to have raised your voice and	14	Potchefstroom you do say this, and are you aware of a
15	given the order not to someone who was on the extreme left,	15	single police statement that suggests the change of
16	but somebody who was close to you on the right, close to	16	direction and veering towards the informal settlement,
17 19	the informal settlement, would it have been possible for	17 18	prior to the Potchefstroom meeting?
18 19	you to have given such an order and it been heard by the		MAJOR-GENERAL MPEMBE: Chairperson, I did
	person to whom you gave the order, who would have known that you're the appropriate person to give the order?	19 20	not see any statement, but I was not able to read all the
20 21	that you're the appropriate person to give the order?	20	people's statements that submitted the statements on the
- 13	MAJOR-GENERAL MPEMBE: Chairperson, on	21	13th.
22 23	that day it could not have been impossible for me, but what	22 23	MR MADLANGA SC: Of those that you have
23	I'm indicating is that it was clearly also depicted from the video that in some certain areas I could not have been	23 24	seen, not a single person suggests this, correct? MAJOR-GENERAL MPEMBE: Correct,
4	seeing what was happening.	24 25	Chairperson. I did indicate that we wanted to escort the
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1	Page 11889	1	Page 11891
1	protesters not to go through the informal settlement, but	1	teargas, then he, then Brigadier Calitz came to me and
2	to go back to the koppie.	2	said, "General, it's Warrant-Officer Kuhn."
3	MR MADLANGA SC: I suggest, General, and	3	CHAIRPERSON: Was this before or after
4	this is what we will argue, that when the police threw	4	you made your own statement?
5	teargas and stun grenades at the protesters, the protesters	5	MAJOR-GENERAL MPEMBE: Chairperson, my
6	were merely retracing their steps and going back to the	6	statement that is being submitted here, which Adv Madlanga
7	koppie and not at all intent on entering the informal	7	is referring to, is a statement that Brigadier Van Zyl
8	settlement. What do you say to that?	8	requested to me to submit for the purpose of opening the
9	MAJOR-GENERAL MPEMBE: Chairperson, I	9	docket, and I'm not quite certain whether it was
10	will not agree.	10	immediately after I'd given to Brigadier Van Zyl or it was
11	COMMISSIONER HEMRAJ: General, when did	11	after, but probably it is on the same date that I know it's
12	you become aware that it was Warrant-Officer Kuhn who fired	12	Brigadier, it was Warrant-Officer Kuhn, and at what time
13	the teargas?	13	did I submit a statement to Brigadier Van Zyl, I'm not
14	MAJOR-GENERAL MPEMBE: It was on the same	14	quite sure.
15	day, Chairperson, when we were asked, when I was – but	15	CHAIRPERSON: It appears to have been 6
16	after the incident, when I was asking who used the teargas.	16	o'clock according to the statement. According to the
17	COMMISSIONER HEMRAJ: Was any explanation	17	statement it was 6 o'clock in the evening. Does that help
18	requested from him as to why he acted as he did?	18	you to answer the other question I asked you? You see, if
19	MAJOR-GENERAL MPEMBE: Chairperson, as I	19	you look at your statement, it's exhibit HHH13, it looks as
20	have indicated, when I said why did you – he did not give	20	if it was – it's A16, I think, in the docket, which doesn't
21	the reasons for the explanation, but he only indicated to	21	sound like a statement that's made to open the docket. The
22	me that he heard a command. He heard a command. Knowing	22	docket has got 15 statements in it already, but if you look
23	that I did brief them earlier, it's me who said that the	23	at the last page of the statement you'll see that under
24	one that might have given that command which Warrant-	24	your signature appear the words "Monday, 2012-08-13,
25	Officer Kuhn is referring to, he might have given it	25	18:00." Your statement was made at 18:00. It doesn't
	Page 11900		Dago 11902
1	Page 11890 according to my earlier briefing.	1	Page 11892 appear to have been one that opened the docket, but that's
1 2	according to my earlier briefing.	1 2	appear to have been one that opened the docket, but that's
	according to my earlier briefing. CHAIRPERSON: What time was it when you		appear to have been one that opened the docket, but that's another matter. What I want to know from you is did you
2	according to my earlier briefing. CHAIRPERSON: What time was it when you discovered that it was Warrant-Officer Kuhn who fired off	2	appear to have been one that opened the docket, but that's another matter. What I want to know from you is did you already know by them that it was Warrant-Officer Kuhn who'd
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	Page 11893		Page 11895
1	COMMISSIONER HEMRAJ: General, of	1	suggestion?
2	Warrant-Officer Kuhn was unable to tell you, or did not	2	MAJOR-GENERAL MPEMBE: Chairperson, my
3	answer your question as to why that teargas was fired, were	3	response will be no, and if Warrant-Officer Kuhn talks the
4	any of the commanders that were reporting to you and	4	truth, because I did believe him that he heard an
5	briefing you, able to answer that question as to why it was	5	instruction.
6	fired and in that particular direction?	6	CHAIRPERSON: None of the commanders told
7	MAJOR-GENERAL MPEMBE: Chairperson, none	7	you that he had given the command, so Kuhn couldn't have
8	of the commanders was precise to me to say what was the	8	acted surely on just what somebody else said. It would
9	reason, and Warrant-Officer Kuhn only state that he heard	9	have to be from a commander, and none of the commanders
10	the command.	10	admit having given the instruction. In fact, somebody, you
11	CHAIRPERSON: I take it we can assume	11	told us, alleged that you had given the instruction and you
12	that none of the commanders told you that he had given the	12	were quite emphatic that that was not true. So the
13	order?	13	difficulty I've got with the statement you're making now is
14	MAJOR-GENERAL MPEMBE: Correct,	14	Kuhn couldn't have just acted on what somebody else told
15	Chairperson.	15	him. Surely he would have had to appreciate that that
16	CHAIRPERSON: Wasn't it of any importance	16	person was a commander, although strictly speaking even
17	to find out if what Warrant-Officer Kuhn had said was true,	17	that wouldn't be enough, but we won't go there now. But
18	who gave him the instruction that he claimed that he acted	18	none of the commanders gave the order according to the
19	on?	19	information that you have. So the whole thing is very
20	MAJOR-GENERAL MPEMBE: Chairperson, I	20	puzzling, isn't it?
21	tried to ask him to say who gave the command, and he said,	21	MAJOR-GENERAL MPEMBE: It's correct,
22	"General, I did not see who, but I heard the instruction."	22	Chairperson, because I couldn't establish to say maybe is
23	CHAIRPERSON: It's now 1 o'clock. I	23	he having any other reason or is he hiding something, and
24	think we can continue that discussion after the lunch	24	that's the reason why I believed him.
