

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 [PROCEEDINGS ON DATE]
 2 [09:48] CHAIRPERSON: The Commission resumes.
 3 This morning before we began Mr Mpofu and the rest of his
 4 team came to see the Commissioners in chambers and he
 5 explained that he is awaiting instructions from his clients
 6 as to the way forward as to what they will do until the
 7 judgment of the High Court in their application for funding
 8 is known, and he will be able to inform us in the course of
 9 the morning what his instructions are. I indicated to him
 10 that I didn't want to lose time, so my suggestion was that
 11 the evidence should continue. He will have access to the
 12 transcript and also to the TV feed, so he did not object to
 13 our proceeding in his absence at this stage. I think I
 14 should put all of that on the record, but the probability
 15 is that after the tea adjournment he will be in a position
 16 to inform us what his instructions are in the interim, as
 17 to the way forward in the interim while they're awaiting
 18 the judgment of the High Court. Major-General, you're
 19 still under oath.
 20 WILLIAM MPEMBE: s.u.o.
 21 CHAIRPERSON: Mr Madlanga, I take it you
 22 wish to proceed with your cross-examination?
 23 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 24 Yes, I do. Thank you, Mr Chairman. Good morning, General.
 25 MAJOR-GENERAL MPEMBE: Good morning,

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1 Advocate.
 2 MR MADLANGA SC: General, I just want to
 3 pass a piece of paper to you. It relates to, or at least
 4 it's my attempt at depicting what I understood your
 5 evidence to be when the strikers or protesters moved away
 6 from the railway line onto the adjacent field. I
 7 understood –
 8 CHAIRPERSON: [Inaudible]
 9 MR MADLANGA SC: Yes, from the General,
 10 then ask that it be passed – I just scribbled it now, Mr
 11 Chair –
 12 CHAIRPERSON: [Inaudible]
 13 MR MADLANGA SC: Yes, yes, yes.
 14 CHAIRPERSON: [Inaudible] It looks like
 15 a T-junction sideways with the, on the left-hand side the
 16 top of the T, if one can call it that, with the word
 17 "Police" next to it, and then the long section of the T
 18 being the strikers/protesters. I prefer to call them the
 19 strikers; other people prefer the other terminology. I
 20 don't know whether any of your learned friends wish to see
 21 this document, but I've endeavoured to describe –
 22 MR MADLANGA SC: I drew a second one, Mr
 23 Chairman, for circulating amongst my colleagues. Mr
 24 Chairman, except that there perhaps should be –
 25 CHAIRPERSON: I sense the three weeks

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1 that we've spent in recess were able to be used profitably.
 2 MR MADLANGA SC: And Mr Chairman, two
 3 things; I said protesters/strikers exactly because I know
 4 you like referring to them as strikers, and then secondly,
 5 may I say the T is inverted. The cross bar, as it were, is
 6 at the bottom.
 7 CHAIRPERSON: Yes.
 8 MR MADLANGA SC: Now General, having
 9 looked at my little sketch, I understood your evidence to
 10 be that the, as the strikers were walking through the
 11 field, the police formed a line, a line that would be
 12 represented by the bottom bar of the inverted T, where I've
 13 written "Police." Did I understand your evidence
 14 correctly?
 15 MAJOR-GENERAL MPEMBE: Chairperson, in my
 16 evidence I did indicate that it's not directly going to be
 17 a straight line, but it will be, it will have the curving
 18 also, but at a reasonable distance from the protesters.
 19 MR MADLANGA SC: Can I ask you to do your
 20 own depiction then, please? There are two pieces of paper
 21 here; very quickly, General, if you can.
 22 CHAIRPERSON: I think you should put the
 23 Major-General's depiction in as an exhibit so that those
 24 who have to read the record in years to come will
 25 understand what exactly is being covered.

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1 MR MADLANGA SC: Perhaps we should start
 2 with mine, Mr Chairman, FFF16 – I'm sorry, HHH16, Mr
 3 Chairman.
 4 CHAIRPERSON: That's Madlanga's depiction
 5 of strikers and – of positions or directions, positions, I
 6 suppose, of strikers and police. That's HHH16.
 7 MR MADLANGA SC: Yes, Mr Chairman, and we
 8 can – perhaps it should be 16.1 and the General's 16.2, Mr
 9 Chairman.
 10 CHAIRPERSON: While the General is giving
 11 us his depiction of the positions of the strikers and the
 12 police, during the recess Adv Hemraj pointed out to us that
 13 in the transcription of the evidence-in-chief of this
 14 witness, particularly when videos were being shown, it's
 15 not very clear what exactly is being talked about. Without
 16 someone knowing what the videos is and specific recording
 17 of what was being pointed out, it's difficult to follow the
 18 record. I take it that aspect has been attended to?
 19 MS PILLAY: Chair, we have raised that
 20 with the SAPS team and they've assured us that they're
 21 working on it and they would report back.
 22 CHAIRPERSON: Thank you, I'm pleased to
 23 hear that.
 24 MR MADLANGA SC: General, it doesn't have
 25 to be artistic; like mine, it can just be squiggled.

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1 CHAIRPERSON: Mr Madlanga set the
2 standard that you have to follow. The bar, the cross bar
3 is not very high. I've marked it – have you been given a
4 copy of it?
5 SPEAKER: Yes [inaudible] –
6 CHAIRPERSON: Would you pass it around?
7 What he's done is he's instituted a correction, which I
8 think may help us, in regard to the position of the police.
9 MR MADLANGA SC: Perhaps another little
10 correction to mine, or the description you gave on record,
11 Mr Chairman, on mine as well it's not as though the line
12 representing the police is right against the line
13 representing the – there's a gap there as well.
14 CHAIRPERSON: The Major-General has
15 actually written "reasonable distance" to indicate that –
16 MR MADLANGA SC: Yes, yes, yes.
17 CHAIRPERSON: - indicate that important
18 point.
19 MR MADLANGA SC: Yes, yes. Thank you, Mr
20 Chairman. And these are quite similar, General, except
21 that yours is curving and you indicate "reasonable
22 distance." Would you accept that?
23 MAJOR-GENERAL MPEMBE: Correct,
24 Chairperson.
25 MR MADLANGA SC: And did I understand you

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1 to say that in the line that represents the police, you
2 were more to the right of that line and Warrant-Officer
3 Kuhn as more to the left of that line? Did I understand
4 you correctly?
5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson, with an exception to say I didn't know exactly
7 where, but on the left.
8 MR MADLANGA SC: General, there's an SABC
9 video footage that we circulated before the three-week
10 adjournment. I would like that to be played and for you to
11 watch it –
12 CHAIRPERSON: Just give it an exhibit
13 number. I take it, it will be HHH17.
14 MR MADLANGA SC: Yes, Mr Chairman, thank
15 you. Mr Chairman, Ms Pillay has offered to circulate
16 computerised versions of the sketch by me and the one by
17 the –
18 CHAIRPERSON: I note the standard is
19 going up at a steady rate of knots.
20 MR MADLANGA SC: Yes, and the one by the
21 General, yes, Mr Chairman. I hope that will be acceptable
22 and that nobody will take the point that these are not the
23 exact same or similar depictions.
24 CHAIRPERSON: I would hope that those who
25 are taking points can find better points than that to take.

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1 Anyway, who knows?
2 [VIDEO RECORDING PLAYED]
3 MR MADLANGA SC: Stop. General, is that
4 not you? The tallest man there, police officer there.
5 MAJOR-GENERAL MPEMBE: No, Chairperson.
6 MR MADLANGA SC: Okay, please continue.
7 [VIDEO RECORDING PLAYED]
8 CHAIRPERSON: May I say this? The same
9 problem is going to arise as arose with the video clips
10 that Mr Ngalwana referred to. When you say "stop there," –
11 MR MADLANGA SC: Yes.
12 CHAIRPERSON: - we've got to find a way
13 of recording the point or time, whatever it is, at which
14 that stop takes place because otherwise when we read the
15 record ourselves later on, we're going to have difficulty
16 understanding it, and the historians of the future who are
17 going to be studying all this will be totally baffled.
18 MR MADLANGA SC: Yes, yes, yes. Thank
19 you very much. Just there, I don't see there. Is that
20 ? Mr Chairman, Commissioners, it's 03:16. I'm
21 relying on Ms Pillay. I can't see that far.
22 CHAIRPERSON: It looks to me like 15, but
23 03, looks like a colon, 15.
24 MR MADLANGA SC: Yes, on that video.
25 CHAIRPERSON: That was the first point at

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1 which you paused.
2 MR MADLANGA SC: Yes, yes.
3 CHAIRPERSON: And there's someone whose
4 back is to the camera, a rather tall policeman with a
5 [inaudible].
6 MR MADLANGA SC: Yes, and General, I'm
7 referring to – you see there's one person, closest – no,
8 no, no, this one, the one closest to the camera, I'm not
9 referring to that one. Then there's the one that was being
10 circles with a cursor, that one. General, that's who I was
11 referring to. Is that not you, the one closest to the
12 group, closest to the group of protesters, with another
13 policeman facing him? Is that not you?
14 MAJOR-GENERAL MPEMBE: It's just a
15 question that the person is looking forward and forward,
16 Chairperson, but by the time I remember when there were –
17 MR MADLANGA SC: I think I would
18 recognise myself even if I was looking the other way.
19 MAJOR-GENERAL MPEMBE: No, I was just
20 saying when I addressed the protesters when they were
21 moving, I was still in the road. Now this one, this one is
22 on the grass.
23 MR MADLANGA SC: But they too are no
24 longer on the road now, General. Did you not change
25 positions? Did you not move on to the field once they had

<p style="text-align: right;">Page 11825</p> <p>1 started moving?</p> <p>2 MAJOR-GENERAL MPEMBE: I did change a</p> <p>3 position, but I don't know when.</p> <p>4 MR MADLANGA SC: Yes.</p> <p>5 CHAIRPERSON: If you're not sure that</p> <p>6 it's you, well then there's nothing we can do about it.</p> <p>7 MAJOR-GENERAL MPEMBE: Yes, okay.</p> <p>8 MR MADLANGA SC: Can you please –</p> <p>9 MAJOR-GENERAL MPEMBE: I'm sorry, Chair.</p> <p>10 MR MADLANGA SC: Yes.</p> <p>11 MAJOR-GENERAL MPEMBE: For the fact that</p> <p>12 the, I can see it's Colonel Merafe, it might be possible</p> <p>13 that it's me who was talking to Colonel Merafe.</p> <p>14 CHAIRPERSON: So are you saying that the</p> <p>15 policeman who is facing the camera, speaking to the person</p> <p>16 to whom we referred earlier, who's back is to the camera,</p> <p>17 that is Colonel Merafe, and it's possible therefore that</p> <p>18 the person to whom he was speaking, whose back we can see,</p> <p>19 is you?</p> <p>20 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p> <p>21 seeing that Colonel Merafe –</p> <p>22 MR MADLANGA SC: Please continue.</p> <p>23 [VIDEO RECORDING PLAYED]</p> <p>24 MR MADLANGA SC: Just go back to, go back</p> <p>25 just a little bit, please. Ja, stop, stop, stop right</p>	<p style="text-align: right;">Page 11827</p> <p>1 CHAIRPERSON: I'm sorry, it's not clear</p> <p>2 which line you're talking about. I take it you mean the</p> <p>3 curved line on his sketch –</p> <p>4 MR MADLANGA SC: The curved line –</p> <p>5 CHAIRPERSON: - HHH16.2.</p> <p>6 MR MADLANGA SC: Yes, the curved line.</p> <p>7 CHAIRPERSON: The curved line</p> <p>8 representing the police?</p> <p>9 MR MADLANGA SC: Yes, Chairperson.</p> <p>10 CHAIRPERSON: So that, Major-General,</p> <p>11 would I be correct in saying that if one looks at this,</p> <p>12 just beyond the middle towards the right there's a</p> <p>13 policeman standing under a tree, and then there are four</p> <p>14 other policemen to the left.</p> <p>15 [10:08] Would that be the extreme right-hand side of the</p> <p>16 curve that you put on your sketch, and presumably the curve</p> <p>17 then continued beyond what we can see in the frame, with</p> <p>18 further policemen. Is that correct?</p> <p>19 COMMISSIONER HEMRAJ: Just before you</p> <p>20 answer that, Mr Madlanga, is the answer to that question a</p> <p>21 good many frames before this frame? That curved formation</p> <p>22 of the police line, doesn't that appear a good many frames</p> <p>23 before this particular one on the video?</p> <p>24 MR MADLANGA SC: Is there a suggestion</p> <p>25 that we saw that just now, or –</p>
<p style="text-align: right;">Page 11826</p> <p>1 there. Stop right there.</p> <p>2 CHAIRPERSON: That's 4:16.</p> <p>3 MR MADLANGA SC: Yes. You can see there</p> <p>4 five police officers, they are closest to the camera,</p> <p>5 closest in contra distinction to where the strikers are,</p> <p>6 and there is one right at the back, apparently again taller</p> <p>7 than the rest. Is that not you?</p> <p>8 MAJOR-GENERAL MPEMBE: Chairperson, it</p> <p>9 looks like myself.</p> <p>10 CHAIRPERSON: - the extreme left of the</p> <p>11 video clip.</p> <p>12 MR MADLANGA SC: Yes, thank you. Thank</p> <p>13 you, Mr Chairman. Now –</p> <p>14 CHAIRPERSON: - of the frame, extreme</p> <p>15 left of the frame.</p> <p>16 MR MADLANGA SC: Thank you. Are you in a</p> <p>17 position to indicate where the line that you drew would be</p> <p>18 here? Because I do not see it, and even before this point,</p> <p>19 even before the point where this footage has been stopped,</p> <p>20 before I could see the police there was a gap between the</p> <p>21 strikers and one could see a few police officers on the</p> <p>22 side, and I didn't really see a line, and now there are</p> <p>23 these five police officers, you behind them, and you are</p> <p>24 not at all standing cross-wise, as it were, in relation to</p> <p>25 the protesters. Can you indicate where the line is?</p>	<p style="text-align: right;">Page 11828</p> <p>1 COMMISSIONER HEMRAJ: Yes, before we got</p> <p>2 to this point.</p> <p>3 MR MADLANGA SC: Can I asked it to be</p> <p>4 played backwards, and perhaps if I could ask the</p> <p>5 Commissioner to please then ask it to be stopped there?</p> <p>6 COMMISSIONER HEMRAJ: Yes.</p> <p>7 CHAIRPERSON: It's somewhere between 3:16</p> <p>8 and 4:16.</p> <p>9 [VIDEO RECORDING PLAYED]</p> <p>10 CHAIRPERSON: The video clip is now</p> <p>11 stopped at 3:46.</p> <p>12 MR MADLANGA SC: I don't see the curving</p> <p>13 line, no. And where would the protesters – you see the</p> <p>14 problem is one doesn't see where the protesters are, and if</p> <p>15 one is looking at the two police officers who are facing us</p> <p>16 directly, and one gets the impression that they must be</p> <p>17 following the protesters, and if they are, then what</p> <p>18 appears before them, the two police officers there at the</p> <p>19 front wouldn't really be the curving line.</p> <p>20 CHAIRPERSON: Let the witness help us,</p> <p>21 because he's the only one of us who was there at the time –</p> <p>22 MR MADLANGA SC: Ja, because the</p> <p>23 Commissioners see it; I don't. I was just trying to</p> <p>24 understand it from the perspective of the Commissioners,</p> <p>25 yes.</p>

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1 MR NGALWANA: Sorry, Mr Chairman, I think
2 the frame does not show the whole scene. That could be the
3 problem.

4 CHAIRPERSON: Right, let's carry on with
5 the clip, but I think the Major-General wants to say
6 something. He's the witness; it's his evidence and he was
7 the only one of us who was there, so perhaps he can help
8 us.

9 MAJOR-GENERAL MPEMBE: Chairperson, as it
10 can be depicted here, that's the curve that I'm talking
11 about, and I also want to indicate to Adv Madlanga is that
12 that was also part of my briefing to the officers, and
13 during the operation I expect that my officers who have
14 briefed members, should be keeping that line in the manner
15 in which I have briefed them.

16 MR MADLANGA SC: General, I understood
17 your evidence to be that besides your briefing of the
18 commanders, there wasn't any briefing of the rest of the
19 members. Did I misunderstand your evidence? And now I
20 hear you to be suggesting that there was actually a
21 briefing of the rest of the members by their commanders.
22 Did I misunderstand your evidence?

23 MAJOR-GENERAL MPEMBE: Chairperson, I did
24 say the commanders did not confirm with me whether they
25 briefed their members, but I did brief members.

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1 CHAIRPERSON: Perhaps the next question
2 that flows from that is you briefed the commanders; did
3 your commanders have the opportunity to brief their men?
4 Whether they did or not is something you can't tell us, but
5 did they have the opportunity after you'd briefed them, to
6 brief their men?

7 MAJOR-GENERAL MPEMBE: Chairperson,
8 looking at the time when I briefed them, yes I can say that
9 there was a time that they can brief their members.

10 MR MADLANGA SC: Mr Videographer, you can
11 get –

12 [VIDEO RECORDING PLAYED]

13 MR MADLANGA SC: No, you can please just
14 get rid of it. I wanted to get an understanding on the
15 line. It seems that because we don't see the entire frame,
16 see the police, see the protesters at the same time, it's
17 difficult to achieve that. So let's just get rid of that.
18 Now as I understand the scene of the 15th, as the protesters
19 or strikers were walking through the field, is it so that
20 the informal settlement was roughly to the right of the
21 protesters and the police following them? I say roughly.

22 MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson, without referring to the distance.

24 MR MADLANGA SC: And if the aim of the
25 police was to prevent the protesters from getting onto or

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1 into the informal settlement, it would have made sense for
2 the police to flank the protesters on the right-hand side,
3 not so?

4 MAJOR-GENERAL MPEMBE: I did indicate
5 that there was a flank by using Nyalas.

6 CHAIRPERSON: I think we saw the Nyalas
7 actually on the TV footage. We didn't note the exact
8 frame, if that's necessary, but that certainly was visible
9 on the video clip, was it not?

10 MR MADLANGA SC: I'm aware of that. I'm
11 aware of that too, Mr Chairman, yes, but it's just one
12 particular Nyala that I'm interested in and I'm going to
13 lead to that just now. Can you please play the video which
14 is exhibit Z1?

15 [VIDEO RECORDING PLAYED]

16 MR MADLANGA SC: Can you please fast
17 forward it to where the footage started of the railway
18 line? I'm told the time is 19:18. 19:18. Or 23:11,
19 23:11.

20 [VIDEO RECORDING PLAYED]

21 CHAIRPERSON: There was a dead body
22 there. We didn't give, I don't know if there was a person
23 close to the deceased, sitting in the auditorium. If I'd
24 known that that was going to be seen, I would have given a
25 warning, but if there's any possibility of that in the

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1 future, I'd be grateful if I could be told –

2 MR MADLANGA SC: Mr Chairman, in fact
3 perhaps I failed in describing what I was looking for to Mr
4 Wesley. What I'm looking for is – in fact, the version
5 that I have in my hard drive, the protesters move past the
6 big rock and then my version changes, or switches onto the
7 CCTV footage and it just get onto this at all, at all. So
8 it's the part that has the CCTV footage that I would like
9 to see. Ja, let's try Z3, please. Z3. 14:22:55.

