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 65 19 MARCH 2013 PAGES 6855 TO 6972

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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20th March 2013  
Marikana Commission of Inquiry

[PROCEEDINGS ON 19 MARCH 2013]


National Commissioner, you’re still under oath.

MANGWASHI VICTORIA PHIYEGA: s.u.o.

CHAIRPERSON: Mr Madlanga, I understand you’re going to be the first cross-examiner.

CROSS-EXAMINATION BY MR MADLANGA SC:

Yes, Mr Chairman, thank you. General Phiyega, I want to start by making an example relating to a minister responsible for a department other than yours. Let us posit a situation where three out of the more than 20 universities in South Africa have a complete stoppage of tuition for a whole year. Would you say that the Minister of Higher Education would not be concerned at all about that?

GENERAL PHIYEGA: I think he would be concerned.

MR MADLANGA SC: Let’s come closer home to the Minister of Police. First I want to get an idea of what the nature of the reporting, if any, that you do to the Minister of Police in the normal performance of your duties. Do you do any such reporting at all, or not?

GENERAL PHIYEGA: I do say in my normal duties, the reports that you make to the Minister, do you have said you make in the normal performance of your reporting to him when incidences happen, I do inform him.

MR MADLANGA SC: When had you done this?

GENERAL PHIYEGA: Yes, I did in my normal reporting to him.

MR MADLANGA SC: When had you done this?

GENERAL PHIYEGA: I do say in my normal reporting to him. What I’m interested to establish is whether you would have done this at a normal reporting to the Minister?

GENERAL PHIYEGA: I report to him as a political head of the environment that we’re in.

MR MADLANGA SC: Perhaps be more specific. Would you find it necessary to report to the Minister killings of human beings that are of an unusually high scale? Would you find it necessary to report such killings? Let me remove from the equation all or any type of killing that happens throughout the country. My emphasis is on killings that are of an unusually high scale. Would you find it necessary to report that to the Minister?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: You must have seen visuals of the charred or burnt bodies of the Lonmin security guards. Did you?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: And from your evidence, and indeed even the content of the statements of other police officers, the killings kept escalating after the protest, or strike action had commenced, not so?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: And on the 13th of August no less than five people were killed, including two police officers. Correct?

GENERAL PHIYEGA: Yes.
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25 and I'm also now saying to you that continuously I
24           GENERAL PHIYEGA:          I will start off by
23           MR MADLANGA SC:          I'm happy with a date,
22           MR MADLANGA SC:          I'd like to see a date, in
21           MR MADLANGA SC:          I'd like to see a date, in
20 view?
19           MR MADLANGA SC:          I'm happy with a date,
18           MR MADLANGA SC:          I'm happy with a date,
17           MR MADLANGA SC:          I'm happy with a date,
16           MR MADLANGA SC:          I'm happy with a date,
15           MR MADLANGA SC:          I'm happy with a date,
14           MR MADLANGA SC:          I'm happy with a date,
13           MR MADLANGA SC:          I'm happy with a date,
12           MR MADLANGA SC:          I'm happy with a date,
11           MR MADLANGA SC:          I'm happy with a date,
10           MR MADLANGA SC:          I'm happy with a date,
9           MR MADLANGA SC:          I'm happy with a date,
8           MR MADLANGA SC:          I'm happy with a date,
7           MR MADLANGA SC:          I'm happy with a date,
6           MR MADLANGA SC:          I'm happy with a date,
5           MR MADLANGA SC:          I'm happy with a date,
4           MR MADLANGA SC:          I'm happy with a date,
3           MR MADLANGA SC:          I'm happy with a date,
2           MR MADLANGA SC:          I'm happy with a date,
1           MR MADLANGA SC:          I'm happy with a date,
continuing to give progressive reports. This matter started
on the 9th and progressively I gave reports to internal
stakeholders, including the Minister, on what was happening
in Marikana.

5 MR MADLANGA SC: Remember, General, my
question is focussing only on a telephone call regarding
the killings as at the 13th. Now you say as part of your
response that you do mention or touch on this in your
statement. Can you take me to a paragraph or to paragraphs
in your statement where you say that you told the Minister
about the killings that had taken place at Marikana as at
13 August 2012? I'm not saying it is not there, but please
just take me there.

14 MR SEMENYA SC: No, Chair, the witness
did not say she made a statement, she made a report in her
statement that she made a telephone call on the 13th.