25	adjournment. I think this is a day for a half-hour lunch	25	COMMISSIONER HEMRAJ: But then your
	Page 11894		Page 11896
1	adjournment. I think we should in fact in future always	1	answer to Mr Madlanga's question must be in the
2	adjournment. I think we should in fact in future always have a half-hour lunch adjournment in order to gain extra	2	answer to Mr Madlanga's question must be in the affirmative, isn't it?
2 3	adjournment. I think we should in fact in future always have a half-hour lunch adjournment in order to gain extra time. So we'll adjourn now until 25 to 2.	2 3	answer to Mr Madlanga's question must be in the affirmative, isn't it? MAJOR-GENERAL MPEMBE: My question to Adv
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1	Page 11897	1	Page 11899
1	commanders, that the protesters should indeed be disarmed.	1	given as it is now.
2	What's your response to that?	2	MR BIZOS SC: - at home watching it on
3	MAJOR-GENERAL MPEMBE: Chairperson, I'm	3	television. Can't we make arrangements that the
4	requesting the question to be clarified with more precise	4	interpreter speaks to whoever is televising it and it can
5	who are the juniors, because there are many juniors that I	5	go to the people that want to hear it? I don't want to be
6	spoke to them.	6	thought trying, or asking the Commission to deprive them of
7	MR MADLANGA SC: That is why I said, or	7	that right, but can't it mechanically be done? If we don't
8	perhaps more precisely, the commanders. I said so in the	8	need it here, it can be done -
9	question, General. But let me ask the question again. Or,	9	CHAIRPERSON: Mr Bizos, I think I
10	the second possibility, General, is that the stun grenades	10	understand what you're saying. The reason I said for the
11	and teargas were thrown because, or as a result of you	11	moment we'll carry on as we are, is we obviously can't
12	having been convinced by your juniors, in particular the	12	organise that this afternoon.
13	commanders, that the protesters should be disarmed. Your	13	MR BIZOS SC: No, obviously.
14	comment?	14	CHAIRPERSON: But I understand what you
15	MAJOR-GENERAL MPEMBE: No, Chairperson.	15	have in mind. You're thinking for example of a sports
16	MS BARNES: Chair, I'm sorry to	16	commentary; you can get the cricket in English, Afrikaans,
17	interrupt. I see that the translation has stopped. I do	17	and Xhosa. So it's possible apparently in some way or
18	have –	18	other for where there's simultaneous translation or
19	CHAIRPERSON: I beg your pardon. Thank	19	simultaneous commentary, for the viewer to choose the
20	you for reminding me. I intended to - I was so embarrassed	20	channel. Now whether that's feasible in our situation, we
21	about us starting late that I forgot to say what I was	21	don't know at this stage, but your point is that's
22	supposed to say at the beginning, and that is to ask for	22	something that we'll investigate and -0
23	feedback from the representatives of the parties as to the	23	MR BIZOS SC: Sure.
24	acceptability, at this stage anyway, of Mr Bizos'	24	CHAIRPERSON: But anyway, the short point
25	suggestion, and I've failed to do that. You now have the	25	is we can't do it this afternoon.
	Page 11898		Page 11900
1	opportunity. Have you got any feedback for us, Ms Barnes?	1	MR BIZOS SC: Obviously.
2	MS BARNES: Yes, we do, Chair, thank you.	2	CHAIRPERSON: So this afternoon we'll
3	We have taken instructions and it does appear that some of	3	carry on as we were before.
4	the AMCU members as well as some of the family members do	4	MR BIZOS SC: Yes.
5	watch the live feed and are watching it currently, and so	5	CHAIRPERSON: But we've already asked the
6	they would need the translation to continue. We're not	6	officials of the Commission to investigate the feasibility
7	sure of the exact numbers in this regard, but if any of our	7	of simultaneous translation and tenders have been obtained
8	clients are watching –	8	and tests have been done, and so forth, but what will have
9	CHAIRPERSON: Watching the live feed here	9	to be factored in, if that's the right word, is this
10	in the building?	10	question of simultaneous translation in various languages
11	MS BARNES: No, not in the building.	11	to be chosen by the viewer. That may in fact put it beyond
12	CHAIRPERSON: Oh, they're watching it on	12	the bounds of feasibility, but certainly it's something we
13	CHAIRPERSON: Oh, they're watching it on YouTube or whatever?	12 13	the bounds of feasibility, but certainly it's something we must investigate.
13 14	CHAIRPERSON: Oh, they're watching it on YouTube or whatever? MS BARNES: They're watching it out	12 13 14	the bounds of feasibility, but certainly it's something we must investigate. MR BIZOS SC: Thank you, Mr Chair.
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		I	
	Page 11901		Page 11903
1	other side if the people should really be planning from	1	relation to those individuals that might be carrying the
2	this side, and we suddenly hear of some mine shaft that at	2	firearms illegally.
3	least thus far I thought we have not heard about, but	3	MR MADLANGA SC: General, I don't follow
4	something on which the General is still to come back to us	4	that. This is a question that flows from the answer that
5	on about, yes. Now General, subject to the homework that I	5	you have just given relative to what the excerpt that I
6	have asked you to kindly do, let us for now step off the	6	read to you means. You agree that what you say there means
7	events of the 13th of August 2012. Can I take you to page	7	that you saw, because you say "I see, I also see," you saw
8	11370 of the transcript, lines 4 to 11, and 11370, day 106,	8	that – let me just look at this again. "I did also see
9	11370, lines 4 to 11, and it's your testimony, General, and	9	that if the dispersal has to take place, there might be
10	please tell me when you are there, General.	10	shooting taking place either from the police, or," and then
11	MAJOR-GENERAL MPEMBE: Chairperson, I	11	you go on, "or the protesters," and so on and so on. You
12	will just, maybe if I can be reminded about the page?	12	are saying this is something that you saw as a possibility,
13	MR MADLANGA SC: 11370, lines 4 to 11.	13	and you've already agreed, not so?
14	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	14	MAJOR-GENERAL MPEMBE: Chairperson,
15	I did find it.	15	seeing I was referring to the individuals on the side of
16	MR MADLANGA SC: There where I have	16	the protesters that might have been carrying the firearms,
17	referred you to you are responding to a question by Mr	17	and I did indicate how that risk which I said I foresee,
18	Ngalwana as to what in your estimation would have caused	18	how it has been mitigated by the plan.
19	bloodshed, and in this context you are dealing with the	19	MR MADLANGA SC: General, mitigated, but
20	debriefing session with the union leaders, in particular	20	not excluded, not so? Mitigated, but not completely
21	here with NUM. Now, yes you are dealing with GGG4. Now	21	excluded.