10 CHAIRPERSON: - where on this video clip
11 the frames that we're now seeing will be found, can be
12 found.

13 MR MADLANGA SC: There seems to be no
14 time, but – yes, but Mr Wesley tells me that it's from
15 14:22:55. 14:22:55.

16 [VIDEO RECORDING PLAYED]

17 Just stop there, stop there. Please stop there.
18 Yes, stop.

19 CHAIRPERSON: Just indicate what position
20 this frame is that we're now looking at.

21 MS PILLAY: Chair, it's at 1 minute and
22 36 seconds into the video.

23 CHAIRPERSON: 1 minute and 36 seconds
24 into the video?

25 MR MADLANGA SC: Yes. General, the Nyala

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1 that just appeared on the screen roughly behind the
 2 protesters, do you have any idea who the occupants of that
 3 were? Was Lieutenant Baloyi not one of the police who were
 4 in that Nyala?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR MADLANGA SC: As it is moving there,
 8 do you have any idea where it was going to or what it was
 9 going to do?
 10 MAJOR-GENERAL MPEMBE: No, Chairperson.
 11 The only identified point on the other hand, it was on the
 12 extreme left-hand side. It was some, a shaft which we said
 13 that maybe the protesters might not be going that side. So
 14 but whether they were going there as they were moving now,
 15 I really, that's the one that I don't know.
 16 MR MADLANGA SC: Can you just repeat what
 17 you said about the shaft? What about the shaft?
 18 MAJOR-GENERAL MPEMBE: There is a point –
 19 maybe I don't know whether it does appear on the video, a
 20 shaft on the extreme left-hand side of that place, which of
 21 course it was one of the points which we said that we
 22 should check that the protesters might not move there.
 23 CHAIRPERSON: Is this one of the Karee
 24 shafts? Is this one of the Karee shafts?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I'm

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1 not quite sure about the name, but –
 2 MR MADLANGA SC: But in the footage you
 3 see the direction they are taking, and even from memory you
 4 do recall which direction they were going. As they are
 5 going now and as you see them, and as you recall from
 6 memory, were they in any way proceeding towards that shaft?
 7 MAJOR-GENERAL MPEMBE: No, I don't,
 8 Chairperson.
 9 MR MADLANGA SC: No, they were not
 10 proceeding towards that shaft? Is that what you mean?
 11 MAJOR-GENERAL MPEMBE: No, I'm saying now
 12 I don't know whether they were proceeding there. Maybe
 13 they might be the correct people to say that when they were
 14 moving they were proceeding to that place.
 15 CHAIRPERSON: Major-General, is it not
 16 perhaps something slightly different? They were proceeding
 17 in a direction which we can see on the video clip. There
 18 was a possibility they might veer off to the right to the
 19 informal settlement. You obviously didn't want that.
 20 There was also a possibility, I take it, that they might
 21 have veered off to the left and gone around to the shaft,
 22 where there might have been further trouble as well. So
 23 are you suggesting that what happened was that there were
 24 Nyalas on the right, as we can see from the video. They
 25 were there to stop them going into the informal settlement,

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1 and this other video, which is on the left, was presumably
 2 going in that direction to stop them veering off to the
 3 left, or some of them, and going to the shaft. Is that
 4 what you're saying, or am I not understanding you
 5 correctly?
 6 MAJOR-GENERAL MPEMBE: Chairperson, it's
 7 correct. The only reason is that why they drove so close
 8 to the protesters, because I said they should keep a
 9 reasonable distance, hence I mentioned also the extreme
 10 shaft.
 11 MR MADLANGA SC: General, you answered my
 12 question based on what you see on the footage today, but
 13 surely if there was a shaft that you were concerned with on
 14 the day, you had an idea on the day which direction it was.
 15 Is that so or not?
 16 [10:28] MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson, I did know where is it, and I also stated it
 18 where now it is.
 19 MR MADLANGA SC: Now as they were walking
 20 through that field on the day, were they proceeding towards
 21 that shaft? You knew where it was. You were looking at
 22 them, seeing which direction they were going. Were they
 23 proceeding towards that shaft?
 24 MAJOR-GENERAL MPEMBE: I did indicate
 25 that there is a possibility that they were going to the

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1 shaft, but in my briefing it was said that they should keep
 2 a reasonable distance.
 3 MR MADLANGA SC: General, you have not
 4 indicated that they might have been proceeding to the
 5 shaft. What you indicated rather in response to the
 6 question by the Chairman is there was a possibility that
 7 they might have proceeded towards the shaft, and that there
 8 was also a possibility that they might have proceeded
 9 towards the informal settlement, and that what you were
 10 doing was to try to avert or prevent that.
 11 CHAIRPERSON: Can I just clarify? What I
 12 think I put was not that they were going towards –
 13 MR MADLANGA SC: I'm correct him, Mr
 14 Chairman, not you.
 15 CHAIRPERSON: No, no, I understand. It's
 16 really, the point that I stress is the future. They were
 17 concerned that they might in the future move to the shaft,
 18 i.e. to the left, or they might move to the informal
 19 settlement, i.e. to the right, but it was all – they
 20 weren't doing either of those things, but in order to
 21 prevent them from doing it in the future, the Nyalas were
 22 moved away. That's the point I was trying to make. I
 23 don't know whether it came across clearly.
 24 MR MADLANGA SC: Mr Chairman, I
 25 understood you perfectly. You came across exactly as you

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1 are saying, but now the witness is saying what he said was
 2 they might have been going there, and he says that he has
 3 already said so, and what I'm saying is he has not said so.
 4 In response to your answer the point he made is exactly
 5 what the Chairman is now saying, because to your question
 6 he said yes, which means that he exactly said what you are
 7 now saying, Mr Chairman. But now in response to my
 8 question he says that "I've already said that they might
 9 have been proceeding there," and though it's maybe a subtle
 10 difference, but a difference there is, and I'm saying he
 11 has not as yet said so.

12 CHAIRPERSON: Just give him a chance to
 13 say so if he wants to say so.

14 MAJOR-GENERAL MPEMBE: Chairperson, in my
 15 earlier response to the question it was that there was a
 16 shaft which was supposed to be protected. I was indicating
 17 that the Nyala might have been going there, but for the
 18 reason of coming closer, that's one that was, I was also
 19 explaining. Maybe the Advocate did not understand me well,
 20 otherwise I could not have included the shaft on the left.

21 CHAIRPERSON: I think that by, my
 22 [inaudible] ambiguous. I think you meant to refer to the
 23 future. Am I correct? Yes. Mr Mathibedi, you turned your
 24 light on. Do you want to say something?

25 MR MATHIBEDI SC: Mr Chairman, I think he

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1 has given the answer because initially he said he did not
 2 know where the Nyala was going, but it might be going
 3 there, because you know, hearing that the protesters might
 4 go to the side of the shaft.

5 CHAIRPERSON: Well, I think we've now got
 6 clarity. So perhaps Mr Madlanga would like to proceed.

7 MR MADLANGA SC: Thank you, Mr Chairman.
 8 Now General, what I would still like to get clarity on is
 9 this; I understand your perfectly response to what you say
 10 in response to the question by the Chairman, and it is
 11 this. There was the possibility in future that they might
 12 have gone to, or towards the shaft, as there was a
 13 possibility that they might have gone to the informal
 14 settlement, and you wanted to avert both those movements.
 15 I understand that perfectly. I've understood it from,
 16 right from the onset. I was never mistaken about it. Now
 17 what I want to establish from you is simple, and it is
 18 this; you knew, and you said so, where the shaft was. You
 19 knew where the informal settlement was. From memory – I'm
 20 not asking you about what you see here now, because you now
 21 choose to say you don't quite recollect – from memory, or
 22 rather you cannot relate it to what you see here now. From
 23 memory, bearing in mind that you knew where the shaft was,
 24 you knew where the informal settlement was, were the
 25 protesters proceeding, as a matter of fact were they

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1 proceeding towards the shaft or not?
 2 MAJOR-GENERAL MPEMBE: No, Chairperson.
 3 We were acting on prevention, proactively.
 4 MR MADLANGA SC: Thank you, General.
 5 Please play the video.
 6 [VIDEO RECORDING PLAYED]
 7 MR MADLANGA SC: Stop it there. Stop it
 8 there. Ms Pillay, I'm sorry, that's how many minutes now
 9 into the video?
 10 MS PILLAY: Chair, it's 2 minutes and 27
 11 seconds into the video.
 12 MR MADLANGA SC: Now General, is that –
 13 to your recollection, is that the same Nyala that we saw
 14 earlier?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR MADLANGA SC: Please continue.
 18 [VIDEO RECORDING PLAYED]
 19 MR MADLANGA SC: Stop there.
 20 MS PILLAY: That's 2 minutes and 58
 21 seconds into the video.
 22 MR MADLANGA SC: And General, is that
 23 still the same Nyala?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 CHAIRPERSON: That's the Nyala on the
 2 left, is it –
 3 MR MADLANGA SC: Yes.
 4 CHAIRPERSON: - of the crowd?
 5 MR MADLANGA SC: Yes.
 6 CHAIRPERSON: In the front of the crowd,
 7 out to the left.
 8 MR MADLANGA SC: Yes, yes, yes. Now
 9 General, would I be correct, based on what I saw, even
 10 though one doesn't see the Nyala throughout, it sometimes
 11 disappears, but would it be a correct description to say it
 12 seems to go past the protesters to their right, it cuts in
 13 front of them, goes to the left, as the Chairman has
 14 indicated, makes a turn and where we are now at the time
 15 that was just given on record, it is now to their left. Do
 16 you think I'm capturing what happened correctly?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR MADLANGA SC: At that point, that is
 20 where we are on that footage, are the protesters moving in
 21 the direction of the shaft that you referred to? Or
 22 rather, let me be careful again and not refer to what you
 23 see here, because I encountered difficulties when I asked
 24 you according to what you see here. On your recollection,
 25 and at that point, bearing in mind your knowledge of where

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1 the shaft was, were the protesters moving in the direction
2 of the shaft?
3 MAJOR-GENERAL MPEMBE: No, Chairperson,
4 as I testified earlier on –
5 MR MADLANGA SC: Please continue.
6 [VIDEO RECORDING PLAYED]
7 MR MADLANGA SC: Stop there. Stop there.
8 Stop there. Ja, right there. Right there. Or just go
9 back a little bit, just a little bit. Keep going back.
10 Ja, stop right there. Stop right there. What's the time
11 now?
12 MS PILLAY: It's 3 minutes and 12 seconds
13 into the video.
14 MR MADLANGA SC: General, there's
15 somebody who emerged from the left-hand side of the Nyala,
16 and you can see him now, I would say in front of the Nyala.
17 Is that a policeman, or don't you know?
18 MAJOR-GENERAL MPEMBE: He alighted from
19 the Nyala, so it could be a police officer.
20 MR MADLANGA SC: Please continue.
21 [VIDEO RECORDING PLAYED]
22 MR MADLANGA SC: Stop there, right there.
23 Right there, ja. Just forward a little bit so that the
24 second person – just stop there, stop there. What's the
25 time now?

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1 MS PILLAY: That's 3 minutes and 17
2 seconds into the video.
3 MR MADLANGA SC: Two more people emerged
4 also from the left-hand side of the Nyala, General. Would
5 those be police officers as well?
6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.
8 MR MADLANGA SC: Please continue.
9 CHAIRPERSON: If we go back a little bit
10 – you see there's some smoke there. I'd like to see where
11 the smoke first becomes visible.
12 MR MADLANGA SC: Going back –
13 CHAIRPERSON: Yes, perhaps we can go back
14 a bit more. I'd like to see –
15 MR MADLANGA SC: Just before the smoke –
16 CHAIRPERSON: I'd like to see a frame
17 before we see any smoke, and then to work out at what point
18 we see the smoke the first time.
19 MR MADLANGA SC: Please continue.
20 [VIDEO RECORDING PLAYED]
21 MS PILLAY: 3 minutes and 14 seconds.
22 CHAIRPERSON: - a few frames earlier.
23 You understand I'm interested in when we can see the
24 teargas for the first time, and just before that,
25 particularly in relation to when these people had come from

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1 the Nyala. A little bit further back, please. When the
2 person first emerged – there we are – from the Nyala.
3 Perhaps we can be told what that reading is on the video.
4 MS PILLAY: 3 minutes and 11 seconds.
5 CHAIRPERSON: Thank you.
6 [VIDEO RECORDING PLAYED]
7 MR MADLANGA SC: There's the smoke.
8 CHAIRPERSON: - we can perhaps be told
9 what the reading is when we see the smoke for the first
10 time?
11 MS PILLAY: 3 minutes and 16 seconds.
12 CHAIRPERSON: Thank you.
13 [VIDEO RECORDING PLAYED]
14 MR MADLANGA SC: You can stop now. I
15 take it, General, you wouldn't know who those three police
16 officers are, and what they did? Or do you know what they
17 did after alighting from the Nyala, or do you know?
18 MAJOR-GENERAL MPEMBE: I don't know,
19 Chairperson.
20 MR MADLANGA SC: Now can we play the
21 other CCTV footage that also shows the protesters on the
22 field. Mr Wesley, the other Z something, and please select
23 the spot where they are on the field, not before.
24 MS PILLAY: That's exhibit Z2.
25 COMMISSIONER HEMRAJ: Before we get

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1 there, can I just ask you, General, do you know who would
2 have instructed Lieutenant Baloyi to go in any particular
3 direction?
4 MAJOR-GENERAL MPEMBE: No, Chairperson.
5 COMMISSIONER HEMRAJ: It could have been
6 his immediate commander?
7 MAJOR-GENERAL MPEMBE: Lieutenant-General
8 Tsiloane, not the Tsiloane I saw in the other – other
9 transcript, they said Tsiloane, but in my understand
10 Lieutenant Baloyi came with Lieutenant-Colonel Tsiloane,
11 who was also present.
12 [VIDEO RECORDING PLAYED]
13 MR MADLANGA SC: Just stop there. Even
14 though the protesters are not within view, is this the same
15 Nyala that we saw earlier, or don't you know?
16 CHAIRPERSON: I take it you're referring
17 to the one in the middle of the field, not the one fairly
18 close to the camera?
19 MR MADLANGA SC: This one which I think
20 is a Quantum, it's a Toyota Quantum –
21 CHAIRPERSON: Oh, I see.
22 MR MADLANGA SC: Yes, the Nyala is the
23 Nyala.
24 CHAIRPERSON: Your knowledge of this is
25 superior to mine.

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1 MR MADLANGA SC: What's the time –
 2 MS PILLAY: For purpose of the record,
 3 it's 42 seconds into the video.
 4 MR MADLANGA SC: Are you able to tell, or
 5 not, General?
 6 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 7 not quite sure because that one was close to the
 8 protesters.
 9 MR MADLANGA SC: If I'm not mistaken,
 10 they are going to emerge somewhere there at the front.
 11 Perhaps we should play on. Please continue.
 12 [VIDEO RECORDING PLAYED]
 13 MR MADLANGA SC: Or behind, rather;
 14 behind.
 15 [VIDEO RECORDING PLAYED]
 16 MR MADLANGA SC: Stop right there. Stop
 17 right – there is the protesters that I mentioned, just –
 18 [VIDEO RECORDING PLAYED]
 19 MR MADLANGA SC: Ja, stop right there.
 20 Right there. What's the time now?
 21 MS PILLAY: 1 minute and 5 seconds.
 22 MR MADLANGA SC: And may I just give a
 23 description, as the protesters that are appearing at that
 24 time, the Nyala is not quite at 90 degrees in relation to
 25 them, but roughly at that and slightly at an angle, but it

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1 has sort of cut, or gone in front of them. Please
 2 continue.
 3 [VIDEO RECORDING PLAYED]
 4 MR MADLANGA SC: Stop again. Stop again.
 5 Stop again. Or perhaps just continue as the Nyala is
 6 beginning to turn, turn to the right. Stop there. Stop
 7 there. What's the time now?
 8 MS PILLAY: 1 minute and 16 seconds.
 9 MR MADLANGA SC: Now General, bearing in
 10 mind the earlier description that I gave and with which you
 11 agreed as to the movement of the Nyala proceeding to the
 12 right of the protesters, cutting in front of them, then
 13 turning to the right and ending up to their left, we've
 14 just seen this Nyala go across in front of the protesters
 15 and it's now beginning to turn to the right. Would you not
 16 accept that it is the same Nyala that we saw in the earlier
 17 video clip?
 18 [10:48] MAJOR-GENERAL MPEMBE: I will agree,
 19 Chairperson.
 20 MR MADLANGA SC: Please – did we get the
 21 time? I'm sorry. Oh, thank you. Thank you. Please
 22 continue.
 23 [VIDEO RECORDING PLAYED]
 24 MR MADLANGA SC: Can you go back just a
 25 bit and stop where the Nyala stops?

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1 CHAIRPERSON: - given that reading, are
 2 we?
 3 MS PILLAY: 1 minute and 42 seconds.
 4 MR MADLANGA SC: Please continue.
 5 [VIDEO RECORDING PLAYED]
 6 MR MADLANGA SC: Stop when the smoke
 7 starts coming out and give us the reading. Exactly there,
 8 what's the time?
 9 MS PILLAY: 2 minutes and 2 seconds.
 10 MR MADLANGA SC: Continue.
 11 [VIDEO RECORDING PLAYED]
 12 MR MADLANGA SC: Just stop there. Just
 13 stop there. Ja, now what's the time where we are now?
 14 MS PILLAY: 2 minutes and 7 seconds.
 15 MR MADLANGA SC: Yes, General, where we
 16 are now, do you accept that the protesters are continuing
 17 to walk, or go the same way as they were before, despite
 18 the fact that there's already smoke around? Do you accept
 19 so? And perhaps for you to see it better, let's just go
 20 back to exactly the point where the smoke starts and then
 21 we just continue watching, General.
 22 [VIDEO RECORDING PLAYED]
 23 MR MADLANGA SC: You see there's smoke
 24 there, they are walking. They are walking. They are
 25 walking. They are still walking. Stop there. Do you

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1 agree with me, General?
 2 MAJOR-GENERAL MPEMBE: Chairperson, what
 3 I see, I cannot – I agree, but I did also testify that I
 4 saw them, they were moving in the direction of the informal
 5 settlement.
 6 MR MADLANGA SC: That's not what I'm
 7 asking you. I'm just asking you are they just walking,
 8 walking; they are not running around or they've not turned,
 9 started to turn back and they attack the police. They are
 10 just walking. That's all I'm asking you, General.
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 12 MS PILLAY: Chair, the video is now at 2
 13 minutes and 14 seconds.
 14 MR MADLANGA SC: Please continue.
 15 [VIDEO RECORDING PLAYED]
 16 MR MADLANGA SC: Just stop. Stop, and
 17 stop it where those two small clouds of smoke right at the
 18 front there. There was a – I can't quite describe it.
 19 That's when those come out, or the first one. Ja, there,
 20 what's the time there? What's the time there?
 21 MS PILLAY: 2 minutes and 25 seconds.
 22 CHAIRPERSON: Perhaps you could just
 23 explain for the benefit of those who are watching this on
 24 the worldwide web what exactly it is that is recorded on
 25 this particular frame that's significant?