19 Madlanga, you heard what Mr Semenya says.
20 MR MADLANGA SC: Mr Chairman, in context,
my learned friend cannot disregard context. I inquired
from the witness whether she had made a telephone call to
the Minister regarding the killings at Marikana as at 13th
August 2012, and she said she had. I then asked her for,
or rather I asked her when she had done so, and she said,
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1 [10:21] Do you remember me asking you the question, did you make a telephone call to the Minister, reporting to him the killings that had taken place at Marikana as at midnight on the 13th of August 2012? Do you remember me asking you that question?

GENERAL PHIYEGA: You’ve asked me a lot of questions. It could have been one of those.

MR MADLANGA SC: General, this is a simple question and it’s less than five minutes ago. Are you suggesting that you do not remember, for a fact you do not remember me asking you that question?

GENERAL PHIYEGA: I’m not suggesting that.

MR MADLANGA SC: Do you remember me asking you that question then? Do you remember?

GENERAL PHIYEGA: I have had a number of questions from you, and that could have been one of those.

MR MADLANGA SC: Alright, perhaps let me be content with the “maybe” or “it might have been” type of approach, and do you remember that your response to that question was that yes, you had made such a call to the Minister?

GENERAL PHIYEGA: I have answered you, saying I communicate with the Minister continuously. I have mentioned that I use multiplicity of platforms. I

2 [10:25] I have indicated that in some instances I do call, and in that context I would say yes.

CHAIRPERSON: General, I’m not sure I understand your answer to the specific question which Mr Madlanga asked you, whether as of midnight on the 13th of August you had previously, as it were, informed the Minister telephonically of these five killings that had taken place on the 13th.

GENERAL PHIYEGA: No, that is not in my statement.

CHAIRPERSON: No, I know that is not in your statement, but I’m asking you whether you did tell the Minister telephonically before midnight on the 13th of August that those killings had taken place? I know it’s not in your statement, but I’m not interested whether it’s in your statement or not. I’m interested in whether you had informed the Minister as of midnight, whether you had informed him as at midnight on the 13th that those killings had taken place. That, as I understand, is Mr Madlanga’s question.

GENERAL PHIYEGA: I informed the Minister about what was happening in Marikana since the 9th. I am not sure whether I had done that by 12 midnight on the 13th, but I do not remember calling him by 12 midnight on the 13th, but I did inform him about what was happening in

1 Marikana on several occasions.

MR MADLANGA SC: In your statement you, I’ve already indicated in my earlier questions, you refer to the Minister in paragraphs 23 and 24 of your statement. This is exhibit FFF3, Mr Chairman, Commissioners. You confirm that?

GENERAL PHIYEGA: In the statement I have I talk about the Minister in paragraph 24.

MR MADLANGA SC: 23 as well. Just look at the very last word of paragraph 23.

GENERAL PHIYEGA: I think I need to be guided, because there’s a statement to be corrected and I’m just wanting to check if we are talking about the same statement.

MR MADLANGA SC: I’m referring to the one dated 12 March 2013, Commissioner, which was handed in as exhibit FFF3. That’s F for Freddie.

GENERAL PHIYEGA: That is the statement that was corrected.

MR MADLANGA SC: I’m sorry?

GENERAL PHIYEGA: I am referring to the one of the 7th, because the correction was reverting to my statement, which is the one of the 7th.

MR SEMENYA SC: Chair, just to avoid confusion –
1. I relayed to the Minister." I'm not quite sure what the
2. final status is of paragraph 23, but what is clear is that
3. on the statement which we have, dated the 12th of March, you
4. did state that you had relayed to the Minister the
5. information which you'd received from General Mbombo
6. regarding the decision to implement the plan.
7. 
8. **MR SEMENYA SC:** Chairperson, the
9. correction that was one in the evidence is that the
10. statement of 12th should have a full stop after the word
11. "plan" and that's the correction the witness brought to our
12. attention in her evidence-in-chief. After the word "plan"
13. it must be full stop.
14. 
15. **CHAIRPERSON:** As I say, there was an
16. element of confusion last Thursday on it. If you're now
17. satisfied that you have what one can describe as the final
18. version, perhaps you can proceed with your cross-
19. examination.
20. 
21. **MR MADLANGA SC:** Mr Chairman, all my
22. colleagues around me in the evidence leading team are
23. contradicting my learned friend Mr Semenya, but perhaps the
24. best is for me to leave the reference to paragraph 23 in my
25. cross-examination thus far. I may come back there later.
26. 
27. So according to you then mention of the Minister in your
28. statement is only in paragraph 24.