22	let's go to the part I referred you to, line 4 to 11, this	22	[14:12] MAJOR-GENERAL MPEMBE: Chairperson,
23	is what you say. "So the bloodshed that I was referring	23	definitely excluded in the manner that that bloodshed
24	to, it's what has happened and what is happening currently,	24	happened there, because that is not what one was referring
25	and what might also happen in what, in the future. By that	25	to. Yes, somebody shooting at the police yes, but that the
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	Dega 11000		Dece 11004
1	Page 11902 time I did not know that the incident of the 16th will	1	Page 11904 protesters in that great number while the barbed wire or to
1	time I did not know that the incident of the 16th will		protesters in that great number while the barbed wire or to
2	time I did not know that the incident of the 16th will happen, but I did," and I emphasise this part, General,	2	protesters in that great number while the barbed wire or to say the plan being interrupted, I did not foresee that.
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1	Page 11905	1	Page 11907
1	in fact, elsewhere in the transcript and you will say if I am wrong, elsewhere in the transcript you say that you knew	1	Chairperson, it might already have been said in the Commission, either by General Annandale that we also had
3	about that because some media people had told you that some		the counters-snipers and those that will have the – what is
4	of the protesters were hiding firearms beneath their	4	it, the binoculars to look at those that will have the
5	blankets, am I correct on that as well?	5	firearm. That is a shooting that I was speaking to.
6	MAJOR-GENERAL MPEMBE: Correct,	6	Chairperson, in answer to Advocate Madlanga, it will be
7	Chairperson.	7	saying if either of those people are not seen by the
8	MR MADLANGA SC: And in fact you also	, 8	police, and surely if they attack the police, that is what
9	knew as a matter of fact that some of the protesters had	9	we are speaking but the risk to address is the one that I
10	stolen firearms from the police and also from Lonmin	10	am talking about, but not that shooting which took place at
11	security officers.	11	Marikana, that one I was not referring to.
12	MAJOR-GENERAL MPEMBE: Correct,	12	CHAIRPERSON: Does it really matter? The
13	Chairperson.	13	shooting that took place at Marikana was, as has been
14	MR MADLANGA SC: Now surely, if as you	14	described to us, as we've seen but the answer to the
15	say the protesters might have fired shots at the police,	15	question which has been put to you, is that there was a
16	they could not possibly have been doing that for fun, they	16	distinct possibility that shooting of another kind would
17	would have been firing directly at the police, not just	17	take place, as a result of which people would be killed.
18	firing anywhere, that is what you foresaw, not so? And the	18	Isn't that right? Blood was going to be shed.
19	shots would be aimed at the police, is that not so?	19	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
20	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	20	but the plan, the mitigation of the plan was actually
21	and I did also explain how we address that risk.	21	addressing precisely that risk. The Commission will recall
22	MR MADLANGA SC: Addressed as it might	22	how we put the six Nyalas and what I have already explained
23	have been, but you still also foresaw the possibility that	23	now.
24	the police might shoot back. You say so, not so?	24	MR MADLANGA SC: General, I will repeat
25	MAJOR-GENERAL MPEMBE: Chairperson, I	25	and say that, not that I am detracting from what the
1	Page 11906		Page 11908
1	said if the police they see they are being shot at, they	1	Chairperson said, but just to try to avoid what seems to be
2	said if the police they see they are being shot at, they will act in self or private defence.	2	Chairperson said, but just to try to avoid what seems to be some confusion in your mind, I too was purely at the level
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1	Page 11909	1	Page 11911
1	is the right word, but we won't debate that at the moment,	1	Major-General you're still under oath.
2	but what is clear I think is that whatever was done to try	2	WILLIAM MPEMBE: s.u.o.
3	to minimise the situation you did foresee bloodshed, people	3	CHAIRPERSON: Mr Madlanga, you're still
4	being killed. Isn't that right, as a distinct possibility	4	cross-examining.
5	of the action that was going to be taken. Isn't that	5	CROSS-EXAMINATION BY MR MADLANGA SC (CONT.):
6	right? These people, according to the evidence that we	6	Thank you, Mr Chairman.
7	have had, the suggestion is that they had taken, that muti	7	COMMISSIONER HEMRAJ: General, your
8	had been administered to them. They believed they were	8	answers do take into consideration that that excerpt that
9	invincible, invulnerable, so they weren't scared of being	9	was read out to you refers to that possibility in the event
10	shot at by the police, if that evidence is correct.	10	of dispersal being taking place. Do you understand that,
11	Obviously we have to decide that later. If that is, that	11	that the excerpt that was read out to you it refers to what
12	weapons themselves, didn't think they could be hurt by the	12	you foresaw in the event of a dispersal action taking
13	police weapons, so did you - and you knew about the muti	13	place.
14	didn't you?	14	MAJOR-GENERAL MPEMBE: That will include
15	MAJOR-GENERAL MPEMBE: Correct,	15	that, Chairperson, but I wanted also to state that when I
16	Chairperson, I knew about the muti but I did not believe in	16	was speaking to Mr Senzeni Zokwana I was also speaking with
17	what they are believing in.	17	what has happened and also what was happening and that is
18	CHAIRPERSON: I accept you did not	18	also in that excerpt.
19	believe that they would be invincible or invulnerable, you	19	MR MADLANGA SC: Can I now take you to,
20	realised, that's the whole point, you realised they may	20	still on the same page of your testimony, General, take you
21	have proceeded under a false impression, that they were	21	to lines 12 to 24? Ms Pillay got off the relevant part on
22	invincible, you knew they weren't, and you knew if the	22	her screen there Commissioner, apologies. The following
23	police fired at them, there would be fatal – there might	23	appears, General, "in other words the blood," and this is
24	well be fatal consequences, isn't that so?	24	the Chairperson asking you now, "in other words the blood
25	MAJOR-GENERAL MPEMBE: Chairperson, as I	25	that you thought" mark the words "that you thought was
	Page 11910		Page 11912
1	indicated, I was looking at the individuals and that is	1	going to be shed would be the blood of strikers or police
2	really what I am - not the mass as it has happened at	2	or both. Is that correct? That's because the strikers
3	Marikana, about that risk and that, and according to my	3	were in possession of firearms which they had taken from
4	statement there.	4	the security guards and the police and might use them. And
5	CHAIRPERSON: Does that answer means that	5	of course, the police in disarming them would use firearms
6	you didn't foresee that 34 people would be killed and about	6	as well. Is that the way you saw it?" Again I emphasise
7	70, I think is the number of people would be injured, you	7	the last sentence or question. "Is that the way you saw
8	didn't foresee that? You didn't foresee bloodshed on that	8	it?" And then you respond. "Chairperson, when a dispersal
9	scale. Is that right?	9	process takes place we do not use sharp ammunition but what
10	MAJOR-GENERAL MPEMBE: Correct,	10	I'm saying is that the individuals, those that had firearms
11	Chairperson.	11	they might also shoot at the police and the police might
12	CHAIRPERSON: But the statement that's	12	defend themselves, the individuals." My question on this,
13	been put to you, what does it mean in the context of the	13	General, is a simple one. Do you agree that even in
14	foreseeability of bloodshed, at least affecting some	14	response to this question by the Chairperson you are yet
15		15	again referring to the situation as you, yourself saw it.