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1 MR MADLANGA SC: General, would that not
 2 be a stun grenade what we just saw now? We'll go back a
 3 bit maybe for you to see what happens exactly there. Just
 4 go back before it starts and then – ja, now play forward.
 5 Just stop there. Stop there. You saw there were two poofs
 6 that were poof-poof – I don't know how to describe what I
 7 think –
 8 CHAIRPERSON: I think "puff" is a more
 9 elegant pronunciation.
 10 MR MADLANGA SC: Thank you. Thank you,
 11 Mr Chairman. I'm a third language English speaker. Would
 12 those two puffs there, quick ones, boof, would those not be
 13 stun grenades perhaps?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MS PILLAY: Chair, the stun grenades
 17 start at 2:26.
 18 MR MADLANGA SC: Please continue.
 19 [VIDEO RECORDING PLAYED]
 20 MR MADLANGA SC: Just stop there. Stop.
 21 The people are beginning to run. The people are beginning
 22 to run around, and can you give us the time when they start
 23 running?
 24 MS PILLAY: It's 2:27.
 25 MR MADLANGA SC: Now just continue. I'll

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1 tell you to stop shortly.
 2 [VIDEO RECORDING PLAYED]
 3 MR MADLANGA SC: Please stop. General,
 4 the smoke that we saw earlier when I ask you and you agreed
 5 that do you see that the people are continuing to walk,
 6 despite the fact that there is smoke around, would that not
 7 have been smoke from teargas canisters?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MADLANGA SC: And do you agree that
 11 from what we see, people start running around after the
 12 stun grenades have been thrown and exploded? It's only
 13 then that people start running around.
 14 MR MATHIBEDI SC: Chair, there's some
 15 obstruction –
 16 CHAIRPERSON: Mr Mathibedi?
 17 MR MATHIBEDI SC: - that's caused by the
 18 trees there, so we don't see what's happening that side in
 19 the smoke.
 20 CHAIRPERSON: Is that an objection?
 21 MR MATHIBEDI SC: It's an objection, Mr
 22 Chairman. So we cannot say we see the people are running
 23 around at that stage when the stun grenades are being
 24 thrown.
 25 CHAIRPERSON: Mr Madlanga, you heard Mr

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1 Mathibedi's objection. How do you respond to it?
 2 MR MADLANGA SC: Let me ask the question
 3 this way. General, when there is – when one sees the smoke
 4 that you say is teargas smoke, do we see any people
 5 running? I'm not asking about whether or not there might
 6 well be people running, but from what we see on the
 7 footage, do you see any people running before the stun
 8 grenades explode?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I'll
 10 request that maybe it starts where the smoke was, what is
 11 teargas was used until to the stun grenade.
 12 MR MADLANGA SC: Can you please rewind to
 13 a point just before we see any smoke, and then start
 14 playing.
 15 MS PILLAY: It's at 1:58, 1 minute and 58
 16 seconds.
 17 [VIDEO RECORDING PLAYED]
 18 MR MADLANGA SC: Just stop – just go back
 19 a bit; I think I see police, or people that I think, just
 20 play; I want you to stop just before, on the extreme right-
 21 hand side of the frame, more to the front, to the right of
 22 the protesters there are some people there and they start
 23 running. I want you to stop as those people begin to run,
 24 or start running.
 25 [VIDEO RECORDING PLAYED]

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1 MR MADLANGA SC: Right there. Right
 2 there. Just before they start running. Is it there? And
 3 what's the time?
 4 MS PILLAY: 2 minutes and 7 seconds.
 5 MR MADLANGA SC: General, the one, two,
 6 three – I think it's about four people, they start running.
 7 Are those not police officers? They are to the extreme
 8 right-hand side of the frame, sort of above, at least as it
 9 appears on the picture, sort of above the Quantum, the
 10 Toyota Quantum on the road.
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MR MADLANGA SC: Correct, it is police,
 14 you say.
 15 CHAIRPERSON: Perhaps we can take the
 16 adjournment at this stage, unless you want to carry on for
 17 a short while? But before we do so, Commissioner Hemraj
 18 wants to ask a question.
 19 COMMISSIONER HEMRAJ: General, are you
 20 able to differentiate from the video which is CS smoke and
 21 which is stun grenade smoke, or are you relying on what
 22 you've been told or what you saw on the day and
 23 reconstructing?
 24 MAJOR-GENERAL MPEMBE: Chairperson, the
 25 stun grenade does move twice. It does make also a sound.

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1 It will, it will move twice, as it happened there.
 2 CHAIRPERSON: That means you can
 3 differentiate on the video between teargas smoke and smoke
 4 from a stun grenade. Is that right?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 CHAIRPERSON: We'll now take the tea
 8 adjournment for 15 minutes.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:30] CHAIRPERSON: The Commission resumes.
 11 Before I ask, before I remind the Major-General he's still
 12 under oath I want to thank, I think it's Ms Pillay who has
 13 kindly prepare artistically improved sketches, depictions
 14 of the positions of the strikers and the police which have
 15 handed in and made available to us, thank you. Mr Mpofo, I
 16 understand you wish to make an announcement to us.
 17 MR MPOFU: Thank you very much,
 18 Chairperson, and I hope everyone had a good break. Some of
 19 us didn't. Chairperson, if you remember the remarks I made
 20 on the 21st of June regarding the then intended application
 21 for the funding of the applicants or the victims as we
 22 prefer to call them. What I want to do now is quickly just
 23 to report back as to what happened and then to address what
 24 - the position of our plans. Thank you, Chairperson.
 25 Chairperson, indeed the matter was set down for the 9th of

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1 July, by agreement between the parties it was held on the
 2 11th. The 11th, the 12th and the 13th, which is the Thursday,
 3 the Friday and the Saturday of last week. On all those
 4 three days the matter finished after dark so it was quite a
 5 lot of argument and a lot of paper indeed. I think before
 6 - I want to preface my remarks by thanking the Commission
 7 for the support and understanding of the fact that we tried
 8 as much as possible not to disrupt the work of the
 9 commission by firstly setting the matter down. The reason
 10 why it was set down on the Tuesday because we anticipated
 11 the judge might want until about Friday so that by the
 12 Monday there would be a judgement. But we do understand
 13 because of the volume of work that the judge had to - he
 14 needed more than just a day to make a judgement. And when
 15 we thank the Commission we're not - the support doesn't
 16 mean you supported the application, indeed what the
 17 commission did was to file a notice that it would abide by
 18 the decision but we think that even that speaks volumes.
 19 And we also want to thank the other parties, some of the
 20 parties supported, others also filed notices to abide.
 21 Thankfully only one party represented here opposed the
 22 application. Maybe understandably and that is the police
 23 and the National Commissioner.
 24 What we said at the court because obviously the
 25 issue of the looming 15th was uppermost in everybody's mind.

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1 One of the ways in which we dealt with that was to adopt a
 2 comprised position of not interdicting the commission but
 3 asking for interim relief pending the final determination
 4 of the rights of the parties. And that was always meant to
 5 make sure that whatever happens the work should continue
 6 and that's the order ultimately that we amended the notice
 7 of motion to. If we get that order, Chairperson, from the
 8 point of view of the commission at least we would have
 9 achieved the intended result which is that while the big
 10 constitutional issues are debated in good time, on an
 11 expedited basis but at least that the commission is
 12 insulated from that process.
 13 So where are - and we made the remarks to the
 14 judge to say irrespective of the outcome, even if the
 15 outcome had come yesterday, as professionals we have a duty
 16 to come here and explain to the Commission. We couldn't
 17 just disappear, whatever the instructions would be which is
 18 what we are doing, thank you, with your leave, Chairperson.
 19 The position now is that while we are waiting or maybe
 20 before, let me correct something that has been badly or
 21 incorrectly reported in the media. They have said that the
 22 judge said his judgment will be on Thursday. The judge did
 23 not say that and we can understand how that confusion
 24 arose. The judge simply said he'll his judgement during
 25 this week. What the Thursday issue was about, the

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1 postponement of the separate application of Baloyi and I
 2 think the media then conflicted the two things. So in
 3 reality the judgment could be in the next two hours. It
 4 could be tomorrow, it could be anytime this week, we don't
 5 know, but that situation then left us with the problem of
 6 what do we do now, between now and the time of the
 7 judgment. And as we indicated and as you also indicated to
 8 the forum, Chair, what then happened is that a small
 9 delegation of the victims was sent to consult with us which
 10 is what we have been doing now. We're still going to
 11 consult with the larger groups and our instructions are to
 12 await the judgment and at that point to receive further
 13 instructions from them. In the meantime we'll not be
 14 participating, the victims that are affected, at least
 15 those that we represent and hopefully as the Chairperson's
 16 remarks were, if we are back later in the week then
 17 obviously we'll have to take the burden of catching up with
 18 what has happened which is not a major crisis. I think, as
 19 I was saying, the only difference is we are not here to be
 20 able to object and so on but that's a minor inconvenience.
 21 I'm sure Chairperson will allow us to raise belated
 22 objections if need be.
 23 CHAIRPERSON: - promise but we'll see
 24 when that problem arises.
 25 MR MPOFU: You can't promise up front,

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1 thank you, Chairperson. So that seems to be an elegant way
 2 to deal with the situation that we find ourselves in. We
 3 do - well there's no need for me to reveal what our
 4 instructions are if we don't come back but once again we'll
 5 communicate that one way or the other. So that's the
 6 situation, Chairperson, and we want to make it very clear
 7 that this is what - all the steps that we are taking,
 8 including this morning for which we are very grateful that
 9 you gave us the time, is to make sure that the progress but
 10 also the integrity of this commission is preserved. And
 11 everything we did in court we made sure because it would
 12 not make sense for us to be saying our client's rights are
 13 in jeopardy and they need to be exercised here and yet
 14 damage the very institution to which they are to exercise
 15 those rights.

16 So we were very careful about that and it's
 17 important that even the media must be very clear that these
 18 are positions that are taken as comprises because of a
 19 situation that no-one could foresee but it doesn't reflect
 20 anything whatsoever, if anything that they were grateful
 21 that the commission took the view of not opposing the
 22 application. As we say that speaks volumes on its one.
 23 Thanks. Sorry, Chairperson, before you respond insofar as
 24 the practical issue of what is happening at the commission
 25 is concerned, the commission will be aware that we are

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1 scheduled the next cross-examiner after Mr Madlanga. That
 2 is a matter that we will be able to handle with our
 3 colleagues, our various colleagues here, bearing in mind
 4 that on Wednesday the commission is not sitting and so on
 5 but we'll handle it outside here. We'll still be in touch
 6 with the evidence leaders on those issues. Thank you.

7 CHAIRPERSON: Thank you, Mr Mpofo. Thank
 8 you for what you've told us and I think we're all much
 9 better informed than we were before. And I also want to
 10 say that we are appreciative of the fact that you and your
 11 clients acted very responsibly in deciding not to proceed
 12 with the application for an interdict because that would
 13 have had unfortunate consequences if it had been
 14 successful. Very well, thank you very much, Mr Mpofo.
 15 Major-General it's now my duty to remind you again that
 16 you're still under oath.

17 WILLIAM MPEMBE: s.u.o.
 18 CHAIRPERSON: Mr Madlanga -
 19 MR MPOFU: Sorry Chairperson, can we
 20 therefore be excused -
 21 CHAIRPERSON: I don't say that you need
 22 permission but you may be excused.
 23 MR MPOFU: In this case I think I do,
 24 thank you, Chairperson.
 25 CHAIRPERSON: Perhaps we should give Mr

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1 Mpofo and his team an opportunity to leave before we
 2 continue with the cross-examination. I should have said
 3 before but let me say it now before you leave, we trust
 4 that your recovery from the assault that you were the
 5 victim of is continuing and that you are almost back to
 6 100% condition.

7 MR MPOFU: I -
 8 CHAIRPERSON: So now that we have to
 9 proceed without a response from Mr Mpofo to the state of
 10 his health perhaps you can carry on with your cross-
 11 examination.

12 CROSS-EXAMINATION BY MR MADLANGA SC (CONT.):
 13 Thank you, thank you, Mr Chairman. General just on the
 14 last response you gave to Commissioner Hemraj, so it means
 15 what I saw which was - or we all saw the two puffs which I
 16 thought were two stun grenades, so you are saying that's
 17 one stun grenade. I'm not suggesting that throughout there
 18 was only one stun grenade but at the point to which I drew
 19 your attention that was one stun grenade. Is that so?

20 MAJOR-GENERAL MPEMBE: Chairperson, I was
 21 not referring to the number but I was referring to the way
 22 I could identify a difference between a stun grenade and a
 23 CS teargas.

24 COMMISSIONER HEMRAJ: The question you
 25 put to him, Mr Madlanga, was in the plural, are those stun

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1 grenades and he said yes.

2 MR MADLANGA SC: Ag anyway, anyway he
 3 stands by his response that it was stun grenades, thank
 4 you, thank you very much, Commissioner Hemraj. Now back to
 5 the question that I had been asking which was whether you
 6 see any people running once there is smoke on the screen.
 7 Do you see any people running? And you said you would
 8 rather have the footage played all over again for you to be
 9 able to tell and as it was being played we saw people that
 10 you identified as police running. Now I want the footage
 11 to continue and I want you to watch and see if you see
 12 besides the police any other people running. As we see the
 13 teargas smoke just before the stun grenade explodes. Can
 14 you please rewind to just before the police start running
 15 and play right up to the point where we see the stun
 16 grenade exploding.

17 [VIDEO SHOWN]
 18 MR MADLANGA SC: General, what's your
 19 response?
 20 MAJOR-GENERAL MPEMBE: Chairperson, it's
 21 true that the people run where the stun grenade is but
 22 there is a point which I need just to put into right
 23 context. If we look at the video now it's totally covered
 24 with the smoke which one might not be in a position to
 25 comment those that are within the smoke but those that are

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1 visible yes it's true.

2 MR MADLANGA SC: So it's true those that

3 you can see are not running and they only start doing so

4 when the stun grenade goes off?

5 MAJOR-GENERAL MPEMBE: Chairperson, I

6 said it's correct except the point where there are a number

7 of people who were protestors or strikers that are covered

8 by tear smoke.

9 MR MADLANGA SC: General, the story that

10 the police also wanted to protect some shaft as I

11 understand it, somewhere to the left of the frame that if

12 I'm not mistaken, I'm hearing for the first time today is

13 that correct? Are you mentioning that for the first time

14 today

15 MAJOR-GENERAL MPEMBE: No, Chairperson.

16 MR MADLANGA SC: Where do you mention it

17 for the first time? I might be wrong altogether, General.

18 Just remind me.

19 MAJOR-GENERAL MPEMBE: I once spoke about

20 it and I think it was the day when we were on the scene

21 showing the shaft there. And also in my evidence in chief

22 I said that there were certain places which of course I was

23 briefed on my arrival that those places have been

24 identified. I mentioned informal settlement and also any

25 place that belongs to Lonmin mine that can be made to be

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1 disrupted.

2 [11:50] MR MADLANGA SC: General, you do not

3 mention this in your hand-written statement of the 13th of

4 August which is HHH13. Do you agree?

5 Do you agree?

6 MAJOR-GENERAL MPEMBE: I agree,

7 Chairperson.

8 MR MADLANGA SC: Now General, because it

9 took you a bit of time to go through that statement which

10 is relatively short I will not ask you to go through

11 exhibit GGG12 which is your earlier typed statement and

12 your supplementary statement, your more recent typed

13 statement which is exhibit HHH3. I will not ask you to go

14 through those because it would take us forever, at least

15 not now, but I want you, when you have time, to go through

16 those two statements and find out if you do make that

17 point. And General, when you do that exercise, I'm not

18 looking for a general statement that indicates what

19 premises, what property SAPS were generally protecting

20 during the events at Marikana, but specifically on whether

21 as the protestors were moving across the field, this field

22 that we see on this particular footage that's playing now,

23 SAPS or the police or you were concerned about the

24 protection of some shaft that was somewhere to the left of

25 the frame as we see it on this footage.

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1 CHAIRPERSON: As I see it your statement

2 which is GGG12 would deal with it if it were dealt with in

3 paragraph 18. It doesn't appear to be and in Colonel

4 Merafe's statement, Lieutenant-Colonel Merafe's statement,

5 I'm not sure what the exhibit number is, but oh sorry it's

6 GGG15, exhibit GGG15 Lieutenant-Colonel Merafe's statement,

7 he would deal with the matter if he dealt with it at all in

8 para 18 also. In neither of those statements is that is

9 that point mentioned at all.

10 MR MADLANGA SC: Yes, yes but if he were

11 to want to satisfy himself, thank you very much, Mr

12 Chairman. Perhaps we'll just give him time and maybe when

13 we resume even tomorrow morning the General can indicate

14 whether he has been able to find anywhere where he

15 pertinently deals with this issue, protestors walking

16 through this field and the General's concern or SAPS'

17 concern about some shaft somewhere to the left of the

18 frame. Will you please do that, General? Oh, you can stop

19 the footage now, thank you.

20 CHAIRPERSON: I think I must also point

21 that in the supplementary statement which is HHH3 I think,

22 you deal with what is said in para 18 of your original

23 statement in paragraph 8 of that statement and you also

24 don't mention the point there either.

25 MR MADLANGA SC: Thanks again, Mr

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1 Chairman. Now General, I want to take you to the SAPS

2 policy on public order policing and it is exhibit FFF1 and

3 there I want you to have a look at the third sentence of

4 clause or paragraph 4.3.3. At typed page 8 at the top of

5 the policy.

6 CHAIRPERSON: What paragraph must he look

7 at, or clause number?

8 MR MADLANGA SC: 4.3.2, Mr Chairman.

9 CHAIRPERSON: Thank you.

10 MR MADLANGA SC: Do you have it in front

11 of you now?

12 MAJOR-GENERAL MPEMBE: I have in front of

13 me I just wanted the page, Chairperson.

14 MR MADLANGA SC: 4.3.2 is the paragraph

15 number or clause that I'm referring you to, it's a typed

16 page 8 at the top.

17 MAJOR-GENERAL MPEMBE: Paragraph 4. -

18 MR MADLANGA SC: 3.2, 4.3.2.

19 MAJOR-GENERAL MPEMBE: I've got it,

20 Chairperson.

21 MR MADLANGA SC: Yes, the third sentence

22 starting "The planning and operational command" do you see

23 that now? Four lines down.

24 MAJOR-GENERAL MPEMBE: I see the one.

25 MR MADLANGA SC: Four lines down, the

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1 planning and - do you see that?
 2 Do you see the line starting "however, at all
 3 times?"
 4 MAJOR-GENERAL MPEMBE: Yes, I see it.
 5 MR MADLANGA SC: Yes, now the sentence
 6 starting towards the right-hand margin. "The planning and
 7 operational command of public order operations must always
 8 be entrusted to commanders of POP units in consultation
 9 with the Provincial Commissioner as they are trained and
 10 usually experienced in such matters." Do you see that?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson, I can see it.
 13 MR MADLANGA SC: Mr Chairperson,
 14 Commissioners, Ms Pillay has just drawn to my attention the
 15 fact that the transcript of the inspection in loco is
 16 available and the General will be given a copy for him to
 17 have a look at where he refers to the shaft that needed to
 18 be protected.
 19 CHAIRPERSON: Thank you.
 20 MR MADLANGA SC: Thank you. General,
 21 what I read refers to the planning and operational command.
 22 For now I will not bother about the planning. You said
 23 because this was spontaneous and there was no time for
 24 planning you would have - in the circumstances you would
 25 have required three days to plan but I emphasise the part

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1 that says "operational command of public order operations
 2 must always be entrusted to commanders of POP units in
 3 consultation with the Provincial Commissioner as they are
 4 trained and usually experienced in such matters." On the
 5 date we adjourned you testified that Brigadier Calitz was
 6 the operational commander but that as a matter of fact on
 7 the day, on the 13th next to the railway line you assumed
 8 the duties of an operational commander. You acted as or
 9 you performed the duties of an operational commander. My
 10 question is do you agree that your assumption of the
 11 functions of an operational commander on that day -
 12 CHAIRPERSON: Sorry to interrupt you. It
 13 sounds as if someone's cell phone is going off. Will they
 14 please turn it off and anyone else who has a cell phone
 15 which is on must please turn it off. If a cell phone goes
 16 off from now on I'm going to ask the person concerned to
 17 leave the auditorium.
 18 MR MADLANGA SC: Do you agree, General,
 19 that your assumption of the functions of an operational
 20 commander on the 13th was in fact in contravention of the
 21 plain injunction contained in the third sentence of
 22 paragraph 4.3.2 of the policy on public order policing, do
 23 you agree with that? Or perhaps let me ask this question
 24 first, I'm sorry Commissioners. Let me ask this question
 25 first. Are you a commander of an POP unit?

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1 MAJOR-GENERAL MPEMBE: I am not a
 2 commander of the POP unit but I am in charge of POP units
 3 in the province. The commanders are reporting to me.
 4 Chairperson, I need also maybe to say last time I said I
 5 went there still as a CJOC and Brigadier Calitz was at the
 6 JOC but I went there as a CJOC.
 7 MR MADLANGA SC: General, this is not as
 8 I read it, saying that a CJOC may also do this. It says
 9 "because commanders of POP units are trained and usually
 10 experienced in such matters." For that reason they must be
 11 the one who are in charge of, or rather, yes in charge of
 12 an operation. They must be operational commanders. It
 13 says nothing about a CJOC who may not necessarily also be a
 14 POP commander. So the simple question, General, is are you
 15 a POP commander? Do I understand your answer to be that
 16 you are not? Or rather a commander of a POP unit, do I
 17 understand your answer to be that you are not?
 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 19 and I indicated that all POP commanders are reporting to
 20 me. And, Chairperson, I need also to add that I did not go
 21 on the 13th alone, I was surrounded by POP commanders.
 22 MR MADLANGA SC: Are you suggesting an
 23 exception to what 4.3.2 says which is that a person to whom
 24 POP commanders report may, regardless of what 4.3.2 says be
 25 in charge of a public order policing operation even if that

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1 person is not himself or herself a commander of a POP unit?
 2 Are you suggesting that exception to 4.3.2?
 3 MAJOR-GENERAL MPEMBE: Chairperson, as I
 4 indicated previously and maybe I know the Chairperson has
 5 given a ruling on that one in terms of standing order 11,
 6 paragraph 5, I need to just state that outside there
 7 operationally some of the policies will not be in -
 8 directly applied. As I said it will depend on the
 9 situational appropriateness, not that you are contravening
 10 the policy but for the matter of practicability. One will
 11 have to take those matters personally and I did indicate
 12 that as a general I am expected to give guidance to the
 13 members. I'm expected to do hands-on management and I am
 14 not normally a general that sits in the office, I lead in
 15 the front and I will ask the commission and Commissioners
 16 to judge me on what happened that day, particularly me as a
 17 CJOC commander.
 18 MR MADLANGA SC: And I suggest to you
 19 also, General, that you are saying there is yet another
 20 exception and it is that a person who is not a commander of
 21 a POP unit may exercise the functions of an operational
 22 commander in a public order policing operation for as long
 23 as there are around him or her commanders of POP units. Do
 24 you agree with that as well, do you agree with that?
 25 MAJOR-GENERAL MPEMBE: Chairperson, this

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1 is not what I'm saying. I'm saying that POP commanders as
 2 a general they are reporting to me and on that day I was
 3 with them but I'm also not saying that it's an exception.
 4 But what I'm saying if Chairperson will allow me to
 5 demonstrate with the previous policy that we also dealt
 6 with, that is standing order 262, paragraph 11.5. And in
 7 terms of that policy which I also admitted that what is
 8 written there I cannot change but practically when you are
 9 on the ground in answering this question, when an
 10 operational commander is leading the forces of 600 or even
 11 1000 on the 16th of - you could not be able maybe to give a
 12 command of a teargas because of the varsity(?) of the
 13 place, because of the number of people, and yet the policy
 14 only depicts the two people, the operational commander as
 15 well as the CJOC commander, and the CJOC, the same policy
 16 expect them to be in the JOC.
 17 [12:09] So at the end of the day it does – and this is
 18 what I'm indicating to the Commission – it does have an
 19 impact in the operation, and as a matter of fact, Brigadier
 20 Calitz is coming as an operational commander, a POP
 21 commander, that he will also say what did he experience on
 22 the 16th of August.
 23 MR MADLANGA SC: General, you did testify
 24 how many commanders, or POP commanders, or commanders of
 25 POP units there were on the 13th. Can you just –

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1 unfortunately I don't remember how many you said there
 2 were. How many were they, if you remember?
 3 MAJOR-GENERAL MPEMBE: Chairperson, I had
 4 Lieutenant-Colonel Merafe.
 5 MR MADLANGA SC: Yes?
 6 MAJOR-GENERAL MPEMBE: I had Lieutenant-
 7 Colonel Tsiloane.
 8 MR MADLANGA SC: Yes?
 9 MAJOR-GENERAL MPEMBE: Captain, it's,
 10 Lieutenant Baloyi was also there.
 11 MR MADLANGA SC: Yes?
 12 MAJOR-GENERAL MPEMBE: And in the
 13 chopper, which was also directing the operation, it was
 14 Lieutenant-Colonel Vermaak.
 15 MR MADLANGA SC: General, it would have
 16 been a matter of relative ease for one of these commanders
 17 of POP units to take command of the operation on the 13th,
 18 would it not have been?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson, but the person still reports to me.
 21 CHAIRPERSON: - putting to you doesn't
 22 seem to be decisive. If you look at this policy document,
 23 page 8, the passage to which counsel has referred you,
 24 paragraph 4.3.2, the third sentence gives the reason for
 25 what is contained there. Let's read it again. "The

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1 planning and operational command of public order operations
 2 must always be entrusted to commanders of POP units, in
 3 consultation with the Provincial Commissioner" – and now
 4 the reason is given – "as they are trained and usually
 5 experienced in such matters." Now I've looked through your
 6 CV, looked through the document that you put before us,
 7 your record, and the work you've done at various stages in
 8 your career. I couldn't see any evidence that you've been
 9 trained and were experienced in public order operations.
 10 If there is something that I did not see, or something
 11 that's not there that I should have been told about, now is
 12 your time to tell me, but the whole idea of this document
 13 is that operation command for public order operations must
 14 always be entrusted to people who are trained and
 15 experienced in such matters. Now the question is, were you
 16 trained and were you experienced in such matters, in public
 17 order operations? I can understand being assistant
 18 commissioner, the people, the Public Order Policing
 19 commanders are under you and subject to your orders, and so
 20 forth. I can understand that, but that's not the point.
 21 The point is whether the reason given in the sentence I
 22 read afforded justification for you being in charge of the
 23 execution of this particular operation. I think that's the
 24 question counsel is putting to you.
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 would say I'm experienced in crowd management, in Public
 2 Order Policing matters, and what I was trying to explain is
 3 that as a General experienced in Public Order Policing, I'm
 4 also expected to give guidance to the same Public Order
 5 Policing commanders. And also in adding to that is that
 6 the Commission should look exactly the conduct and the
 7 guidance that I give on the same day, whether was it in
 8 line with Public Order Policing policy or I guided the
 9 commanders in a different way. That's what I was saying.
 10 MR MADLANGA SC: General, yes, you have
 11 testified that you consider yourself to be experienced in
 12 Public Order Policing. Can I draw to your attention what I
 13 recollect to have been the evidence of General Annandale on
 14 this? But of course I accept that you know your training
 15 and experience better than what General Annandale knows.
 16 My recollection is that his evidence was that what you did
 17 – I may be wrong altogether – what you did was in fact no
 18 more than the basic training on Public Order Policing that
 19 every policeman or policewoman or police officer undergoes
 20 at basic training. I will not take it further at this
 21 stage. I will try to find the evidence and even, as I
 22 recollect, the document that General Annandale was looking
 23 at, and I will give you - if I'm able to find that, I will
 24 give you a copy of that for you to consider. Now can I –
 25 MAJOR-GENERAL MPEMBE: I'm sorry,

<p style="text-align: right;">Page 11873</p> <p>1 Chairperson, may I please respond to this?</p> <p>2 CHAIRPERSON: You may.</p> <p>3 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>4 don't dispute the fact that I'm trained in a basic Public</p> <p>5 Order Policing training, which I do agree with Adv</p> <p>6 Madlanga. The experience that I am talking about is an</p> <p>7 experience through that training and having a practical</p> <p>8 experience for 13 years of a deputy operations in the</p> <p>9 Northwest Province.</p> <p>10 MR MADLANGA SC: Can I now, General, take</p> <p>11 you to paragraph 5.3.4 of this same document, the policy on</p> <p>12 Public Order Policing. You testified that this was – what</p> <p>13 happened there was spontaneous and your reaction also</p> <p>14 therefore was a spontaneous reaction. Now if you look at</p> <p>15 paragraph 5.3.4, in fact if you look at 5.3, it deals with</p> <p>16 a spontaneous gathering, and then there's 5.3.1 all the way</p> <p>17 down to 5.3.4, and this appears after the policy has</p> <p>18 referred to what is expected of SAPS, that is all of the</p> <p>19 things that SAPS must do, including briefing, planning, and</p> <p>20 so on and so on. Now if you look at 5.3.4 it says, "The</p> <p>21 situation should be managed by applying the procedures</p> <p>22 indicated in this policy document." Would I be correct,</p> <p>23 General, if I suggest to you that even in circumstances</p> <p>24 where a gathering is a spontaneous one, SAPS must still do</p> <p>25 the best they can to strive for upholding the principles</p>	<p style="text-align: right;">Page 11875</p> <p>1 practicable, I'm at the level of interpretation purely. Do</p> <p>2 you agree that what I'm proffering as a possible</p> <p>3 interpretation is the correct interpretation, or don't you</p> <p>4 agree?</p> <p>5 MAJOR-GENERAL MPEMBE: Chairperson, yes I</p> <p>6 agree, and I see that it was done in terms of when I was</p> <p>7 there.</p> <p>8 MR BIZOS SC: Mr Chairman, I can't help</p> <p>9 noticing that there are less than six people in the</p> <p>10 audience. Should we not ask them, with respect, whether</p> <p>11 they understand English, and if so, we can dispense for the</p> <p>12 time being, if they don't want a translation and insist on</p> <p>13 it, that we may expedite matters if we give the interpreter</p> <p>14 a rest?</p> <p>15 CHAIRPERSON: - how do you react to that</p> <p>16 suggestion Mr Bizos has made?</p> <p>17 MR MADLANGA SC: I'm agreeable to that,</p> <p>18 if we may perhaps –</p> <p>19 CHAIRPERSON: Anyone who –</p> <p>20 MR MADLANGA SC: - the Commission to –</p> <p>21 CHAIRPERSON: Anyone representing the</p> <p>22 parties opposed to Mr Bizos' suggestion? Perhaps the</p> <p>23 sensible thing to do is to suggest that the parties are</p> <p>24 going to speak to their clients over the lunch adjournment,</p> <p>25 and depending on the feedback we get, we can then adopt Mr</p>
<p style="text-align: right;">Page 11874</p> <p>1 that are set out in this policy? Isn't that what 5.3.4</p> <p>2 means? As far as that would be practical, of course.</p> <p>3 CHAIRPERSON: - to be fair, you answered</p> <p>4 that last time when you referred us to paragraph 3.3 under</p> <p>5 the heading of "Situational appropriateness," and you</p> <p>6 explained to us that in deciding to do what you did, and</p> <p>7 differing in fact from the commanders who were working with</p> <p>8 you who took a different line, you thought that what you</p> <p>9 said should be done would be in accordance with the</p> <p>10 principles of situational appropriateness, and if they had</p> <p>11 done what – if they wanted done had been done, there would</p> <p>12 have been far more bloodshed than in fact there was. Is</p> <p>13 that what you said last time? I take it that's still your</p> <p>14 answer?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct,</p> <p>16 Chairperson, and these confirms that as a General and the</p> <p>17 commanders reporting to me, I have to give them guidance.</p> <p>18 That's why I was asking the Commission to judge me by what</p> <p>19 I did on that day.</p> <p>20 MR MADLANGA SC: That is not my question,</p> <p>21 General. General, my question is purely at the level of</p> <p>22 interpretation. General, I'm asking you whether you agree</p> <p>23 with me that what 5.3.4 conveys is that SAPS should still</p> <p>24 strive for upholding all of the principles stated in this</p> <p>25 policy, but of course, insofar as that would be</p>	<p style="text-align: right;">Page 11876</p> <p>1 Bizos' suggestion in the light of the feedback. I think</p> <p>2 there are people watching on a screen, or screens,</p> <p>3 elsewhere in this building. Of course there are people</p> <p>4 watching through YouTube and so on, but it prima facie</p> <p>5 sounds a very good suggestion, but perhaps as I said the</p> <p>6 parties' representatives can consult their clients during</p> <p>7 the lunch adjournment, and depending on the feedback, we</p> <p>8 will implement Mr Bizos' suggestion, if it appears</p> <p>9 appropriate. Thank you for the suggestion, Mr Bizos.</p> <p>10 MR MADLANGA SC: Now General, I can</p> <p>11 already see what your likely answer to this is based on</p> <p>12 your response to the question that the Chairman asked, but</p> <p>13 I will asked the question nonetheless. Now General, going</p> <p>14 through the transcript on Friday night I saw that you say</p> <p>15 that from the time that you were requested by the</p> <p>16 Provincial Commissioner to attend to the gathering on the</p> <p>17 13th, you said you had about two hours. Yes, I'm not</p> <p>18 unmindful of the fact that you say that for proper</p> <p>19 planning, briefing, and so on, you would have required</p> <p>20 three days, but I will still ask you this. Bearing in</p> <p>21 mind, General, what clause 5.3.4 says, that is an attempt</p> <p>22 as far as possible to comply with the policy, and also</p> <p>23 bearing in mind, General, that the policy also specifies</p> <p>24 why there is a need for a proper briefing, and that reason</p> <p>25 being that all role players should know what is expected of</p>

<p style="text-align: right;">Page 11877</p> <p>1 them, within the two hours that you had, should you not at 2 the very least have had a very brief, very brief briefing 3 session at which you indicated what you required to be done 4 on the day, as opposed to simply just walking there and 5 only having a briefing once everything was unfolding, the 6 briefing being with the commanders, as you were talking to 7 the protesters gathered next to the railway line? Was the 8 proper thing to do, in the light of 5.3.4, and in the light 9 of the need for role players to know what is expected of 10 them, was the proper thing to do not at the very least to 11 have a very brief briefing session so that the role players 12 should be aware of what is expected of them?</p> <p>13 MAJOR-GENERAL MPEMBE: Chairperson, my 14 understanding of 5.3 does not only refer to the briefing. 15 It refers to the number of actions that the police should 16 take with regard to a spontaneous gathering. In answering 17 the question I will also state maybe the paragraph and 18 indicate the action that we did – identify the leadership 19 element in order to establish communication and 20 negotiation; Chairperson, the video is very clear, I was 21 personally talking to them. 22 [12:29] The only problem that we couldn't establish is 23 that what are their names, where are they staying, but the 24 follow-up action that I personally did, it was exactly to 25 do that. Coming to set up a mobile joint operational</p>	<p style="text-align: right;">Page 11879</p> <p>1 the meeting. It's the police that initiated the leaders to 2 go and address there, and Chairperson, that was also in 3 compliance with the policy. 4 With regard to establish the perpetrator, 5 Chairperson, you will also know that in terms of the 6 exhibit OO4 I repeatedly asked even those leaders who are 7 the people that they should help me to beat this elephant 8 bit by bit. I'm just also explaining in terms of the 9 actions that emanated from the 13th. 10 CHAIRPERSON: Yes, yes, I understand 11 that, but I think Mr Madlanga is more concerned not with 12 what you did on the 15th, which you've explained was 13 entirely in accordance with the policy document, but what 14 you did on the 13th. Am I correct, Mr Madlanga? That's 15 what he's focusing on at the moment, but anyway, we have 16 your answer in respect of the other points, which is on 17 record and we'll obviously bear it in mind, but perhaps 18 you'd like to proceed, Mr Madlanga, when the interpreter 19 has been given a chance to interpret the response. 20 COMMISSIONER HEMRAJ: Mr Madlanga, the 21 brief briefing that you referred to is his briefing the 22 other POP commanders and the police, not other role 23 players; it's the briefing of the police personnel present? 24 MR MADLANGA SC: Yes, but which then, 25 Commissioner Hemraj, should have led to those commanders in</p>
<p style="text-align: right;">Page 11878</p> <p>1 centre, Chairperson, I can confirm that it was set up. 2 Inform the local authority of the gathering and, if 3 possible, the reasons or purpose of the gathering; 4 Chairperson, that is the responsibility of the authorised 5 officer, that is Captain Govender of Marikana Police 6 Station, which he did confirm with me that he did inform 7 the local authority. 8 The situation should be managed by applying the 9 procedures indicated in this policy document. Chairperson, 10 I did testify a difference between a spontaneous gathering 11 and a gathering intended in section 3 of the Regulation of 12 Gatherings Act, that even though it is a spontaneous 13 gathering, we should manage it as if it is done in terms of 14 section 3 of – the video is clearly there; my negotiation, 15 the approach to the situation, we wanted really to legalise 16 it. The only issue that couldn't be of an assistance to us 17 is the protesters themselves and the other role players 18 maybe in anticipation to go further. The actions of myself 19 setting up the meetings with the mine management, the 20 unions, Chairperson, it was exactly to comply with the 21 policy. 22 Chairperson, to add, it is already before the 23 Commission that the involvement of Mr Mathunjwa, Mr Senzeni 24 Zokwana, is because of the police initiative. They did not 25 come there on their own. It's the police that initiated</p>	<p style="text-align: right;">Page 11880</p> <p>1 turn – 2 COMMISSIONER HEMRAJ: Yes. 3 MR MADLANGA SC: - briefing the other 4 role players. 5 COMMISSIONER HEMRAJ: Yes. 6 MR MADLANGA SC: Because as I suggest to 7 the witness, the policy expects all the role players to 8 know what is expected of them. That is the briefing. 9 COMMISSIONER HEMRAJ: That's how I 10 understand the question. 11 MR MADLANGA SC: Yes, yes, you're quite 12 correct, Commissioner. 13 CHAIRPERSON: It also might be relevant 14 to look at 5.1.1, which deals with ordinary crowd 15 gatherings. I take it in the case of spontaneous ones you 16 apply the ordinary principles insofar as you can, but 17 obviously sometimes the exigency of the moment prevent 18 that. 19 MR MADLANGA SC: Yes. 20 CHAIRPERSON: But if 5.1.1 could have 21 been implemented, and that's a matter which could usefully 22 be explored – 23 MR MADLANGA SC: Yes. 24 CHAIRPERSON: - but I'll leave it to you 25 to do what you want to do.</p>