15	people?		
16	people? MAJOR-GENERAL MPEMBE: The last	16	Do you agree?
			Do you agree? MAJOR-GENERAL MPEMBE: Chairperson, this
16	MAJOR-GENERAL MPEMBE: The last	16	
16 17	MAJOR-GENERAL MPEMBE: The last statement, correct, Chairperson and hence the plan had to	16 17	MAJOR-GENERAL MPEMBE: Chairperson, this
16 17 18	MAJOR-GENERAL MPEMBE: The last statement, correct, Chairperson and hence the plan had to address that risk. I won't talk about mitigation, but what	16 17 18	MAJOR-GENERAL MPEMBE: Chairperson, this isn't very clear here, it refers to the individual I have
16 17 18 19	MAJOR-GENERAL MPEMBE: The last statement, correct, Chairperson and hence the plan had to address that risk. I won't talk about mitigation, but what the plan actually addresses that risk.	16 17 18 19	MAJOR-GENERAL MPEMBE: Chairperson, this isn't very clear here, it refers to the individual I have referred at them. And that at Marikana at that same time
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		1	
	Page 11913		Page 11915
1	in response to the question by the Chairperson is the	1	therefore that you could indeed, as you say, not have been
2	situation regarding the individuals, as you refer to them,	2	referring to the following day but what you definitely were
3	or the shooting by individuals and the possible response by	3	referring to was if a dispersal action were to take place
4	the police, so you are referring to it as you yourself saw	4	and you've already said yes to that in response to a
5	it. Am I correct?	5	question by Commissioner Hemraj. Now let me take you to
6	MAJOR-GENERAL MPEMBE: Correct,	6	page 11397 of the transcript, lines 5 to 23. And this is
7	Chairperson, and I even said that there were plans to	7	examination in chief by Mr Ngalwana and this is what you
8	address the risk.	8	say. "At the evening meeting" or no that's him, my learned
9	MR MADLANGA SC: Now let me take you to	9	friend, Mr Ngalwana. "At the evening meeting, the
10	the foot of this same page and from there to the top of the	10	debriefing meeting on the 15th you said to the trade union
11	next one and I will start reading at line 25,	11	leaders that if the police were to implement a dispersal
12	Commissioners. And all the way through to line 11 at page	12	action there will be bloodshed. Did you convey that same
13	11371. Again the Chairperson, "that's why what you are	13	sentiment at the JOC?" Your response "Chairperson, no." Mr
14	saying as I understand you, I just want to make sure I	14	Ngalwana "why didn't you?" Your response "Chairperson,
15	understand you correctly, is that the strikers who are	15	that was a strategy to - intended for the union leaders to
16	being disarmed might use their firearms even, I suppose,	16	take the matter seriously when they communicate to their
17	might use pangas and so forth and that would cause	17	members to lay down their weapons. I did not believe that
18	bloodshed on the part of the police. Shed police blood.	18	that will happen." Mr Ngalwana "when you say you did not
19	Equally, the police in defending themselves would	19	believe that that would happen what do you mean? What is
20	presumably have to regard it necessary to fire back. In	20	it that you did not believe will happen, General?" Major-
21	which case some of the striker's blood could also be shed.	21	General Mpembe "I did not believe that when the police go
22	Is that the way you understand it?" Your response "that's	22	there, there will be bloodshed but that's what I'm saying
23	correct, Chairperson." And then you go on further. And	23	is that it was a strategy intended to convince the union
24	perhaps because you say but, maybe let me read that as	24	leaders to take the matter seriously when they communicate
25	well. So that will take us all the way to line 14, one,	25	with the members."
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	5		
1	Page 11914 four. "But I was not only referring on the following day	1	Page 11916 Now General Lread this to suggest that you are
1	four. "But I was not only referring on the following day	1	Now, General, I read this to suggest that you are
2	four. "But I was not only referring on the following day but what I was referring to and what that may be is what I	2	Now, General, I read this to suggest that you are now saying that you did not foresee the risk of shooting
2 3	four. "But I was not only referring on the following day but what I was referring to and what that may be is what I wanted that's why I was saying there, 'tomorrow or tonight	2 3	Now, General, I read this to suggest that you are now saying that you did not foresee the risk of shooting and therefore bloodshed and that you had merely said what
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1	Page 11917 and therefore as a result the possibility of bloodshed. I	1	Page 11919 CHAIRPERSON: - about individuals being
2	understand you to be accepting that part and that instead	2	killed, or injured? Individuals would be killed or injured
3	you had said what you had said about the shooting and	3	if you tried to disperse the parties. Is that what you
4	counter shooting and the risk of bloodshed purely as a	4	say? Individuals who according to your information, who
5	matter of strategy to convince the NUM leaders to talk to	5	believed they were invincible, who, attempts being made to
	their members and convince them to disarm. Purely a matter		disperse them, but you foresee they'd resist, did you not?
6	of strategy but as a matter of fact you did not have	6	
7		7	The individuals would, is that right?
8	foresight of the risk of bloodshed. I'm repeating the	8	MAJOR-GENERAL MPEMBE: Chairperson, the
9	question because, as I said, I got confused by the long	9	individual that I'm speaking about, those that would be
10	answer you gave. I'm trying to establish if you agree with	10	having the firearms, but not those that will be invincible,
11	that part, just that part. Am I interpreting what you are	11	but I'm –
12	saying correctly?	12	CHAIRPERSON: - they're invincible.