<p style="text-align: right;">Page 11881</p> <p>1 MR MADLANGA SC: Yes, thank you, Mr 2 Chairman. That's why I took him to 5.3.4, saying within 3 reason, and insofar as practical, you must do your best to 4 comply, and indeed complying even with 5.1.1, as the 5 Chairman is saying, if practical. Now General, I do hear 6 your response, but as I understand them, all of the things 7 that you itemised seem to be matters that related to 8 planning on the Marikana events as a whole, and the manner 9 in which the police were approaching that the Marikana 10 events, as a whole, and what the police operation thereon 11 was, as a whole, all of the things that you itemised seem 12 to relate to that, and as the Chairman quite correctly 13 indicated, my focus is something pops up unexpectedly; 14 protesters go to Karee and you get an instruction, please 15 attend to that. It's something spontaneous, I agree with 16 you, 100%. You have two hours from the time that you are 17 instructed to attend to it, and I'm asking you now in the 18 face of 5.3.4, were you not at the very least, or was it 19 not incumbent upon you at the very least to have a very 20 short briefing session with the commanders, who in turn 21 should have had a very short briefing session with all the 22 role players, so that everyone should be in a position to 23 know what was expected of them, spontaneous as it was, 24 rather than what in fact happened, which is just you all 25 walked in there – and please excuse this – blind as it</p>	<p style="text-align: right;">Page 11883</p> <p>1 the video, it is with regard to the situation where I 2 expected how the police to respond. 3 MR MADLANGA SC: General, let me take you 4 to a different issue. I have touched on it, but from a 5 different angle, and it's – 6 CHAIRPERSON: Are you moving away from 7 the policy document? 8 MR MADLANGA SC: Yes, Mr Chairman. 9 CHAIRPERSON: Okay, I'd like to ask a 10 question about that before you do that, before you move 11 away. I take it 5.3.4 means you apply everything in the 12 policy document that you can in the time available. 13 Clearly if it's absolutely spontaneous, then you can't. 14 Now if you look at 5.1.1, this deals with an ordinary crowd 15 gathering. There it says, "Members of the SAPS POP are to 16 be structured, organised, well trained, and provided with 17 suitable protection and equipment before being deployed. A 18 detailed briefing, during which the line of demand is 19 clearly defined, must be given to all the members involved. 20 During this briefing," and now come words underlined, "the 21 level of force must be pre-determined and clearly explained 22 to all members, and that it can only be effected by 23 instruction of the operational commander." Now there was 24 time to give that briefing, I take it, on the 13th. Is that 25 correct?</p>
<p style="text-align: right;">Page 11882</p> <p>1 were, and the only briefing that takes place is when your 2 attempt at managing the process is already afoot. So 3 question is, would it not have been incumbent of you within 4 the two-hour period that you had to have this brief-brief 5 briefing session with the commanders, who in turn should 6 have had a very brief briefing session with all the other 7 role players, as opposed to walking in blind, as it were, 8 with nobody knowing what was expected of them, except 9 perhaps you only? 10 MAJOR-GENERAL MPEMBE: Chairperson, 5.3.4 11 refers to the itemised actions that are expected from the 12 police in the case of a spontaneous gathering. Hence I was 13 indicating that, and the policy says in that case, in 14 paragraph 3.4, in my understanding, Chairperson, says do 15 not just not police the spontaneous gathering. You do 16 police it as it is intended in section 3 of the Regulation 17 of Gatherings Act, and that is what I was referring to, 18 Chairperson, and on the 13th I did indicate that I did ask 19 Lieutenant-Colonel Merafe whether the people were briefed 20 about the situation of Marikana and he did confirm with me, 21 and he even said, "General, the continuous briefing and 22 also I mentioned to acclimatise those members that were 23 coming from the other provinces, will also be done on 24 ongoing basis because I am also personally." And the 25 second issue, the briefing that I was doing, which was on</p>	<p style="text-align: right;">Page 11884</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 2 CHAIRPERSON: Warrant-Office Kuhn could 3 have been told that force could only be effected by 4 instruction of the operational commander, who for practical 5 purposes that day was you. Is that right? He could have 6 been told that? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 CHAIRPERSON: And yet he was not. Would 10 you agree with that? 11 MAJOR-GENERAL MPEMBE: No, Chairperson. 12 Warrant-Officer Kuhn, as far as my understanding is 13 concerned, even though he is not stationed in Northwest, 14 he's a member of POP. 15 CHAIRPERSON: Yes, I - 16 MAJOR-GENERAL MPEMBE: He does his work 17 on a daily basis and he is one of the members of the unit 18 in the POP. 19 CHAIRPERSON: I see. So you're saying it 20 wasn't necessary for him to be told that he couldn't fire 21 off a teargas canister unless instructed by the operational 22 commander, because he would have known that anyway? Is 23 that what you say about it? 24 MAJOR-GENERAL MPEMBE: No, Chairperson, 25 this is not what I'm saying, but –</p>

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1 CHAIRPERSON: What are you saying?
 2 MAJOR-GENERAL MPEMBE: What I'm saying
 3 is, Chairperson, in any normal situation in a practical
 4 way, and this is what I'm explaining, even in the operation
 5 where the Chairperson, the paragraph is referring, if you
 6 have briefed the commanders, the commanders themselves are
 7 the ones that they go and brief their own members, and then
 8 they submit a certificate to you to say that the people are
 9 being briefed. So this is what I'm saying to say with
 10 regard to the normal operation and that one, I don't see
 11 myself having deviated because I did brief the commanders,
 12 and I did explain that the commanders should have briefed
 13 their members, and Warrant-Officer Kuhn as a member, he had
 14 that knowledge.
 15 CHAIRPERSON: - the point, he had the
 16 knowledge anyway. But despite that, on the material before
 17 us he appears to have fired off a teargas canister without
 18 having received an instruction from the operational
 19 commander. Is that correct? That's right, isn't it? He
 20 admitted to you that he didn't know - he said he got a
 21 command; whether that's true or not we don't know, but
 22 certainly he never suggested he got a command from you, and
 23 you were functioning as the operational commander that day.
 24 That's correct, isn't it?
 25 MAJOR-GENERAL MPEMBE: It's correct,

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1 Chairperson, but Chairperson, I need also to add that based
 2 on paragraph 11.5, practically speaking, not deviating from
 3 the policy, practically speaking, if the operational
 4 commander could, operational commander will not be able to
 5 cover the whole area and in that case I indicated
 6 operational speaking, not policy wise, and that's,
 7 Chairperson, I did indicate to this Commission that in a
 8 very big and wide space the operational commander, will it
 9 be impossible to see everything and to give command in
 10 advance in order for the members to act.
 11 CHAIRPERSON: Would it have been possible
 12 for you to have - if it's true that the strikers veered off
 13 towards the informal settlement, if that's true, would it
 14 have been possible for you to have raised your voice and
 15 given the order not to someone who was on the extreme left,
 16 but somebody who was close to you on the right, close to
 17 the informal settlement, would it have been possible for
 18 you to have given such an order and it been heard by the
 19 person to whom you gave the order, who would have known
 20 that you're the appropriate person to give the order?
 21 MAJOR-GENERAL MPEMBE: Chairperson, on
 22 that day it could not have been impossible for me, but what
 23 I'm indicating is that it was clearly also depicted from
 24 the video that in some certain areas I could not have been
 25 seeing what was happening.

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1 CHAIRPERSON: - on the right.
 2 MAJOR-GENERAL MPEMBE: I was on the
 3 right, Chairperson.
 4 CHAIRPERSON: So couldn't you have seen
 5 whether - if it did happen is another matter we won't go
 6 into now, but if it was true that some of the strikers
 7 started veering towards the informal settlement, they would
 8 have done so on the right side; surely you could have seen
 9 that from where you were?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson. With regard to this I was referring to the
 12 command that was given to Warrant-Officer Kuhn -
 13 CHAIRPERSON: If one was.
 14 MAJOR-GENERAL MPEMBE: - not the command
 15 that he heard.
 16 CHAIRPERSON: If one was. - like I
 17 thought this was relevant in this context. You said you
 18 were moving on to another point.
 19 MR MADLANGA SC: Thank you. Thank you,
 20 Mr Chairman. General, the subject of the protesters
 21 suddenly changing direction and veering towards the
 22 informal settlement, I've dealt with it in one context.
 23 Now what I would like to find out from you, you've already
 24 accepted that in your handwritten statement of the 13th of
 25 August you do not know this. Now what I would like to

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1 establish from you is whether you are aware of any
 2 statement made before the Potchefstroom meeting that talks
 3 about a change of direction and heading towards the
 4 informal settlement.
 5 [12:49] Are you aware of any, prior to the Potchefstroom
 6 meeting? I am aware that after the Potchefstroom meeting
 7 there are a few statements, yours, GGG12 - is it 12? -
 8 being one of them, and another one by Lieutenant-Colonel
 9 Vermaak being one of them - I'm not sure if it's an exhibit
 10 - although Colonel Vermaak does have an earlier statement
 11 which does not say this, but after Potchefstroom he has one
 12 that does say this. You too, you earlier before the
 13 Potchefstroom meeting, you do not say this; after
 14 Potchefstroom you do say this, and are you aware of a
 15 single police statement that suggests the change of
 16 direction and veering towards the informal settlement,
 17 prior to the Potchefstroom meeting?
 18 MAJOR-GENERAL MPEMBE: Chairperson, I did
 19 not see any statement, but I was not able to read all the
 20 people's statements that submitted the statements on the
 21 13th.
 22 MR MADLANGA SC: Of those that you have
 23 seen, not a single person suggests this, correct?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson. I did indicate that we wanted to escort the

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1 protesters not to go through the informal settlement, but
2 to go back to the koppie.
3 MR MADLANGA SC: I suggest, General, and
4 this is what we will argue, that when the police threw
5 teargas and stun grenades at the protesters, the protesters
6 were merely retracing their steps and going back to the
7 koppie and not at all intent on entering the informal
8 settlement. What do you say to that?
9 MAJOR-GENERAL MPEMBE: Chairperson, I
10 will not agree.
11 COMMISSIONER HEMRAJ: General, when did
12 you become aware that it was Warrant-Officer Kuhn who fired
13 the teargas?
14 MAJOR-GENERAL MPEMBE: It was on the same
15 day, Chairperson, when we were asked, when I was – but
16 after the incident, when I was asking who used the teargas.
17 COMMISSIONER HEMRAJ: Was any explanation
18 requested from him as to why he acted as he did?
19 MAJOR-GENERAL MPEMBE: Chairperson, as I
20 have indicated, when I said why did you – he did not give
21 the reasons for the explanation, but he only indicated to
22 me that he heard a command. He heard a command. Knowing
23 that I did brief them earlier, it's me who said that the
24 one that might have given that command which Warrant-
25 Officer Kuhn is referring to, he might have given it

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1 according to my earlier briefing.
2 CHAIRPERSON: What time was it when you
3 discovered that it was Warrant-Officer Kuhn who fired off
4 the teargas canister?
5 MAJOR-GENERAL MPEMBE: Chairperson, it
6 was when they report off-duty on that day, the Chairperson
7 will recall that I was requested to leave the scene
8 immediately.
9 CHAIRPERSON: Yes, I understand. You
10 were taken off your post for reasons of personal safety,
11 but what I'm concerned about is at what time did you
12 discover that it was Warrant-Officer Kuhn who had fired off
13 the teargas canister? Was it before you left or later on
14 at the JOC or when was that?
15 MAJOR-GENERAL MPEMBE: Chairperson, it
16 was at the JOC, as I indicated that I was taken quickly
17 from the scene.
18 CHAIRPERSON: Okay, now my question is,
19 what time on that day on the 13th did you discover, or learn
20 that it was Warrant-Officer Kuhn who'd fired off the
21 teargas canister?
22 MAJOR-GENERAL MPEMBE: Chairperson, it
23 was during the evening when we, when I was getting various
24 briefing from the commanders, and particularly Brigadier
25 Calitz, and then I asked that I wanted to know who used the

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1 teargas, then he, then Brigadier Calitz came to me and
2 said, "General, it's Warrant-Officer Kuhn."
3 CHAIRPERSON: Was this before or after
4 you made your own statement?
5 MAJOR-GENERAL MPEMBE: Chairperson, my
6 statement that is being submitted here, which Adv Madlanga
7 is referring to, is a statement that Brigadier Van Zyl
8 requested to me to submit for the purpose of opening the
9 docket, and I'm not quite certain whether it was
10 immediately after I'd given to Brigadier Van Zyl or it was
11 after, but probably it is on the same date that I know it's
12 Brigadier, it was Warrant-Officer Kuhn, and at what time
13 did I submit a statement to Brigadier Van Zyl, I'm not
14 quite sure.
15 CHAIRPERSON: It appears to have been 6
16 o'clock according to the statement. According to the
17 statement it was 6 o'clock in the evening. Does that help
18 you to answer the other question I asked you? You see, if
19 you look at your statement, it's exhibit HHH13, it looks as
20 if it was – it's A16, I think, in the docket, which doesn't
21 sound like a statement that's made to open the docket. The
22 docket has got 15 statements in it already, but if you look
23 at the last page of the statement you'll see that under
24 your signature appear the words "Monday, 2012-08-13,
25 18:00." Your statement was made at 18:00. It doesn't

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1 appear to have been one that opened the docket, but that's
2 another matter. What I want to know from you is did you
3 already know by them that it was Warrant-Officer Kuhn who'd
4 fired off the teargas canister?
5 MAJOR-GENERAL MPEMBE: Chairperson will
6 recall that on that day also the National Commissioner did
7 come, so probably I'm not in a position to say it was after
8 18:00, but there were many things that I was doing on that
9 day, but definitely it was in the evening on the 13th.
10 CHAIRPERSON: You see, the indications
11 are that you didn't know when you made your statement who
12 it was, because you just talked – if you look at paragraph
13 4 of your statement, second page, it reads, it looks like,
14 "The community members who were sitting, they became
15 agitated and they stood up and forced their way," I think
16 I'm reading correctly. "I instructed the police to walk
17 behind them, to escort, to avoid confrontation and
18 bloodshed. While they were walking, someone threw the
19 teargas." So you didn't know who it was because you
20 wouldn't have said "someone" if you'd known who it was. It
21 was quite clear you didn't know who it was when you made
22 your statement. Was it not important to find out?
23 MAJOR-GENERAL MPEMBE: It was important,
24 Chairperson, and I did find out, even though it is clear
25 that it was before I submit the statement.

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1 COMMISSIONER HEMRAJ: General, of
 2 Warrant-Officer Kuhn was unable to tell you, or did not
 3 answer your question as to why that teargas was fired, were
 4 any of the commanders that were reporting to you and
 5 briefing you, able to answer that question as to why it was
 6 fired and in that particular direction?
 7 MAJOR-GENERAL MPEMBE: Chairperson, none
 8 of the commanders was precise to me to say what was the
 9 reason, and Warrant-Officer Kuhn only state that he heard
 10 the command.
 11 CHAIRPERSON: I take it we can assume
 12 that none of the commanders told you that he had given the
 13 order?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 CHAIRPERSON: Wasn't it of any importance
 17 to find out if what Warrant-Officer Kuhn had said was true,
 18 who gave him the instruction that he claimed that he acted
 19 on?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I
 21 tried to ask him to say who gave the command, and he said,
 22 "General, I did not see who, but I heard the instruction."
 23 CHAIRPERSON: It's now 1 o'clock. I
 24 think we can continue that discussion after the lunch
 25 adjournment. I think this is a day for a half-hour lunch

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1 adjournment. I think we should in fact in future always
 2 have a half-hour lunch adjournment in order to gain extra
 3 time. So we'll adjourn now until 25 to 2.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [13:52] CHAIRPERSON: - resumes. I'm sorry we
 6 didn't start at the time that I wanted us to start, but we
 7 had to interview someone during the lunch adjournment and
 8 that caused the delay, for which I apologise. You are
 9 still under oath, Major-General.
 10 WILLIAM MPEMBE: s.u.o.
 11 CHAIRPERSON: Mr Madlanga?
 12 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 13 Thank you. Thank you, Mr Chairman. General, may I make
 14 yet another suggestion to you, and it is this; General,
 15 there are at least, maybe more, there are at least two
 16 possible reasons why the teargas and stun grenades were
 17 thrown, and the first one is your juniors disobeyed you and
 18 decided to disarm the protesters. What is your response to
 19 that suggestion?
 20 COMMISSIONER HEMRAJ: Your juniors as in
 21 the commanders, the POP commanders?
 22 MR MADLANGA SC: Perhaps let me use it
 23 more broadly; your juniors are many, because he was more
 24 senior to everybody there, as I understand the position,
 25 Commissioner Hemraj, yes. What is your response to that

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1 suggestion?
 2 MAJOR-GENERAL MPEMBE: Chairperson, my
 3 response will be no, and if Warrant-Officer Kuhn talks the
 4 truth, because I did believe him that he heard an
 5 instruction.
 6 CHAIRPERSON: None of the commanders told
 7 you that he had given the command, so Kuhn couldn't have
 8 acted surely on just what somebody else said. It would
 9 have to be from a commander, and none of the commanders
 10 admit having given the instruction. In fact, somebody, you
 11 told us, alleged that you had given the instruction and you
 12 were quite emphatic that that was not true. So the
 13 difficulty I've got with the statement you're making now is
 14 Kuhn couldn't have just acted on what somebody else told
 15 him. Surely he would have had to appreciate that that
 16 person was a commander, although strictly speaking even
 17 that wouldn't be enough, but we won't go there now. But
 18 none of the commanders gave the order according to the
 19 information that you have. So the whole thing is very
 20 puzzling, isn't it?
 21 MAJOR-GENERAL MPEMBE: It's correct,
 22 Chairperson, because I couldn't establish to say maybe is
 23 he having any other reason or is he hiding something, and
 24 that's the reason why I believed him.
 25 COMMISSIONER HEMRAJ: But then your

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1 answer to Mr Madlanga's question must be in the
 2 affirmative, isn't it?
 3 MAJOR-GENERAL MPEMBE: My question to Adv
 4 Madlanga is based on the answer of Warrant-Officer Kuhn,
 5 even though we, I'm not quite sure, or I don't know who
 6 gave him that command.
 7 CHAIRPERSON: - possibilities; the one is
 8 he was the junior who disobeyed you and took it upon
 9 himself to throw a teargas canister, or fire a teargas
 10 canister without him being ordered to do so.
 11 Alternatively, one of those subject to your command,
 12 without your say-so, without any instruction from you -
 13 although you were close to the informal settlement, you
 14 could have given a instruction if you considered it
 15 necessary - decided to take the initiative himself, without
 16 authorisation from you, to give an order that you were not
 17 giving, which you were the person who was authorised to
 18 give. So either way the answer to what Mr Madlanga has put
 19 to you must be yes. Isn't that right?
 20 MAJOR-GENERAL MPEMBE: Chairperson, with
 21 the explanation that you have given now, I would say my
 22 answer will be yes.
 23 MR MADLANGA SC: Thank you, General. Or
 24 - and this is the second possible reason I want to suggest,
 25 General - you were convinced by your juniors, possibly the

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1 commanders, that the protesters should indeed be disarmed.
 2 What's your response to that?
 3 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 4 requesting the question to be clarified with more precise
 5 who are the juniors, because there are many juniors that I
 6 spoke to them.
 7 MR MADLANGA SC: That is why I said, or
 8 perhaps more precisely, the commanders. I said so in the
 9 question, General. But let me ask the question again. Or,
 10 the second possibility, General, is that the stun grenades
 11 and teargas were thrown because, or as a result of you
 12 having been convinced by your juniors, in particular the
 13 commanders, that the protesters should be disarmed. Your
 14 comment?
 15 MAJOR-GENERAL MPEMBE: No, Chairperson.
 16 MS BARNES: Chair, I'm sorry to
 17 interrupt. I see that the translation has stopped. I do
 18 have –
 19 CHAIRPERSON: I beg your pardon. Thank
 20 you for reminding me. I intended to – I was so embarrassed
 21 about us starting late that I forgot to say what I was
 22 supposed to say at the beginning, and that is to ask for
 23 feedback from the representatives of the parties as to the
 24 acceptability, at this stage anyway, of Mr Bizos'
 25 suggestion, and I've failed to do that. You now have the

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1 opportunity. Have you got any feedback for us, Ms Barnes?
 2 MS BARNES: Yes, we do, Chair, thank you.
 3 We have taken instructions and it does appear that some of
 4 the AMCU members as well as some of the family members do
 5 watch the live feed and are watching it currently, and so
 6 they would need the translation to continue. We're not
 7 sure of the exact numbers in this regard, but if any of our
 8 clients are watching –
 9 CHAIRPERSON: Watching the live feed here
 10 in the building?
 11 MS BARNES: No, not in the building.
 12 CHAIRPERSON: Oh, they're watching it on
 13 YouTube or whatever?
 14 MS BARNES: They're watching it out
 15 there, yes, and family members and the AMCU members are
 16 Xhosa-speaking and they would need the translation to
 17 continue in order to enable them to continue watching. So
 18 we would ask that it continues.
 19 CHAIRPERSON: At this stage anyway, we
 20 can –
 21 MS BARNES: Yes.
 22 CHAIRPERSON: Ja, alright. Any other
 23 representative of any of the other parties who has any
 24 feedback you wish to give us? No, well I think – for the
 25 moment at least we'll continue with the translation being

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1 given as it is now.
 2 MR BIZOS SC: - at home watching it on
 3 television. Can't we make arrangements that the
 4 interpreter speaks to whoever is televising it and it can
 5 go to the people that want to hear it? I don't want to be
 6 thought trying, or asking the Commission to deprive them of
 7 that right, but can't it mechanically be done? If we don't
 8 need it here, it can be done –
 9 CHAIRPERSON: Mr Bizos, I think I
 10 understand what you're saying. The reason I said for the
 11 moment we'll carry on as we are, is we obviously can't
 12 organise that this afternoon.
 13 MR BIZOS SC: No, obviously.
 14 CHAIRPERSON: But I understand what you
 15 have in mind. You're thinking for example of a sports
 16 commentary; you can get the cricket in English, Afrikaans,
 17 and Xhosa. So it's possible apparently in some way or
 18 other for where there's simultaneous translation or
 19 simultaneous commentary, for the viewer to choose the
 20 channel. Now whether that's feasible in our situation, we
 21 don't know at this stage, but your point is that's
 22 something that we'll investigate and -0
 23 MR BIZOS SC: Sure.
 24 CHAIRPERSON: But anyway, the short point
 25 is we can't do it this afternoon.