13	MAJOR-GENERAL MPEMBE: Chairperson, the	13	Right, so what would happen to these individuals then; you
14	context of what I was saying here and I think that is what	14	go along, you try to disperse them. Some of them have got
15	is more important in the sense of what I said to Mr Senzeni	15	firearms, some of them have got axes, some of them have got
16	Zokwana, Mr Ngalwana wanted to know if I believed in it so	16	assegais, some of them have got pangas. You try to
17	why then I did not brief the police officers in the JOC.	17	disperse them. You point firearms at them, presumably to
18	And that's the context that I was saying but it does not	18	try to frighten them. On the basis of what you believed,
19	take away the issue of me raising the consent of the	19	they thought that they were invincible because of the muti,
20	protestors having firearms. The plan that had to be	20 21	because you knew about the muti. Is that right?
21 22	specific in terms of addressing that risk. MR MADLANGA SC: General, in exactly that	21	MAJOR-GENERAL MPEMBE: Chairperson, I knew about the muti.
22	context, the context that you give, exactly that context,	22	CHAIRPERSON: Ja, you knew it would be
23 24	what I'm trying to establish is whether you agree with me	23 24	worthless. You thought, you believed that they thought it
24 25	that what this means, in that context what this means is	24 25	worthess. You thought, you believed that they thought it would work. Is that right?
25		25	
	Page 11918		Page 11920
1	Page 11918 that you are saying you in fact did not foresee the risk of	1	Page 11920 MAJOR-GENERAL MPEMBE: Correct,
1 2		1 2	
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2	that you are saying you in fact did not foresee the risk of shooting by the protestors and counter shooting by the	2	MAJOR-GENERAL MPEMBE: Correct, Chairperson.
2 3	that you are saying you in fact did not foresee the risk of shooting by the protestors and counter shooting by the police. And therefore the possibility of bloodshed if a	2 3	MAJOR-GENERAL MPEMBE: Correct, Chairperson. CHAIRPERSON: Right, so you come along
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	that you are saying you in fact did not foresee the risk of shooting by the protestors and counter shooting by the police. And therefore the possibility of bloodshed if a dispersal were to take place. That is what you are saying, you only did this as a matter of strategy. Am I correct or not? [14:52] MAJOR-GENERAL MPEMBE: Chairperson, the strategy is very specific here, is to say let your members disarm voluntarily, and that is purely the context which I'm referring to, and there is a separation between a strategy and a risk. COMMISSIONER HEMRAJ: General, did you or did you not foresee that if there was dispersal action, that there would be shooting between the parties and bloodshed? Did you or did you not foresee that? MAJOR-GENERAL MPEMBE: Chairperson, my answer is clear, is to say individually yes, and to disarm them, it was a best strategy to let their own leaders persuade their members and hand those weapons voluntarily. COMMISSIONER HEMRAJ: I'm afraid I don't understand that. Did you or did you not foresee that in the event of a dispersal, there would be shooting between the parties?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MAJOR-GENERAL MPEMBE: Correct, Chairperson. CHAIRPERSON: Right, so you come along with your, or one of your men comes along with his R5 or his R1 and he says to this man, "Give me your firearm," or "Give me your panga, and disperse." Does he listen? Does he respond to the demand, or command that he disperse, or that he hand over his firearm, as you foresaw what would happen? MAJOR-GENERAL MPEMBE: Chairperson, the manner in which I foresaw, it was that the placing of the barbed wire was precisely to prevent those that have got pangas and spears to be on, to be – CHAIRPERSON: On the police side of the line. MAJOR-GENERAL MPEMBE: Yes. CHAIRPERSON: Ja, you didn't go – MAJOR-GENERAL MPEMBE: And that will mitigate – I'm sorry – CHAIRPERSON: Yes, carry on. No, I'm interrupting you. You carry on, sorry. MAJOR-GENERAL MPEMBE: That would mitigate – as I'm saying, I don't know whether I'm using

Page 11921 probably the right word, but never mind, carry on. MAJOR-GENERAL MPEMBE: Yes, and those that they had firearms, that's the individual which I'm referring to, those that have been put by the way in the Nyalas, on top of the Nyalas with the binoculars and the counter snipers, they will actually only deal with those that will cause risk. That's the one that I'm referring to, and then when the dispersal process takes place, obviously the majority I did expect that they will leave the place, and those that shall have – what is it? – accepted the warnings will lay down their weapons, and Chairperson will recall I did refer to the group between 10 and 20 that could be confronted by the police, and encircling them and disarming them. That's how the plan would – CHAIRPERSON: What it means is you put the barbed wire barrier up. You've got to leave a space to go, so you can go inside to disarm the people, don't you? MAJOR-GENERAL MPEMBE: Correct, Chairperson. CHAIRPERSON: So some police have to advance through the gap in the fence, the barbed wire, towards the strikers to make sure they either put their arms down or their arms are taken away from them. Isn't	Page 11923 1 CHAIRPERSON: I'd like to talk about 2 something else. We're talking about the POP members who 3 are now advancing into the area where the strikers are, to 4 disarm them. That's a matter which we'll debate in a 5 moment. The Nyalas can't follow them into the area to 6 provide a place for them to jump into, safe place for them 7 to jump into if there's aggression or attack of some kind 8 from the strikers. Isn't that right? That's the way I 9 understand it, but if I'm misunderstanding it, you must 10 help me. Mmm? 11 MAJOR-GENERAL MPEMBE: Chairperson will 12 recall when we said that, when Adv Madlanga asked me that 13 why didn't we preposition the Nyalas for the informal 14 settlement, I said that the resources that we had, and 15 those are the Nyalas that I'm referring to, those could 16 have been used as a safe house, will follow these members, 17 will follow the ones that could enter there who are moving 18 in groups, confront them, encircle, and confront them in 19 terms of disarming them. 20 CHAIRPERSON: The Nyalas can't go through 21 the barbed wire, and presumably the gap in the barbed wire 22 through which the POP members were going to go to disarm 23 the strikers, that wasn't wide enough for a Nyala, was it? 24 Was envisaged that Nyalas would go on the other side of the
25 that right? Is that right? You can't disarm them by	25 barbed wire?