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1 MR BIZOS SC: Obviously.
 2 CHAIRPERSON: So this afternoon we'll
 3 carry on as we were before.
 4 MR BIZOS SC: Yes.
 5 CHAIRPERSON: But we've already asked the
 6 officials of the Commission to investigate the feasibility
 7 of simultaneous translation and tenders have been obtained
 8 and tests have been done, and so forth, but what will have
 9 to be factored in, if that's the right word, is this
 10 question of simultaneous translation in various languages
 11 to be chosen by the viewer. That may in fact put it beyond
 12 the bounds of feasibility, but certainly it's something we
 13 must investigate.
 14 MR BIZOS SC: Thank you, Mr Chair.
 15 MR MADLANGA SC: May I ask Mr Mahlangu
 16 perhaps to from memory try to summarise everything that has
 17 gone on thus far?
 18 COMMISSIONER HEMRAJ: Mr Madlanga, the
 19 second possibility that the General was convinced by his
 20 juniors, is the follow-up that he then gave the command.
 21 Is that implicit in the question?
 22 MR MADLANGA SC: Yes, it's implicit in
 23 the question, yes, yes, yes. Thank you, Commissioner
 24 Hemraj; this obviously founded on, amongst others, the
 25 attempt at explaining why there's a Nyala that is on the

<p style="text-align: right;">Page 11901</p> <p>1 other side if the people should really be planning from 2 this side, and we suddenly hear of some mine shaft that at 3 least thus far I thought we have not heard about, but 4 something on which the General is still to come back to us 5 on about, yes. Now General, subject to the homework that I 6 have asked you to kindly do, let us for now step off the 7 events of the 13th of August 2012. Can I take you to page 8 11370 of the transcript, lines 4 to 11, and 11370, day 106, 9 11370, lines 4 to 11, and it's your testimony, General, and 10 please tell me when you are there, General.</p> <p>11 MAJOR-GENERAL MPEMBE: Chairperson, I 12 will just, maybe if I can be reminded about the page?</p> <p>13 MR MADLANGA SC: 11370, lines 4 to 11.</p> <p>14 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 15 I did find it.</p> <p>16 MR MADLANGA SC: There where I have 17 referred you to you are responding to a question by Mr 18 Ngalwana as to what in your estimation would have caused 19 bloodshed, and in this context you are dealing with the 20 debriefing session with the union leaders, in particular 21 here with NUM. Now, yes you are dealing with GGG4. Now 22 let's go to the part I referred you to, line 4 to 11, this 23 is what you say. "So the bloodshed that I was referring 24 to, it's what has happened and what is happening currently, 25 and what might also happen in what, in the future. By that</p>	<p style="text-align: right;">Page 11903</p> <p>1 relation to those individuals that might be carrying the 2 firearms illegally.</p> <p>3 MR MADLANGA SC: General, I don't follow 4 that. This is a question that flows from the answer that 5 you have just given relative to what the excerpt that I 6 read to you means. You agree that what you say there means 7 that you saw, because you say "I see, I also see," you saw 8 that – let me just look at this again. "I did also see 9 that if the dispersal has to take place, there might be 10 shooting taking place either from the police, or," and then 11 you go on, "or the protesters," and so on and so on. You 12 are saying this is something that you saw as a possibility, 13 and you've already agreed, not so?</p> <p>14 MAJOR-GENERAL MPEMBE: Chairperson, 15 seeing I was referring to the individuals on the side of 16 the protesters that might have been carrying the firearms, 17 and I did indicate how that risk which I said I foresee, 18 how it has been mitigated by the plan.</p> <p>19 MR MADLANGA SC: General, mitigated, but 20 not excluded, not so? Mitigated, but not completely 21 excluded.</p> <p>22 [14:12] MAJOR-GENERAL MPEMBE: Chairperson, 23 definitely excluded in the manner that that bloodshed 24 happened there, because that is not what one was referring 25 to. Yes, somebody shooting at the police yes, but that the</p>
<p style="text-align: right;">Page 11902</p> <p>1 time I did not know that the incident of the 16th will 2 happen, but I did," and I emphasise this part, General, 3 "but I did also see that if the dispersal has to take 4 place, there might be shooting taking place either from the 5 police, or either from the protesters, and also from the 6 police." Now General, my question on that is this; surely, 7 General, the part from this excerpt that says "but I did 8 also see that if the dispersal has to take place, there 9 might be shooting taking place either from the police, or 10 either from the protesters, and also from the police," must 11 mean that as a matter of fact you - you, General - saw the 12 possibility of shooting either by the police or protesters 13 or both if a dispersal took place. You agree that that is 14 what this means?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson, referring to the fact that the protesters, 17 there were firearms that, of the police that were taken and 18 that of the security companies.</p> <p>19 MR MADLANGA SC: Needless to say, 20 General, if you foresaw the possibility of shooting, you 21 must likewise have foreseen the possibility of injury or 22 even death, and thus bloodshed, not so?</p> <p>23 MAJOR-GENERAL MPEMBE: It is not correct, 24 Chairperson. I did also indicate the measures that we did 25 put in place and also the actions that we have done in</p>	<p style="text-align: right;">Page 11904</p> <p>1 protesters in that great number while the barbed wire or to 2 say the plan being interrupted, I did not foresee that.</p> <p>3 MR MADLANGA SC: General, you now seem to 4 be dealing with what in fact happened, the breaching of the 5 police line and so on, that is not what I am asking you. I 6 am asking about what you yourself are saying in this 7 excerpt and you've already agreed with my interpretation of 8 that excerpt and you agree that what it means is that what 9 you saw, you yourself as a matter of fact saw was the 10 possibility of shooting by the protesters and the 11 possibility of shooting back by the police. You've agreed 12 with that, haven't you? All I am asking you now is just to 13 establish, have you agreed with that interpretation? You 14 have, haven't you?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, I did 16 say that there were protesters that they had firearms, that 17 could shoot at the police, and the police could shoot in 18 retaliation but not with the bloodshed at it has happened 19 at Marikana.</p> <p>20 MR MADLANGA SC: Yes, General, it is 21 quite plain you are agreeing with me, and just so we are 22 exactly on the same page, I too am not asking you about how 23 the bloodshed that we eventually saw came about, I am not 24 asking you about that, I am exactly saying what you are 25 saying, and we seem to be in agreement on that. Now, and</p>

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1 in fact, elsewhere in the transcript and you will say if I
 2 am wrong, elsewhere in the transcript you say that you knew
 3 about that because some media people had told you that some
 4 of the protesters were hiding firearms beneath their
 5 blankets, am I correct on that as well?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MR MADLANGA SC: And in fact you also
 9 knew as a matter of fact that some of the protesters had
 10 stolen firearms from the police and also from Lonmin
 11 security officers.
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 MR MADLANGA SC: Now surely, if as you
 15 say the protesters might have fired shots at the police,
 16 they could not possibly have been doing that for fun, they
 17 would have been firing directly at the police, not just
 18 firing anywhere, that is what you foresaw, not so? And the
 19 shots would be aimed at the police, is that not so?
 20 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 21 and I did also explain how we address that risk.
 22 MR MADLANGA SC: Addressed as it might
 23 have been, but you still also foresaw the possibility that
 24 the police might shoot back. You say so, not so?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 said if the police they see they are being shot at, they
 2 will act in self or private defence.
 3 MR MADLANGA SC: And that is exactly what
 4 you say in this excerpt you foresaw, not so?
 5 MAJOR-GENERAL MPEMBE: Not correct,
 6 Chairperson, what I am saying is that is exactly what I
 7 have already explained and also the mitigation of the plan
 8 because as a police service we have to protect the lives of
 9 the people, and the reasons as I have explained in my
 10 supplementary statement why we have to disperse, they were
 11 very clear, Chairperson.
 12 MR MADLANGA SC: General, if you disagree
 13 with me on my last question, I want to understand you then,
 14 on what basis are you saying that the shooting by the
 15 police that you are referring to in this excerpt, was not
 16 the shooting in response to the shooting by the protesters
 17 who as you say had firearms. How do you say that shooting
 18 by the police was not the same shooting that you are
 19 referring to in this excerpt?
 20 MAJOR-GENERAL MPEMBE: Chairperson, my
 21 explanation was very clear, to say amongst the protesters
 22 there should have been somebody who is having a firearm and
 23 surely, we had and General Annandale already testified
 24 that we had the observers that were looking those that
 25 might produce a firearm amongst the protesters, and

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1 Chairperson, it might already have been said in the
 2 Commission, either by General Annandale that we also had
 3 the counters-snipers and those that will have the – what is
 4 it, the binoculars to look at those that will have the
 5 firearm. That is a shooting that I was speaking to.
 6 Chairperson, in answer to Advocate Madlanga, it will be
 7 saying if either of those people are not seen by the
 8 police, and surely if they attack the police, that is what
 9 we are speaking but the risk to address is the one that I
 10 am talking about, but not that shooting which took place at
 11 Marikana, that one I was not referring to.
 12 CHAIRPERSON: Does it really matter? The
 13 shooting that took place at Marikana was, as has been
 14 described to us, as we've seen but the answer to the
 15 question which has been put to you, is that there was a
 16 distinct possibility that shooting of another kind would
 17 take place, as a result of which people would be killed.
 18 Isn't that right? Blood was going to be shed.
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 20 but the plan, the mitigation of the plan was actually
 21 addressing precisely that risk. The Commission will recall
 22 how we put the six Nyalas and what I have already explained
 23 now.
 24 MR MADLANGA SC: General, I will repeat
 25 and say that, not that I am detracting from what the

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1 Chairperson said, but just to try to avoid what seems to be
 2 some confusion in your mind, I too was purely at the level
 3 of what you yourself are saying in the excerpt that I read
 4 to you, which I read to say, and you have agreed, you
 5 yourself saw the possibility of the protesters who
 6 elsewhere in the transcript you say, and you have agreed
 7 again, were hiding firearms beneath their blankets, you
 8 foresaw the possibility of them firing at the police as
 9 also you foresaw the possibility of police firing back and
 10 you add that, but that was in self-defence. But what I am
 11 trying to emphasise is that you do agree that that is
 12 exactly what you say in this excerpt means, and my
 13 understanding is that you have agreed with that. Am I
 14 correct in that understanding? Regardless of the stage
 15 when this might have been, whether it was a breaching or
 16 even before the breaching, or at what, you foresaw, I do
 17 not know at what stage you foresaw it, you foresaw the
 18 possibility of the protesters shooting at the police and
 19 the police shooting back in self-defence, you accepted
 20 that, am I correct or not?
 21 MAJOR-GENERAL MPEMBE: Chairperson, I
 22 said that risk for the reason that I have explained, yes,
 23 one foresaw it, but there were mitigations to address the
 24 risk, the actions that addressed that risk.
 25 CHAIRPERSON: I don't think "mitigation"

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1 is the right word, but we won't debate that at the moment,
2 but what is clear I think is that whatever was done to try
3 to minimise the situation you did foresee bloodshed, people
4 being killed. Isn't that right, as a distinct possibility
5 of the action that was going to be taken. Isn't that
6 right? These people, according to the evidence that we
7 have had, the suggestion is that they had taken, that muti
8 had been administered to them. They believed they were
9 invincible, invulnerable, so they weren't scared of being
10 shot at by the police, if that evidence is correct.
11 Obviously we have to decide that later. If that is, that
12 weapons themselves, didn't think they could be hurt by the
13 police weapons, so did you – and you knew about the muti
14 didn't you?

15 MAJOR-GENERAL MPEMBE: Correct,
16 Chairperson, I knew about the muti but I did not believe in
17 what they are believing in.

18 CHAIRPERSON: I accept you did not
19 believe that they would be invincible or invulnerable, you
20 realised, that's the whole point, you realised they may
21 have proceeded under a false impression, that they were
22 invincible, you knew they weren't, and you knew if the
23 police fired at them, there would be fatal – there might
24 well be fatal consequences, isn't that so?

25 MAJOR-GENERAL MPEMBE: Chairperson, as I

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1 indicated, I was looking at the individuals and that is
2 really what I am - not the mass as it has happened at
3 Marikana, about that risk and that, and according to my
4 statement there.

5 CHAIRPERSON: Does that answer means that
6 you didn't foresee that 34 people would be killed and about
7 70, I think is the number of people would be injured, you
8 didn't foresee that? You didn't foresee bloodshed on that
9 scale. Is that right?

10 MAJOR-GENERAL MPEMBE: Correct,
11 Chairperson.

12 CHAIRPERSON: But the statement that's
13 been put to you, what does it mean in the context of the
14 foreseeability of bloodshed, at least affecting some
15 people?

16 MAJOR-GENERAL MPEMBE: The last
17 statement, correct, Chairperson and hence the plan had to
18 address that risk. I won't talk about mitigation, but what
19 the plan actually addresses that risk.

20 CHAIRPERSON: One of my commissioners has
21 asked me to take an adjournment for five minutes, which I
22 am prepared to do. So we will adjourn now for five
23 minutes.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]

25 [14:32] CHAIRPERSON: The Commission resumes.

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1 Major-General you're still under oath.

2 WILLIAM MPEMBE: s.u.o.

3 CHAIRPERSON: Mr Madlanga, you're still
4 cross-examining.

5 CROSS-EXAMINATION BY MR MADLANGA SC (CONT.):

6 Thank you, Mr Chairman.

7 COMMISSIONER HEMRAJ: General, your
8 answers do take into consideration that that excerpt that
9 was read out to you refers to that possibility in the event
10 of dispersal being taking place. Do you understand that,
11 that the excerpt that was read out to you it refers to what
12 you foresaw in the event of a dispersal action taking
13 place.

14 MAJOR-GENERAL MPEMBE: That will include
15 that, Chairperson, but I wanted also to state that when I
16 was speaking to Mr Senzeni Zokwana I was also speaking with
17 what has happened and also what was happening and that is
18 also in that excerpt.

19 MR MADLANGA SC: Can I now take you to,
20 still on the same page of your testimony, General, take you
21 to lines 12 to 24? Ms Pillay got off the relevant part on
22 her screen there Commissioner, apologies. The following
23 appears, General, "in other words the blood," and this is
24 the Chairperson asking you now, "in other words the blood
25 that you thought" mark the words "that you thought was

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1 going to be shed would be the blood of strikers or police
2 or both. Is that correct? That's because the strikers
3 were in possession of firearms which they had taken from
4 the security guards and the police and might use them. And
5 of course, the police in disarming them would use firearms
6 as well. Is that the way you saw it?" Again I emphasise
7 the last sentence or question. "Is that the way you saw
8 it?" And then you respond. "Chairperson, when a dispersal
9 process takes place we do not use sharp ammunition but what
10 I'm saying is that the individuals, those that had firearms
11 they might also shoot at the police and the police might
12 defend themselves, the individuals." My question on this,
13 General, is a simple one. Do you agree that even in
14 response to this question by the Chairperson you are yet
15 again referring to the situation as you, yourself saw it.
16 Do you agree?

17 MAJOR-GENERAL MPEMBE: Chairperson, this
18 isn't very clear here, it refers to the individual I have
19 referred at them. And that at Marikana at that same time
20 on the 16th I did not expect that in the scale that it has
21 happened it will be the same and as I indicated in
22 dispersal process we don't use sharp ammunition.

23 MR MADLANGA SC: Okay let me use your
24 language of individuals because I'm not sure I follow your
25 response. General, is it so that what you are referring to

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1 in response to the question by the Chairperson is the
 2 situation regarding the individuals, as you refer to them,
 3 or the shooting by individuals and the possible response by
 4 the police, so you are referring to it as you yourself saw
 5 it. Am I correct?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson, and I even said that there were plans to
 8 address the risk.
 9 MR MADLANGA SC: Now let me take you to
 10 the foot of this same page and from there to the top of the
 11 next one and I will start reading at line 25,
 12 Commissioners. And all the way through to line 11 at page
 13 11371. Again the Chairperson, "that's why what you are
 14 saying as I understand you, I just want to make sure I
 15 understand you correctly, is that the strikers who are
 16 being disarmed might use their firearms even, I suppose,
 17 might use pangas and so forth and that would cause
 18 bloodshed on the part of the police. Shed police blood.
 19 Equally, the police in defending themselves would
 20 presumably have to regard it necessary to fire back. In
 21 which case some of the striker's blood could also be shed.
 22 Is that the way you understand it?" Your response "that's
 23 correct, Chairperson." And then you go on further. And
 24 perhaps because you say but, maybe let me read that as
 25 well. So that will take us all the way to line 14, one,

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1 four. "But I was not only referring on the following day
 2 but what I was referring to and what that may be is what I
 3 wanted that's why I was saying there, 'tomorrow or tonight
 4 and people are dying' and the end of what you say there but
 5 you do accept that you were referring to the following day
 6 but just that you are not referring only to the following
 7 day. Now, General, do you accept that this last excerpt
 8 puts it beyond question that what you, yourself understood
 9 was that police blood or the striker's blood might be shed.
 10 That is what you, yourself said or saw or understood.
 11 MAJOR-GENERAL MPEMBE: Chairperson, it is
 12 also clear that I was not only saying tomorrow but what I
 13 was saying still referring to the individual, not in the
 14 large scale as Marikana. And I was also referring to what
 15 has happened since Sunday and even some of the people that
 16 died as a result where firearms were used.
 17 MR MADLANGA SC: General, let's just
 18 clear this up. At the time you were holding the de-
 19 briefing session with NUM and you are addressing the
 20 question, you did not know that the dispersal action would
 21 take place the following day, that is on the 16th. Am I
 22 correct?
 23 MAJOR-GENERAL MPEMBE: That is correct,
 24 Chairperson.
 25 MR MADLANGA SC: It is understandable

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1 therefore that you could indeed, as you say, not have been
 2 referring to the following day but what you definitely were
 3 referring to was if a dispersal action were to take place
 4 and you've already said yes to that in response to a
 5 question by Commissioner Hemraj. Now let me take you to
 6 page 11397 of the transcript, lines 5 to 23. And this is
 7 examination in chief by Mr Ngalwana and this is what you
 8 say. "At the evening meeting" or no that's him, my learned
 9 friend, Mr Ngalwana. "At the evening meeting, the
 10 debriefing meeting on the 15th you said to the trade union
 11 leaders that if the police were to implement a dispersal
 12 action there will be bloodshed. Did you convey that same
 13 sentiment at the JOC?" Your response "Chairperson, no." Mr
 14 Ngalwana "why didn't you?" Your response "Chairperson,
 15 that was a strategy to - intended for the union leaders to
 16 take the matter seriously when they communicate to their
 17 members to lay down their weapons. I did not believe that
 18 that will happen." Mr Ngalwana "when you say you did not
 19 believe that that would happen what do you mean? What is
 20 it that you did not believe will happen, General?" Major-
 21 General Mpeembe "I did not believe that when the police go
 22 there, there will be bloodshed but that's what I'm saying
 23 is that it was a strategy intended to convince the union
 24 leaders to take the matter seriously when they communicate
 25 with the members."