Page 11922 remote control, can you? There isn't a remote that you can use to get them to put down their arms, and you've got to go in and fetch the arms, if they don't voluntarily put them down? MAJOR-GENERAL MPEMBE: Correct, Chairperson. CHAIRPERSON: So you go inside, armed presumably: the police are armed with R1s or R5s, I take it, when they go in to disarm these people. Is that right? MAJOR-GENERAL MPEMBE: Chairperson will recall that those had R1s and R5s. According to the plan they were supposed to be 100 metres away from the POP members, and they will only come to the fore if the lives of the POP members was in danger. CHAIRPERSON: Yes well, that's the next question. If the POP man with his teargas, with his shotgun with the teargas canister, whatever it is, or stun grenade, if he proceeds into the area through the barbed wire to disarm someone who doesn't want to be disarmed, then what's going to happen? Won't the life of the POP person be endangered? MAJOR-GENERAL MPEMBE: Correct, AJOR-GENERAL MPEMBE: Correct, AJOR-GENERAL MPEMBE: Correct, AJOR-GENERAL MPEMBE: Correct, then what's going to happen? Won't the life of the POP person be endangered? MAJOR-GENERAL MPEMBE: Correct, Chairperson. Chairperson will recall that in the plan we said that the Nyalas will always be next to the POP members that the Chairperson is referring to, as a safe house.	Page 119241MAJOR-GENERAL MPEMBE:Chairperson, the2Nyala is used when we disperse, and probably, I understand3what the Chairperson is saying, that in whatever the4picture that is there, Chairperson did not see where5there's space the Nyalas could go, but the plan does6address the risk the Chairperson is talking about, Nyalas7to be used as a safe house for the POP members.8CHAIRPERSON:Did the plan – sorry, Mr9Interpreter.Did the plan provide for the Nyalas, or a10Nyala, to go on the other side of the barbed wire?11MAJOR-GENERAL MPEMBE:Chairperson,12surely when you have to pursue –13CHAIRPERSON:No, no, the answer is –14simple question –15MAJOR-GENERAL MPEMBE:Okay.16CHAIRPERSON:Did the plan provide for a17Nyala or some Nyalas to go beyond the barbed wire onto the18koppie side of the barbed wire where the strikers were with19their weapons?20MAJOR-GENERAL MPEMBE:Correct,21CHAIRPERSON:It did?23MAJOR-GENERAL MPEMBE:Yes, Chairperson,24as I'm referring to that the Nyala will be used as a safe25house.Nouse.

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1	Page 11925 CHAIRPERSON: No, I can understand the	1	Page 11927 differentiate when I was talking to Mr Senzeni Zokwana, in
1		1	the context of that, and also to respond to Adv Ngalwana
2	Nyala being used as a safe house. The question is which side of the barbed wire was it going to be. We have	2	with regard to why I did not brief the police.
	photographs of the barbed wire in position. I couldn't see	4	MR MADLANGA SC: General, I suggest to
4 5	any space of a Nyala to go through, unless the Nyala is	4 5	you, and we will argue that the truth is that you in fact
	going to knock the barbed wire over on its way through, but		foresaw the possibility of bloodshed and that it is a lie
6 7	anyway, I don't think that was the plan either, was it?	6 7	or an untruth that you in fact did not have such foresight
8			,
	Mmm? What's your answer to that?	8	and that you merely mentioned this at the debriefing
9	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	9	session with NUM, purely as a strategy. Comment?
10	the Nyala could go on the other side of the barbed wire for	10	MAJOR-GENERAL MPEMBE: No, I do not
11	those POP members that are supposed to do the dispersal	11	agree, Chairperson, with the reasons mentioned.
12	process.	12	MR MADLANGA SC: Let me take you to
13	CHAIRPERSON: But where was it going to	13	paragraph 23 of your supplementary statement, your second
14	go through?	14	typed statement which is HHH3, paragraph 23. Now for
15	MAJOR-GENERAL MPEMBE: Chairperson,	15	context, General, you will recall that there was the JOCCOM
16	probably Brigadier Calitz and those that implemented the	16	meeting of 6AM on the 16th, and there it was decided that
17	plan might be in a position to answer why they couldn't go	17	SAPS would proceed to dispersal action, or stage 3, if
18	through.	18	there was escalation. Now with that background in mind, in
19 20	CHAIRPERSON: Alright, I'll ask them that	19 20	paragraph 23 you deal with what appears to be your reasons
20 21	question when they come to give evidence. Perhaps we can take the tea adjournment at this stage. We've actually run	20 21	for motivating for the implementation of stage 3, and in the introductory part of the paragraph you are indicating
22	on. We'll take the tea adjournment for 15 minutes.		
22	[COMMISSION ADJOURNS COMMISSION RESUMES]	22 23	that you were briefing General Mbombo on why stage 3 should be implemented. You set out what you referred to as some
23 24	[15:24] CHAIRPERSON: The Commission resumes.	23 24	of the reasons why you so motivated, and you do that in
24 25	You are still under oath, Major-General.	24 25	five bullet points. The first one you give is this,
25		25	ive builet points. The first one you give is this,
	Page 11926		Page 11928
1	WILLIAM MPEMBE: s.u.o.	1	Page 11928 "Negotiations by the SAPS directly with them since Monday,
1 2	WILLIAM MPEMBE:s.u.o.CHAIRPERSON:Mr Madlanga.	1 2	"Negotiations by the SAPS directly with them since Monday, 13 August 2012, had failed." Now do you agree, General,
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Page 11291 Page 11291 1 13:30. That is the exercise I an about. I'm not saying escalation we proceed to stage 3, that is a fact that 3 escalation we proceed to stage 3, that is a fact that the polices are not 3 3 escalation we proceed to stage 3, that is a fact that the police 3 4 MAIOR-GENERAL MPEMBE: Correct, 6 7 Chairporson. I'm just requesting the 8 Advocate, maybe we go to the same minutes of 6 ordcock, 9 MR MADLANGA SC: That is the - 10 MAIOR-GENERAL MPEMBE: TAt 10 MR MADLANGA SC: That is the - 10 stated by the Standing Order. 20 Interaston was not 11 Commissioners, that's TT4. TH4 Ith are standing 'rapid order. 11 MR MADLANGA SC: General, bacause I'm 16 daily deployment.': Close to the foot of the page, 'I'fh 12 trying to understand I m ryoon mind what cacalation hat i corterad I. 13 that was known to the police as 4 AMD Singenga at Eat 17 following appears. This is just foot fue page, 'I'fh 14 there was a mediany what hat hat was a fact 16 da	1 13:30. That is the exercise 1 am about. I'm not saying 1 escalation we proceed to stage 3. If that its a fact that 2 there wasn't, but all I'm trying to understand is what 1 they're already aware of, that the protesters ust will not disarm. Do you 4 now understand the relevance of 6AM in the context of 3 cooperating: the protesters just will not disarm. Do you 6 MAUOR-GENERAL MPEMBE: Correct, MAUOR-GENERAL MPEMBE: Correct, MAUOR-GENERAL MPEMBE: Chairperson, my 7 Chairperson, Chairperson, I'm just requesting the amagement policy, Standing Order 262. The reason was not 9 owitch I will request - 1 MM MALANCA SC: That is the - 10 MK MADLANCA SC: Whist you are looking 1 they not appears. This is you find on the 14 for your copy, General, may lin the meanting just and 1 taken place as at 13:30 on the 164h, my question is a simple 15 you what appears. This is yout for usy your mind on the 1 6 4640/coste, "I'rs close to the foot of the page, "If the 16 ostalates, "I'rs close to the foot of the page, "If the 1 1 6 64M/ Simple question. 17 proper communication will be done with all commanders when 1 1 6 64M/ Si
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24 there was no cooperation at all from the police. So as at 24 mean you and I are now debating something that Mr Madlanga	
256 o'clock when the police are saying if there is an25should be debating with the witness. What they knew at 6	24 there was no cooperation at all from the police. So as at 24 mean you and I are now debating something that Mr Madlanga
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1	Page 11933	1	Page 11935
1	was that Mr Mathunjwa had indicated that he thought that he	1	property, particularly life is in danger, and this is what
2	could persuade them to lay down their arms. He was going	2	I wanted to bring afore.
3	back to see them at 9 o'clock, and that's what they knew.	3	MR MADLANGA SC: Now if that was what
4	In fact he didn't go back at 9, for reasons we don't have	4	SAPS understood in the morning at 6AM when they say "We
5	to go into. He went back after 12 and in fact he was still	5	proceed to stage 3 if there is escalation," this fact that
6	with them when the decision was taken at the meeting, if it	6	was already known to SAPS when they took that decision, "We
7	had not been taken before. So with respect, it doesn't	7	proceed to stage 3 if there is escalation," it could not
8	help us, but I don't want to be discourteous. I'm sure	8	possibly have been an escalation. It could not possibly,
9	next time you will help us, but anyway, carry on, Mr	9	or sensibly have been considered to be an escalation.
10	Madlanga.	10	Could it?
11	MR MADLANGA SC: General, just to avoid	11	MAJOR-GENERAL MPEMBE: Chairperson, what
12	possible confusion of issues, point is regardless of what	12	I'm trying to say is not the escalation alone that has to
13	possible outcome might have come of Mr Mathunjwa's attempts	13	be taken into account, and hence I refer the Commission to
14	at disarming the protesters, point is as at that point what	14	the same TT4, to the following page, to indicate that SAPS
15	the police knew was that the protesters would not arm –	15	will go to stage 3 in terms of Standing Order 262. That's
16	that is what they knew as at 6AM –	16	the paragraph that I'm referring to, and secondly, maybe
17	CHAIRPERSON: Would not disarm.	17	Advocate, Chairperson, would be clarified here; escalation
18	MR MADLANGA SC: Would not disarm. Thank	18	of violence, how it's being interpreted in this case.
19	you. Thank you, Mr Chairman.	19	Maybe then we'll also have to indicate on the basis of that
20	CHAIRPERSON: I don't think that question	20	the escalation of violence.
21	is entirely correct. The fact is the intelligence report	21	MR MADLANGA SC: General, I was not at
22	which came before the meeting at 6 o'clock indicated that	22	the meeting of 6AM on the 16th, nor did I come up with the
23	they wouldn't disarm, but those at the meeting kept their	23	concept of escalation, and I'm happy that you refer to, or
24	options open, as it were, and did consider the possibility	24	rather you make plain that the escalation was in fact
25	that they might disarm. So I think that question requires	25	escalation of violence. So I was not there; this is not my
1	Page 11934	1	Page 11936
1	some formulation –	1	concept. It's SAPS' own concept, and it's SAPS' own
2	some formulation – MR MADLANGA SC: Mr Chairman, thank you	2	concept. It's SAPS' own concept, and it's SAPS' own decision to proceed to stage 3 if there is escalation, and
2 3	some formulation – MR MADLANGA SC: Mr Chairman, thank you very much. I lost reference to negotiations, which is what	2 3	concept. It's SAPS' own concept, and it's SAPS' own decision to proceed to stage 3 if there is escalation, and as I understand you, escalation of violence. So I will not
2 3 4	some formulation – MR MADLANGA SC: Mr Chairman, thank you very much. I lost reference to negotiations, which is what the bullet actually says. Thank you, you're quite correct,	2 3 4	concept. It's SAPS' own concept, and it's SAPS' own decision to proceed to stage 3 if there is escalation, and as I understand you, escalation of violence. So I will not give the explanation that you are asking for. Now –
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	Page 11937		Page 11939
1	there are two possibilities; either stage 3 because of	1	escalation, stage 3 will be implemented. So that's why I
2	escalation, or stage 3 even though there isn't escalation.	2	asked you the question. What happened eventually when it
3	Do you understand the difference?	3	was decided to proceed with the implementation of stage 3
4	MAJOR-GENERAL MPEMBE: Correct,	4	at the 1:30 meeting was that because there was escalation,
5	Chairperson, but what I wanted to –	5	or was it decided because there was, despite the fact that
6	CHAIRPERSON: Was the decision taken to	6	there wasn't escalation, you were still going ahead with
7	implement stage 3 because there was escalation, or was the	7	stage 3? One or the other. You were at the 1:30 meeting,
8	decision taken to implement stage 3 even though there	8	weren't you?
9	wasn't escalation? Which of the two was it?	9	MAJOR-GENERAL MPEMBE: Correct,
10	MAJOR-GENERAL MPEMBE: Chairperson, in my	10	Chairperson.
11	understanding stage 3 was implemented, as I indicated to	11	CHAIRPERSON: According to your
12	you, to the next page.	12	supplementary statement, but not your original statement,
13	CHAIRPERSON: Yes, but we've gone through	13	you were the one who made the decision to implement stage 3
14	that. The next page is part of the minutes of the JOCCOM	14	before the 1:30 meeting, as I understand you, some time
15	meeting at 6 o'clock.	15	around 12 o'clock, and you then briefed the Provincial
16	MAJOR-GENERAL MPEMBE: Correct,	16	Commissioner accordingly. Now if that's correct and the
17	Chairperson.	17 10	decision was really yours, was the decision to implement
18	CHAIRPERSON: And on page 1 it says that	18	because there had been – sorry, was the decision to
19	if there's escalation, stage 3 will be implemented. Now	19 20	implement stage 3 because there had been escalation, or was
20 21	unless those at the meeting changed their minds between what was recorded at the foot of page 1 and what's reported	20 21	the decision to implement stage 3 even though there hadn't been escalation? Which of the two was it?
22	on page 2, then the result of the deliberations at 6	21	MAJOR-GENERAL MPEMBE: Chairperson, to
22	o'clock at the JOCCOM meeting was there will be	22	explain what Chairperson is saying, to act accordingly in
23	implementation of stage 3 with escalation. But anyway,	24	my interpretation it was that we comply with Standing Order
25	that must be so, surely, unless, it's not suggested	25	262.