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1 Now, General, I read this to suggest that you are
 2 now saying that you did not foresee the risk of shooting
 3 and therefore bloodshed and that you had merely said what
 4 you said at the de-briefing session as a matter of
 5 strategy. So no foresight of bloodshed. Am I correct in
 6 that interpretation, General?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson. Chairperson, I also want to indicate to say
 9 there is also a point where I indicated that the most
 10 preferred resolving of the matter it was the handing over
 11 of the weapons. Hence, I indicated that it was a strategy
 12 that they should take the matter seriously, that we should
 13 not even go to a phase of dispersal. But, Chairperson, I
 14 still have indicated that there were protestors that had
 15 firearms and as he has already mentioned and the risk to
 16 what is the plan to address that risk was also in place.
 17 MR MADLANGA SC: General, you have said
 18 quite a lot and the greater part of it I find quite
 19 confusing, at least to me. Now what I want to focus on is
 20 the part that I understood and the part that I understood
 21 is that you actually agree with my interpretation of the
 22 last excerpt that I have read and your agreement is that
 23 what you mean there is that you in fact did not have
 24 foresight of the risk of shooting by the protestors. And
 25 the possibility of the police shooting back in self defence

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1 and therefore as a result the possibility of bloodshed. I
 2 understand you to be accepting that part and that instead
 3 you had said what you had said about the shooting and
 4 counter shooting and the risk of bloodshed purely as a
 5 matter of strategy to convince the NUM leaders to talk to
 6 their members and convince them to disarm. Purely a matter
 7 of strategy but as a matter of fact you did not have
 8 foresight of the risk of bloodshed. I'm repeating the
 9 question because, as I said, I got confused by the long
 10 answer you gave. I'm trying to establish if you agree with
 11 that part, just that part. Am I interpreting what you are
 12 saying correctly?
 13 MAJOR-GENERAL MPEMBE: Chairperson, the
 14 context of what I was saying here and I think that is what
 15 is more important in the sense of what I said to Mr Senzeni
 16 Zokwana, Mr Ngalwana wanted to know if I believed in it so
 17 why then I did not brief the police officers in the JOC.
 18 And that's the context that I was saying but it does not
 19 take away the issue of me raising the consent of the
 20 protestors having firearms. The plan that had to be
 21 specific in terms of addressing that risk.
 22 MR MADLANGA SC: General, in exactly that
 23 context, the context that you give, exactly that context,
 24 what I'm trying to establish is whether you agree with me
 25 that what this means, in that context what this means is

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1 that you are saying you in fact did not foresee the risk of
 2 shooting by the protestors and counter shooting by the
 3 police. And therefore the possibility of bloodshed if a
 4 dispersal were to take place. That is what you are saying,
 5 you only did this as a matter of strategy. Am I correct or
 6 not?
 7 [14:52] MAJOR-GENERAL MPEMBE: Chairperson, the
 8 strategy is very specific here, is to say let your members
 9 disarm voluntarily, and that is purely the context which
 10 I'm referring to, and there is a separation between a
 11 strategy and a risk.
 12 COMMISSIONER HEMRAJ: General, did you or
 13 did you not foresee that if there was dispersal action,
 14 that there would be shooting between the parties and
 15 bloodshed? Did you or did you not foresee that?
 16 MAJOR-GENERAL MPEMBE: Chairperson, my
 17 answer is clear, is to say individually yes, and to disarm
 18 them, it was a best strategy to let their own leaders
 19 persuade their members and hand those weapons voluntarily.
 20 COMMISSIONER HEMRAJ: I'm afraid I don't
 21 understand that. Did you or did you not foresee that in
 22 the event of a dispersal, there would be shooting between
 23 the parties?
 24 MAJOR-GENERAL MPEMBE: Chairperson, as I
 25 said, individually, yes.

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1 CHAIRPERSON: - about individuals being
 2 killed, or injured? Individuals would be killed or injured
 3 if you tried to disperse the parties. Is that what you
 4 say? Individuals who according to your information, who
 5 believed they were invincible, who, attempts being made to
 6 disperse them, but you foresee they'd resist, did you not?
 7 The individuals would, is that right?
 8 MAJOR-GENERAL MPEMBE: Chairperson, the
 9 individual that I'm speaking about, those that would be
 10 having the firearms, but not those that will be invincible,
 11 but I'm -
 12 CHAIRPERSON: - they're invincible.
 13 Right, so what would happen to these individuals then; you
 14 go along, you try to disperse them. Some of them have got
 15 firearms, some of them have got axes, some of them have got
 16 assegais, some of them have got pangas. You try to
 17 disperse them. You point firearms at them, presumably to
 18 try to frighten them. On the basis of what you believed,
 19 they thought that they were invincible because of the muti,
 20 because you knew about the muti. Is that right?
 21 MAJOR-GENERAL MPEMBE: Chairperson, I
 22 knew about the muti.
 23 CHAIRPERSON: Ja, you knew it would be
 24 worthless. You thought, you believed that they thought it
 25 would work. Is that right?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 CHAIRPERSON: Right, so you come along
 4 with your, or one of your men comes along with his R5 or
 5 his R1 and he says to this man, "Give me your firearm," or
 6 "Give me your panga, and disperse." Does he listen? Does
 7 he respond to the demand, or command that he disperse, or
 8 that he hand over his firearm, as you foresaw what would
 9 happen?
 10 MAJOR-GENERAL MPEMBE: Chairperson, the
 11 manner in which I foresaw, it was that the placing of the
 12 barbed wire was precisely to prevent those that have got
 13 pangas and spears to be on, to be -
 14 CHAIRPERSON: On the police side of the
 15 line.
 16 MAJOR-GENERAL MPEMBE: Yes.
 17 CHAIRPERSON: Ja, you didn't go -
 18 MAJOR-GENERAL MPEMBE: And that will
 19 mitigate - I'm sorry -
 20 CHAIRPERSON: Yes, carry on. No, I'm
 21 interrupting you. You carry on, sorry.
 22 MAJOR-GENERAL MPEMBE: That would
 23 mitigate - as I'm saying, I don't know whether I'm using
 24 the right word of mitigating, that will -
 25 CHAIRPERSON: Prevent or minimise is

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1 probably the right word, but never mind, carry on.

2 MAJOR-GENERAL MPEMBE: Yes, and those

3 that they had firearms, that's the individual which I'm

4 referring to, those that have been put by the way in the

5 Nyalas, on top of the Nyalas with the binoculars and the

6 counter snipers, they will actually only deal with those

7 that will cause risk. That's the one that I'm referring

8 to, and then when the dispersal process takes place,

9 obviously the majority I did expect that they will leave

10 the place, and those that shall have – what is it? –

11 accepted the warnings will lay down their weapons, and

12 Chairperson will recall I did refer to the group between 10

13 and 20 that could be confronted by the police, and

14 encircling them and disarming them. That's how the plan

15 would –

16 CHAIRPERSON: What it means is you put

17 the barbed wire barrier up. You've got to leave a space to

18 go, so you can go inside to disarm the people, don't you?

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson.

21 CHAIRPERSON: So some police have to

22 advance through the gap in the fence, the barbed wire,

23 towards the strikers to make sure they either put their

24 arms down or their arms are taken away from them. Isn't

25 that right? Is that right? You can't disarm them by

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1 remote control, can you? There isn't a remote that you can

2 use to get them to put down their arms, and you've got to

3 go in and fetch the arms, if they don't voluntarily put

4 them down?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 CHAIRPERSON: So you go inside, armed

8 presumably; the police are armed with R1s or R5s, I take

9 it, when they go in to disarm these people. Is that right?

10 MAJOR-GENERAL MPEMBE: Chairperson will

11 recall that those had R1s and R5s. According to the plan

12 they were supposed to be 100 metres away from the POP

13 members, and they will only come to the fore if the lives

14 of the POP members was in danger.

15 CHAIRPERSON: Yes well, that's the next

16 question. If the POP man with his teargas, with his

17 shotgun with the teargas canister, whatever it is, or stun

18 grenade, if he proceeds into the area through the barbed

19 wire to disarm someone who doesn't want to be disarmed,

20 then what's going to happen? Won't the life of the POP

21 person be endangered?

22 MAJOR-GENERAL MPEMBE: Correct,

23 Chairperson. Chairperson will recall that in the plan we

24 said that the Nyalas will always be next to the POP members

25 that the Chairperson is referring to, as a safe house.

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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 barbed wire?

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1 MAJOR-GENERAL MPEMBE: Chairperson, the

2 Nyala is used when we disperse, and probably, I understand

3 what the Chairperson is saying, that in whatever the

4 picture that is there, Chairperson did not see where

5 there's space the Nyalas could go, but the plan does

6 address the risk the Chairperson is talking about, Nyalas

7 to be used as a safe house for the POP members.

8 CHAIRPERSON: Did the plan – sorry, Mr

9 Interpreter. Did the plan provide for the Nyalas, or a

10 Nyala, to go on the other side of the barbed wire?

11 MAJOR-GENERAL MPEMBE: Chairperson,

12 surely when you have to pursue –

13 CHAIRPERSON: No, no, the answer is –

14 simple question –

15 MAJOR-GENERAL MPEMBE: Okay.

16 CHAIRPERSON: Did the plan provide for a

17 Nyala or some Nyalas to go beyond the barbed wire onto the

18 koppie side of the barbed wire where the strikers were with

19 their weapons?

20 MAJOR-GENERAL MPEMBE: Correct,

21 Chairperson.

22 CHAIRPERSON: It did?

23 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

24 as I'm referring to that the Nyala will be used as a safe

25 house.

<p style="text-align: right;">Page 11925</p> <p>1 CHAIRPERSON: No, I can understand the 2 Nyala being used as a safe house. The question is which 3 side of the barbed wire was it going to be. We have 4 photographs of the barbed wire in position. I couldn't see 5 any space of a Nyala to go through, unless the Nyala is 6 going to knock the barbed wire over on its way through, but 7 anyway, I don't think that was the plan either, was it? 8 Mmm? What's your answer to that? 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 10 the Nyala could go on the other side of the barbed wire for 11 those POP members that are supposed to do the dispersal 12 process. 13 CHAIRPERSON: But where was it going to 14 go through? 15 MAJOR-GENERAL MPEMBE: Chairperson, 16 probably Brigadier Calitz and those that implemented the 17 plan might be in a position to answer why they couldn't go 18 through. 19 CHAIRPERSON: Alright, I'll ask them that 20 question when they come to give evidence. Perhaps we can 21 take the tea adjournment at this stage. We've actually run 22 on. We'll take the tea adjournment for 15 minutes. 23 [COMMISSION ADJOURNS COMMISSION RESUMES] 24 [15:24] CHAIRPERSON: The Commission resumes. 25 You are still under oath, Major-General.</p>	<p style="text-align: right;">Page 11927</p> <p>1 differentiate when I was talking to Mr Senzeni Zokwana, in 2 the context of that, and also to respond to Adv Ngalwana 3 with regard to why I did not brief the police. 4 MR MADLANGA SC: General, I suggest to 5 you, and we will argue that the truth is that you in fact 6 foresaw the possibility of bloodshed and that it is a lie 7 or an untruth that you in fact did not have such foresight 8 and that you merely mentioned this at the debriefing 9 session with NUM, purely as a strategy. Comment? 10 MAJOR-GENERAL MPEMBE: No, I do not 11 agree, Chairperson, with the reasons mentioned. 12 MR MADLANGA SC: Let me take you to 13 paragraph 23 of your supplementary statement, your second 14 typed statement which is HHH3, paragraph 23. Now for 15 context, General, you will recall that there was the JOCCOM 16 meeting of 6AM on the 16th, and there it was decided that 17 SAPS would proceed to dispersal action, or stage 3, if 18 there was escalation. Now with that background in mind, in 19 paragraph 23 you deal with what appears to be your reasons 20 for motivating for the implementation of stage 3, and in 21 the introductory part of the paragraph you are indicating 22 that you were briefing General Mbombo on why stage 3 should 23 be implemented. You set out what you referred to as some 24 of the reasons why you so motivated, and you do that in 25 five bullet points. The first one you give is this,</p>
<p style="text-align: right;">Page 11926</p> <p>1 WILLIAM MPEMBE: s.u.o. 2 CHAIRPERSON: Mr Madlanga. 3 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.): 4 Thank you, Mr Chairman. General, let me take you back to 5 an earlier question that Commissioner Hemraj asked you and 6 to which there was a follow-up by the Chairman, and the 7 question was whether you foresaw that there would be, or 8 there might be bloodshed. Now your response you referred 9 to individuals, and so on, and so on. What I want – I 10 would like to get a response which is as brief as possible, 11 General, to that answer. Did you foresee that there might 12 be bloodshed? Even if precipitated by individuals; let me 13 speak in the individuals, because this is what seems to 14 cause confusion. 15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson, and I even went on to say there were plans to 17 address that risk. 18 MR MADLANGA SC: In that case then, 19 General, what you say in response to Mr Ngalwana's question 20 cannot possibly be true, and which is that you had 21 mentioned the possibility of bloodshed purely as a 22 strategy. In the light of the last response you've just 23 given, surely that just cannot be the truth. What do you 24 say? 25 MAJOR-GENERAL MPEMBE: Chairperson, I did</p>	<p style="text-align: right;">Page 11928</p> <p>1 "Negotiations by the SAPS directly with them since Monday, 2 13 August 2012, had failed." Now do you agree, General, 3 that at the time that – in the morning at 6AM when it was 4 decided that stage 3 would be proceeded to if there was 5 escalation, SAPS was already aware that the protesters were 6 not cooperative on the question of disarming? Is that not 7 so? 8 MAJOR-GENERAL MPEMBE: Chairperson, I 9 need to say firstly, maybe I need to explain because the 10 meeting that Advocate is referring to is 6 o'clock. My 11 motivation is for 13:30. So I wanted maybe Advocate should 12 clarify to me whether should I proceed, because I see them 13 as two different documentations, and if the meeting of 6 14 o'clock in the morning, maybe we can go to the document. 15 There is also an indication of stage 3, but my motivation 16 here, Advocate, Chairperson, it was for 13:30 when I brief 17 the Provincial Commissioner before the meeting. 18 MR MADLANGA SC: I will explain myself, 19 General. The relevance of 6AM on the day is that at 6AM it 20 is said that "We proceed to stage 3 if there is an 21 escalation." At 13:30, or for purposes of a decision that 22 was to be taken at 13:30, you are motivating for the 23 implementation of stage 3. Now what I am about – let me be 24 open with you – what I am about now, is to try to 25 understand what escalation there had been from 6AM to</p>

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1 13:30. That is the exercise I am about. I'm not saying
 2 there wasn't, but all I'm trying to understand is what
 3 escalation, if any, there had been from 6AM to 13:30. You
 4 now understand the relevance of 6AM in the context of
 5 13:30?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson. Chairperson, I'm just requesting the
 8 Advocate, maybe we go to the same minutes of 6 o'clock,
 9 which I will request –
 10 MR MADLANGA SC: That is the -
 11 Commissioners, that's TT4.
 12 MAJOR-GENERAL MPEMBE: TT4.
 13 MR MADLANGA SC: Whilst you are looking
 14 for your copy, General, may I in the meantime just read to
 15 you what appears at 2.3 of TT4 under the heading "Input on
 16 daily deployment." Close to the foot of the page the
 17 following appears. This is just to focus your mind on the
 18 escalation that I referred to. "If the situation
 19 escalates," it's close to the foot of the page, "If the
 20 situation escalates, stage 3 will be implemented, but
 21 proper communication will be done with all commanders when
 22 that decision is taken." Now you may take the Commission
 23 to where you wanted to take it to.
 24 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 25 requesting the Commission we should go to the next page of

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1 the same TT4. The last paragraph, it's the sentence that,
 2 which starts with "If." "If the negotiations are not
 3 successful and the protesters refuse to leave the koppie
 4 and lay down their weapons, the police must be in a
 5 position to act accordingly."
 6 MR MADLANGA SC: Meaning what, General?
 7 Are you reading that to suggest that stage 3 could well
 8 have been proceeded to even if there had not been any
 9 escalation? Is that what you are reading that, to indicate
 10 that?
 11 MAJOR-GENERAL MPEMBE: Chairperson, I'll
 12 request the Advocate to ask the original question, because
 13 this is precisely in response to the question that the
 14 Advocate asked me.
 15 MR MADLANGA SC: Alright, General, let me
 16 take you to what led to that question. In the first bullet
 17 under paragraph 23, and it reads, "Negotiations by the SAPS
 18 directly with them since Monday, 13 August 2012, had
 19 failed." Now what I put to you, or suggested to you, was
 20 that that had been the situation throughout. The
 21 protesters had not cooperated when the police were doing
 22 all they could to try to disarm them. They had,
 23 Lieutenant-Colonel McIntosh and them tried, negotiated, and
 24 there was no cooperation at all from the police. So as at
 25 6 o'clock when the police are saying if there is an

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1 escalation we proceed to stage 3, that is a fact that
 2 they're already aware of, that the protesters are not
 3 cooperating; the protesters just will not disarm. Do you
 4 agree that that was so? That was a fact that the police
 5 were already aware of throughout?
 6 MAJOR-GENERAL MPEMBE: Chairperson, my
 7 reference here, it was also in line with the crowd
 8 management policy, Standing Order 262. The reason was not
 9 only the escalation, but that negotiation, as the, as it
 10 stated by the Standing Order.
 11 MR MADLANGA SC: General, because I'm
 12 trying to understand in my own mind what escalation had
 13 taken place as at 13:30 on the 16th, my question is a simple
 14 one, and it is this; is it not so that the failure by the
 15 strikers to cooperate on the question of disarming, that
 16 was a fact that was known to the police throughout as at
 17 6AM when the police said we will proceed to stage 3 if
 18 there is escalation? Is it not so that this was a fact
 19 that was known to the police as at 6AM? Simple question.
 20 MR MATHIBEDI SC: Sorry, Mr Chairman. I
 21 think the previous night there was a meeting with Mathunjwa
 22 during the debriefing with the members of the police, where
 23 there was an indication that, you know, Mr Mathunjwa
 24 indicated that tomorrow morning we'll be all happy.
 25 CHAIRPERSON: - rather ambiguous, he –

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1 MR MADLANGA SC: That is suggesting an
 2 answer to the witness.
 3 CHAIRPERSON: No, no, but apart from
 4 that, it's a bad answer because Mathunjwa seemed confident
 5 that the problem could be solved the next morning. He was
 6 going to go and speak to them at 9 o'clock, but only went
 7 to speak to them at 12 o'clock, for reasons we'll not go
 8 into. He was urged by the Provincial Commissioner to go
 9 and speak to them. So before he even had come back, while
 10 he was still talking to the people, tried to persuade them
 11 to lay down their arms, the decision was taken at 1:30, if
 12 it was not taken before. So apart from the fact that it's
 13 suggesting an answer, it's a bad answer, so shall we carry
 14 on with the case?
 15 MR MADLANGA SC: Thank you, Mr Chairman.
 16 I'm being discourteous to Mr Mathibedi. I know, and I'm
 17 sure you're endeavouring to be of assistance, but I'm
 18 afraid I think this particular case you're not, but next
 19 time perhaps you will be. So let's carry on -
 20 MR MATHIBEDI SC: Well, the question was
 21 that the General or the members of the police knew about
 22 that, knew at 6 in the morning.
 23 [15:44] CHAIRPERSON: No, what they knew was, I
 24 mean you and I are now debating something that Mr Madlanga
 25 should be debating with the witness. What they knew at 6

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1 was that Mr Mathunjwa had indicated that he thought that he
 2 could persuade them to lay down their arms. He was going
 3 back to see them at 9 o'clock, and that's what they knew.
 4 In fact he didn't go back at 9, for reasons we don't have
 5 to go into. He went back after 12 and in fact he was still
 6 with them when the decision was taken at the meeting, if it
 7 had not been taken before. So with respect, it doesn't
 8 help us, but I don't want to be discourteous. I'm sure
 9 next time you will help us, but anyway, carry on, Mr
 10 Madlanga.