	Page 11938		Page 11940
1	anywhere in the minutes that those at the meeting changed	1	Page 11940 CHAIRPERSON: No, the next sentence says
1 2	anywhere in the minutes that those at the meeting changed their mind between the foot of page 1 and the foot of page	1 2	
	anywhere in the minutes that those at the meeting changed their mind between the foot of page 1 and the foot of page 2. Isn't that right? In fact the passage that you	_	CHAIRPERSON: No, the next sentence says that there would be talks with the unions at 9 o'clock and the result of those, the outcome of those talks would then
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2 3	anywhere in the minutes that those at the meeting changed their mind between the foot of page 1 and the foot of page 2. Isn't that right? In fact the passage that you referred to on page 2 doesn't say that there will be a stage 3 implementation if there isn't escalation. What it	2 3	CHAIRPERSON: No, the next sentence says that there would be talks with the unions at 9 o'clock and the result of those, the outcome of those talks would then determine the decision to be taken. So quite clearly there is no separate decision according to the foot of page 2 at
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1 question 1 ask you is this: the decision that you say you 1 [16-03] CHAIRPERSON: Clearly until Mr Mathunjiva 2 took to implement stage 3, which was taken before the 1:30 came back and said 1 negotiated with them, as 1 was obliged 3 meeting, was that decision taken because there had been an escalation, or was it taken even though there hadrh tbeen too, as the Provincial Commissioner urged me to; 4 escalation, but was thad - 6 MAUOR-GENERAL MPEMBE: Chairperson, what 7 MAUOR-GENERAL MPEMBE: Chairperson, it is 7 1 was saying here is that 1 expected that when Mr Mathunjw 8 acscalation, but was thad - 9 CHAIRPERSON: - perfect. You said rhad 10 CHAIRPERSON: So your answer is the -1 10 failed." Now how could something, how can one say that 11 understand the answer. The answer is the decision taken decision is 15 this tript? You say, our consumer 16 12 intergentiating. A, wen, say, at the time the statement was 16 tript is tript? You say, our consumer 17 13 the Provincial Commissioner urged thim to go and statement was 17 trim out appreciations, he was, at the				
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3 In do, as the Provincial Commissioner urge the top 4 escalation, or was it taken even though there hand to been 5 5 nescalation, That's the question. What's the answer to 5 6 that' MAURE CENERAL MPEMBE: Chairperson, wita 7 MAURE CENERAL MPEMBE: Chairperson, wita 8 in derss of paragraph 23. According to paragraph 23, no escalation, Dut what had - 9 CHAIRPERSON: So your answer is the -1 11 understand the answer. The answer is the decision to The Revolucial Commissioner urge at the popels is that (second comveyed to the stage 3, which you say you to kok and comveyed to the stage 3, which you say you to kok and comveyed to the stage 3, which you say you to kok and comveyed to the stage 3, which you say you to kok and comveyed to the stage 3, which you say you to kok and comveyed to the opple at 9 octock. 10 failed.1. You you concer the pople to you, but to and the pople to you, but to and the pople to thave to go into now, he 10 statements which I dort understand how they can one say that and the stage and the stage and the stage and the the stage and the provincial Commissioner urged thin to go and yeak to the pople to you could to seen thave to go into now, he 10 toy understand have to kcop an our mid and I'm 12 perpaid to the wool to seen thave to go and speak to the stopple. Lident The monow is your chance to put that's			_	
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1	Page 11945 he hadn't spoken to them yet. So I can understand what you	1	Page 11947 me many questions, and to say it's you who made the
2	say about Lieutenant-Colonel McIntosh's statement about	2	decision to go to stage 3. Then I said I briefed the
3	their mood before that. I understand that answer, and I'm	3	Provincial Commissioner. The decision that the Chairperson
4	not criticising you for that answer at all. I think it	4	should understand is that, it's the one that I made to go
5	appears to be perfectly understandable and correct, but	5	to the Provincial Commissioner to say the situation has
6	we're busy really with the second bullet at the foot of	6	come to this and my fear is this one, taking into account
7	page 9, you see, and I'm just putting it to you that prima	7	that we are still going to have a meeting, and if there
8	facie as I see it at the moment, it doesn't appear to be	8	could be any other changes or any member in the meeting
9	correct, but if I'm misunderstanding it or not appreciating	9	opposing what I have already briefed the Provincial
10	something, then you must please help me.	10	Commissioner about, the situation could have changed.
11	MAJOR-GENERAL MPEMBE: Chairperson, that	11	CHAIRPERSON: Sorry, I see in my
12	bullet is in relation to say that while we were also going	12	endeavour to understand your answer I've gone over the time
13	to have the meeting, at that time this was the position,	13	I intended to adjourn. So we've been working overtime. So
14	but if there could have been any changes on the ground,	14	we'll adjourn now until – is that convenient for you, Mr
15	Chairperson, since we were still going to the meeting,	15	Madlanga?
16	maybe then the bullet could not have been like this. But	16	MR MADLANGA SC: It is, Mr Chairman.
17	probably if there could have been any other change to the	17	CHAIRPERSON: And we'll resume at 9
18	statement, then surely the weapons could have been handed,	18	o'clock – please note, 9 o'clock tomorrow. From now on I
19	but at the time when I was briefing the Provincial	19	want us to start at 9 o'clock, if we can, in the morning,
20	Commissioner, after Mr Mathunjwa came, we didn't hear what	20	half an hour lunch hour, which will extend the time that we
21	he's saying, there was no indication to say that he's	21	sit and we will not be sitting, as I think has been
22	succeeding, but I do take into account that he was still	22	indicated, on Wednesday, as Mr Mpofu mentioned. We won't
23	going again back to the protesters and there was still	23	sit here because the premises aren't available on the first
24	time, Chairperson, that if Mr Mathunjwa could have	24	Monday and the first and third Wednesdays of the month, and
25	convinced the protesters, the situation could have changed.	25	this will be the third Wednesday, but we will have a
	Dago 11046		Dogo 11049
1	Page 11946 CHAIRPERSON: The difficulty with that	1	Page 11948 meeting at the Momentum Buildings in Pretoria of the
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2 3	CHAIRPERSON: The difficulty with that answer is – well, first difficulty is it hasn't been interpreted yet. The difficulty with that answer is, as	2 3	meeting at the Momentum Buildings in Pretoria of the Commissioners and the parties and their representatives to discuss ways of expediting the proceedings, and also we
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