11 MR MADLANGA SC: General, just to avoid
 12 possible confusion of issues, point is regardless of what
 13 possible outcome might have come of Mr Mathunjwa's attempts
 14 at disarming the protesters, point is as at that point what
 15 the police knew was that the protesters would not arm –
 16 that is what they knew as at 6AM –

17 CHAIRPERSON: Would not disarm.

18 MR MADLANGA SC: Would not disarm. Thank
 19 you. Thank you, Mr Chairman.

20 CHAIRPERSON: I don't think that question
 21 is entirely correct. The fact is the intelligence report
 22 which came before the meeting at 6 o'clock indicated that
 23 they wouldn't disarm, but those at the meeting kept their
 24 options open, as it were, and did consider the possibility
 25 that they might disarm. So I think that question requires

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1 some formulation –

2 MR MADLANGA SC: Mr Chairman, thank you
 3 very much. I lost reference to negotiations, which is what
 4 the bullet actually says. Thank you, you're quite correct,
 5 Mr Chairman. But the point I'm making, General, is that
 6 regardless of what possible outcome there might have been
 7 on attempts by Mr Mathunjwa to disarm the protesters, as at
 8 6AM negotiations by SAPS directly – that is what the first
 9 bullet says – negotiations by the SAPS directly with them
 10 since Monday 13 August had failed, that the police already
 11 knew as at the meeting of 6AM. Is that not so? It's a
 12 very simple question.

13 MAJOR-GENERAL MPEMBE: Chairperson, as I
 14 said, I referred Commission to SS2, paragraph 11. Standing
 15 Order, Chairperson.

16 CHAIRPERSON: I understand that
 17 [inaudible] –

18 MAJOR-GENERAL MPEMBE: Thank you.

19 COMMISSIONER HEMRAJ: But General, the
 20 factual position is that as at 6 o'clock that morning none
 21 of the negotiations were successful in getting the strikers
 22 to disarm. That's correct, isn't it? That's the factual
 23 position.

24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, but Standing Order also add that when life and

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1 property, particularly life is in danger, and this is what
 2 I wanted to bring afore.

3 MR MADLANGA SC: Now if that was what
 4 SAPS understood in the morning at 6AM when they say "We
 5 proceed to stage 3 if there is escalation," this fact that
 6 was already known to SAPS when they took that decision, "We
 7 proceed to stage 3 if there is escalation," it could not
 8 possibly have been an escalation. It could not possibly,
 9 or sensibly have been considered to be an escalation.
 10 Could it?

11 MAJOR-GENERAL MPEMBE: Chairperson, what
 12 I'm trying to say is not the escalation alone that has to
 13 be taken into account, and hence I refer the Commission to
 14 the same TT4, to the following page, to indicate that SAPS
 15 will go to stage 3 in terms of Standing Order 262. That's
 16 the paragraph that I'm referring to, and secondly, maybe
 17 Advocate, Chairperson, would be clarified here; escalation
 18 of violence, how it's being interpreted in this case.
 19 Maybe then we'll also have to indicate on the basis of that
 20 the escalation of violence.

21 MR MADLANGA SC: General, I was not at
 22 the meeting of 6AM on the 16th, nor did I come up with the
 23 concept of escalation, and I'm happy that you refer to, or
 24 rather you make plain that the escalation was in fact
 25 escalation of violence. So I was not there; this is not my

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1 concept. It's SAPS' own concept, and it's SAPS' own
 2 decision to proceed to stage 3 if there is escalation, and
 3 as I understand you, escalation of violence. So I will not
 4 give the explanation that you are asking for. Now –

5 MAJOR-GENERAL MPEMBE: Chairperson –

6 CHAIRPERSON: Are you getting off
 7 escalation now? Are you getting off the escalator? Can I
 8 put a question dealing still with escalation? I didn't
 9 understand an answer you gave a few minutes ago. You
 10 talked about escalation, then you talked about something
 11 else, and what I want to know from you is this; according
 12 to the minutes it appears that the decision taken was that
 13 stage 3 would be implemented if the situation escalated.
 14 That's what it says on page 1. Unless there's a change of
 15 intention by the time we get to page 2, we can accept that
 16 what the meeting at 6 o'clock decided was that stage 3
 17 would be implemented if there was escalation. Now are you
 18 telling – now there are two possibilities. Either it was
 19 decided to implement stage 3 because there was escalation,
 20 and what Mr Madlanga is investigating is whether there
 21 truly was escalation. Alternatively, there was a change of
 22 intention, and it was decided even though there isn't
 23 escalation, it's clearly decided at 6 o'clock that we will
 24 implement stage 3 if there is escalation. There isn't
 25 escalation, but never mind, we still implement it. So

<p style="text-align: right;">Page 11937</p> <p>1 there are two possibilities; either stage 3 because of 2 escalation, or stage 3 even though there isn't escalation. 3 Do you understand the difference? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson, but what I wanted to – 6 CHAIRPERSON: Was the decision taken to 7 implement stage 3 because there was escalation, or was the 8 decision taken to implement stage 3 even though there 9 wasn't escalation? Which of the two was it? 10 MAJOR-GENERAL MPEMBE: Chairperson, in my 11 understanding stage 3 was implemented, as I indicated to 12 you, to the next page. 13 CHAIRPERSON: Yes, but we've gone through 14 that. The next page is part of the minutes of the JOCCOM 15 meeting at 6 o'clock. 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 CHAIRPERSON: And on page 1 it says that 19 if there's escalation, stage 3 will be implemented. Now 20 unless those at the meeting changed their minds between 21 what was recorded at the foot of page 1 and what's reported 22 on page 2, then the result of the deliberations at 6 23 o'clock at the JOCCOM meeting was there will be 24 implementation of stage 3 with escalation. But anyway, 25 that must be so, surely, unless, it's not suggested</p>	<p style="text-align: right;">Page 11939</p> <p>1 escalation, stage 3 will be implemented. So that's why I 2 asked you the question. What happened eventually when it 3 was decided to proceed with the implementation of stage 3 4 at the 1:30 meeting was that because there was escalation, 5 or was it decided because there was, despite the fact that 6 there wasn't escalation, you were still going ahead with 7 stage 3? One or the other. You were at the 1:30 meeting, 8 weren't you? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 CHAIRPERSON: According to your 12 supplementary statement, but not your original statement, 13 you were the one who made the decision to implement stage 3 14 before the 1:30 meeting, as I understand you, some time 15 around 12 o'clock, and you then briefed the Provincial 16 Commissioner accordingly. Now if that's correct and the 17 decision was really yours, was the decision to implement 18 because there had been – sorry, was the decision to 19 implement stage 3 because there had been escalation, or was 20 the decision to implement stage 3 even though there hadn't 21 been escalation? Which of the two was it? 22 MAJOR-GENERAL MPEMBE: Chairperson, to 23 explain what Chairperson is saying, to act accordingly in 24 my interpretation it was that we comply with Standing Order 25 262.</p>
<p style="text-align: right;">Page 11938</p> <p>1 anywhere in the minutes that those at the meeting changed 2 their mind between the foot of page 1 and the foot of page 3 2. Isn't that right? In fact the passage that you 4 referred to on page 2 doesn't say that there will be a 5 stage 3 implementation if there isn't escalation. What it 6 says is something different. It says if the negotiation is 7 not successful and the protesters refuse to leave the 8 koppie and lay down their weapons, the police must be in a 9 position to act accordingly, not that stage 3 will be 10 implemented. They will have to be in a position to act 11 accordingly, and in fact the very next sentence says there 12 will be again talked to the unions at 9 o'clock, and the 13 outcome thereof will have an influence on the decision 14 taken. But all commanders will be informed accordingly. 15 So it's not possible, I would think, subject to what you're 16 going to tell me, to read the sentence starting "If 17 negotiations are not successful" as meaning that stage 3 18 was going to be implemented even if there wasn't 19 escalation. I would have thought the next sentence makes 20 it clear that no decision had been taken because the 21 outcome of the talk to the unions will have an influence on 22 the decision taken. So it looks to me, I mean again this 23 is the prima facie view – you can help me if I'm wrong, but 24 it looks to me as if at the end of the 6 o'clock meeting 25 one could be clear that the decision was if there's</p>	<p style="text-align: right;">Page 11940</p> <p>1 CHAIRPERSON: No, the next sentence says 2 that there would be talks with the unions at 9 o'clock and 3 the result of those, the outcome of those talks would then 4 determine the decision to be taken. So quite clearly there 5 is no separate decision according to the foot of page 2 at 6 that stage. But anyway, that's a sideshow. Let's 7 concentrate on the main point. The main point is the 8 decision to implement stage 3, which you say you took, 9 according to your supplementary statement, which you 10 conveyed to the Provincial Commissioner, was that decision 11 a decision to implement stage 3 because there had been 12 escalation, or even though there hadn't been escalation? 13 Which of the two was it? 14 MAJOR-GENERAL MPEMBE: Chairperson, 15 according to my supplementary statement is the negotiations 16 and the fear that whatever happened since Sunday, it is 17 going to happen, and that since the mood of the protesters 18 coming to the issue of now that negotiations are not 19 continuing, referring to the assistance that we could have 20 got from Mr Mathunjwa, couldn't possibly have resulted in 21 protesters handing, them handing weapons voluntarily. This 22 is actually what paragraph 23 is addressing. 23 CHAIRPERSON: I'm sorry, I still don't 24 understand your answer because you haven't answered the 25 question directly. So I'll have to ask it again. The</p>

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1 question I ask you is this; the decision that you say you
2 took to implement stage 3, which was taken before the 1:30
3 meeting, was that decision taken because there had been an
4 escalation, or was it taken even though there hadn't been
5 an escalation? That's the question. What's the answer to
6 that?

7 MAJOR-GENERAL MPEMBE: Chairperson, it is
8 in terms of paragraph 23. According to paragraph 23, no
9 escalation, but what had –

10 CHAIRPERSON: So your answer is the - I
11 understand the answer. The answer is the decision to
12 implement stage 3, which you say you took and conveyed to
13 the Provincial Commissioner, was taken not because of
14 escalation, but even though there wasn't escalation. Is
15 that right? You see, one of the points is, you remember Mr
16 Mathunjwa was supposed to speak to the people at 9 o'clock
17 and for various reasons we don't have to go into now, he
18 only got around to seeing them after 12. In fact the
19 Provincial Commissioner urged him to go and speak to the
20 people on the koppie, berated him for not having kept his
21 promise to speak to them, and she urged him to go and
22 persuade the people to lay down their arms. So eventually
23 he went and before he came back, and before you received a
24 report as to whether he'd been successful, the 1:30 meeting
25 was taken, but it's even more complicated than that because

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1 according to you, you decided that stage 3 should be
2 implemented earlier than that, round about 12 o'clock or
3 12:15 or something like that. I think it was even before
4 Mr Mathunjwa had gone, or possibly while he was on the way.
5 Now the evidence, unchallenged, is the Provincial
6 Commissioner berated him for not going to the koppie, said
7 he'd promised to go, he had an obligation to go to persuade
8 the people to lay down their arms. Eventually he went and
9 did that, went to try, and before he reported back, before
10 it was known whether he was successful – and there's a long
11 and passionate speech he made, remember, and he got on his
12 knees and so forth – before any of that was, the result of
13 any of that was known, you say that you decided that stage
14 3 should be implemented. Now how does one explain that?

15 MAJOR-GENERAL MPEMBE: Chairperson, I
16 said that I briefed the Provincial Commissioner before
17 13:30 meeting, whereby the meeting is still going to take
18 place. Yes, and by that time Mr Mathunjwa was also on the
19 way of addressing the protesters.

20 CHAIRPERSON: The difficulty with that
21 answer is your second bullet point in para 23. Would you
22 like to read it to us?

23 MAJOR-GENERAL MPEMBE: Chairperson, it
24 says that, "Negotiations with them through the presidents
25 of the two trade unions, AMCU and NUM, had failed."

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1 [16:03] CHAIRPERSON: Clearly until Mr Mathunjwa
2 came back and said I negotiated with them, as I was obliged
3 to do, as the Provincial Commissioner urged me to;
4 unfortunately I failed and they won't listen, until that
5 had happened, was that statement true?

6 MAJOR-GENERAL MPEMBE: Chairperson, what
7 I was saying here is that I expected that when Mr Mathunjwa
8 addressed them they will listen to him, and –

9 CHAIRPERSON: - perfect. You said "had
10 failed." Now how could something, how can one say that
11 negotiations had failed if Mr Mathunjwa was still busy with
12 his negotiations, he was, at the time the statement was
13 made, he was on his way to resume the negotiations with the
14 strikers on the koppie. I don't understand your answer.
15 You must forgive me if I'm putting it strongly to you, but
16 do you understand I have to keep an open mind and I'm
17 trying my best to do so, but it's difficult in the face of
18 statements which I don't understand how they can be
19 correct, but if I'm misunderstanding, if there's something
20 that I'm not appreciating, then now is your chance to put
21 me on the right track.

22 MAJOR-GENERAL MPEMBE: Chairperson, in my
23 indicating is that of the mood and the mood does include
24 when Mr Mathunjwa was there, but surely if there could have
25 been any other change –

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1 CHAIRPERSON: No, no, no, sorry, I don't
2 understand that either. He hadn't been there yet that day.
3 He went twice, remember, but he went once after 12, then he
4 went again after that, about half past 3, but before he
5 went the first time there was no question of their mood in
6 responding to him because he hadn't been there yet. So I
7 don't understand how the reference to the mood at the top
8 of the next page helps us in relation to the statement
9 which appears to be incorrect, anyway, difficult to
10 understand, at the foot of page 9 of your statement, the
11 second bullet in paragraph 23.

12 MAJOR-GENERAL MPEMBE: Chairperson will
13 recall Colonel McIntosh, what he said about the protesters,
14 and also when Mr Mathunjwa went and knelt and pleaded with
15 them –

16 CHAIRPERSON: That was after you made the
17 statement to the Provincial Commissioner, you see. We're
18 concerned with the statement you claim you made to the
19 Provincial Commissioner, in your supplementary statement,
20 not in your main statement. We're concerned whether, (a),
21 you did make the statement, and if you made it, whether
22 what you said was correct. Now I don't see how you could
23 have talked about negotiations having failed if Mathunjwa
24 wasn't finished with is negotiations. I don't see how you
25 can talk about their mood when Mathunjwa spoke to them if

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1 he hadn't spoken to them yet. So I can understand what you
 2 say about Lieutenant-Colonel McIntosh's statement about
 3 their mood before that. I understand that answer, and I'm
 4 not criticising you for that answer at all. I think it
 5 appears to be perfectly understandable and correct, but
 6 we're busy really with the second bullet at the foot of
 7 page 9, you see, and I'm just putting it to you that prima
 8 facie as I see it at the moment, it doesn't appear to be
 9 correct, but if I'm misunderstanding it or not appreciating
 10 something, then you must please help me.

11 MAJOR-GENERAL MPEMBE: Chairperson, that
 12 bullet is in relation to say that while we were also going
 13 to have the meeting, at that time this was the position,
 14 but if there could have been any changes on the ground,
 15 Chairperson, since we were still going to the meeting,
 16 maybe then the bullet could not have been like this. But
 17 probably if there could have been any other change to the
 18 statement, then surely the weapons could have been handed,
 19 but at the time when I was briefing the Provincial
 20 Commissioner, after Mr Mathunjwa came, we didn't hear what
 21 he's saying, there was no indication to say that he's
 22 succeeding, but I do take into account that he was still
 23 going again back to the protesters and there was still
 24 time, Chairperson, that if Mr Mathunjwa could have
 25 convinced the protesters, the situation could have changed.

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1 CHAIRPERSON: The difficulty with that
 2 answer is – well, first difficulty is it hasn't been
 3 interpreted yet. The difficulty with that answer is, as
 4 far as I can remember – I haven't got the transcript of
 5 what you said last time before me, but as far as I can
 6 remember your evidence was that you made the decision; the
 7 Provincial Commissioner didn't. You made the decision.
 8 You then put it to her at about 12 o'clock and she approved
 9 it, and it was then decided to call the meeting at 130.
 10 Now I may have recollected that incorrectly, but Mr
 11 Madlanga nods his head, so he understands it the same way
 12 as I did. Now if that's so, then what you told us when you
 13 gave evidence last time was that you made the decision, and
 14 you made the decision at 12 o'clock, and you gave your
 15 reasons. I'm examining the reasons with you to see whether
 16 they could have been your reasons because it seems to me
 17 that one of them at least didn't exist yet, but those are
 18 my difficulties, you see. You understand?

19 MAJOR-GENERAL MPEMBE: I understand the
 20 difficulty the Chairperson is having.

21 CHAIRPERSON: - to resolve it?

22 MAJOR-GENERAL MPEMBE: If we could go to
 23 where I said I made a decision; I said I made a decision to
 24 go the Provincial Commissioner and that decision is the one
 25 that briefed her, and I think the Judge Hemraj also asked

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1 me many questions, and to say it's you who made the
 2 decision to go to stage 3. Then I said I briefed the
 3 Provincial Commissioner. The decision that the Chairperson
 4 should understand is that, it's the one that I made to go
 5 to the Provincial Commissioner to say the situation has
 6 come to this and my fear is this one, taking into account
 7 that we are still going to have a meeting, and if there
 8 could be any other changes or any member in the meeting
 9 opposing what I have already briefed the Provincial
 10 Commissioner about, the situation could have changed.

11 CHAIRPERSON: Sorry, I see in my
 12 endeavour to understand your answer I've gone over the time
 13 I intended to adjourn. So we've been working overtime. So
 14 we'll adjourn now until – is that convenient for you, Mr
 15 Madlanga?

16 MR MADLANGA SC: It is, Mr Chairman.

17 CHAIRPERSON: And we'll resume at 9
 18 o'clock – please note, 9 o'clock tomorrow. From now on I
 19 want us to start at 9 o'clock, if we can, in the morning,
 20 half an hour lunch hour, which will extend the time that we
 21 sit and we will not be sitting, as I think has been
 22 indicated, on Wednesday, as Mr Mpofo mentioned. We won't
 23 sit here because the premises aren't available on the first
 24 Monday and the first and third Wednesdays of the month, and
 25 this will be the third Wednesday, but we will have a

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1 meeting at the Momentum Buildings in Pretoria of the
 2 Commissioners and the parties and their representatives to
 3 discuss ways of expediting the proceedings, and also we
 4 hope to have a meeting between the Human Rights Commission
 5 and the police. I understand from senior counsel for the
 6 police that they will be available. So we'll start the
 7 police Human Rights meeting at quarter to 10, and if it's
 8 finished within quarter of an hour, that's imposing a time
 9 limit which I will do flexibly if I have to extend it, and
 10 thereafter at 10 o'clock or as soon thereafter as we can
 11 start, we'll have the plenary meeting, as it were,
 12 discussing ways of hopefully expediting the proceedings.
 13 So we'll now adjourn till 9 o'clock tomorrow morning.

14 [COMMISSION ADJOURNED]

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