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1. **GENERAL PHIYEGA:** Yes.
2. 
3. **MR MADLANGA SC:** And there you say, "I
4. then related the same information to the Minister of Police
5. telephonically and advised him that I shall attend to the
6. matter personally so that I can have a first account of the
7. incident." Give or take, that's roughly the substance of
8. it, not so?
9. 
10. **MR SEMENYA SC:** No, Chair, again that
11. paragraph must end, "I then related the same information to
12. the Minister of Police telephonically and advised him that
13. I shall be attending to the matter personally," full stop.
14. 
15. **MR MADLANGA SC:** Thank you, Mr Semenya,
16. I'm still very happy with that. So that's all that you
17. said in your entire statement about the Minister?
18. 
19. **GENERAL PHIYEGA:** Yes.
20. 
21. **MR MADLANGA SC:** It was according to your
22. statement, and indeed even your evidence here, just
23. relaying reports to him. Your statement and your evidence
24. do not suggest any role that the Minister himself played,
25. or any initiative that the Minister himself took. That is
26. what your evidence and your statement suggests.
27. 
28. **GENERAL PHIYEGA:** I think I would need to
29. understand to answer you properly, any role, any initiative
30. played by the Minister, because it sounds –
31. 
32. **MR MADLANGA SC:** Vague? It sounds vague?
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1. follow that, Commissioner, regarding the direct question
2. that I put to you. The question is, what did the Minister
do, if anything at all? I’m not asking you about reporting
lines and so on, who controls what, who’s concerned with
policy, who’s concerned with management and control and all
of those things. I’m asking you a specific question.
3. What, if anything, did the Minister do, concerned as he was
– because you said he was concerned, or would have been
concerned – what, if anything, did he do prior to the
10. killings of 16 August 2012? Bear in mind, bear in mind
11. that as at 15 August 2012 the killings had escalated and no
less than 10 people had been killed as at that date. What,
13. if anything, did the Minister do?
14. [10:41] GENERAL PHIYEGA: I have already given my
response to this one. He’s a political leader. He gives
us leadership in that space and support. If I have failed
17. maybe to answer in a manner that is appreciated, maybe I’m
18. short of answering your question.
19. MR MADLANGA SC: General, it’s probably
20. not a lack of articulation on your part; it’s probably a
21. lack of comprehension on mine. From what you say, you seem
22. to be talking in general terms – the Minister gives us
support, the Minister gives political direction. Are you
24. saying on this occasion, on the occasion of the killings at
25. Marikana, the Minister gave you specific political

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1. direction that related to the killings at Marikana, or are
2. you talking about political direction that he gives
3. generally and in the normal course of performance of his
duties, that had nothing to do with, or rather that did not
have specific reference to the killings at Marikana? Is
5. that what you are saying?
6. GENERAL PHIYEGA: Maybe let me start off
7. by saying all the answers that I’ve been giving you were
contextualised to the question you were asking me about
10. Marikana.
11. MR MADLANGA SC: And what specific – not
12. that I understand that response, but I’ll move on – and
what specific support did the Minister give you in relation
to the killings at Marikana, before those of 16 August
15. 2012? What support did he give you?
16. GENERAL PHIYEGA: I have answered to say
17. in all my reporting and my feedback to him he is our
18. political leader. He took, gave us politic support. He
gave us that leadership, because I do not have the
20. responsibility of communicating in that space or dealing
21. with issues in that regard, and that is the best answer I
can give you.
23. MR MADLANGA SC: So must I take your last
24. answer to be that you cannot be specific on the political
direction, nor can you be specific on the support that the

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1. Minister gave you?
2. GENERAL PHIYEGA: I have said he has
given us leadership, he has given us political support, and
that enabled us to do our work.
5. MR MADLANGA SC: Mr Chairman,
6. Commissioners, just give me a moment. I’m just looking at
7. something in the transcript. I have in my hand the
8. transcript of the evidence led before this Commission, and
9. I refer my colleagues to day 41, commencing line 6 all the
10. way down to line 20, I will read. Page 4434, let me read
11. what appears there. It’s Mr Zokwana speaking. “I spoke to
12. an official in the offices,” and he was being cross-
13. examined by my learned friend Mr Tip. “I spoke to an
14. official in the offices” –
15. CHAIRPERSON: I think he might have been
16. examined by –
17. MR MADLANGA SC: I’m sorry. I’m sorry.
18. I’m sorry, Mr Chairman. My apologies to Mr Tip as well.
19. There’s no way he could have cross-examined his own
20. witness. “I spoke to an official in the offices of the
21. provincial commissioner and I was not satisfied with the
22. response” –
23. MR SEMENYA SC: Chair, can I ask maybe we
24. place the transcript before the witness so that she can
25. have an appreciation of what is being read out?

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1. CHAIRPERSON: It does sound like a fair,
2. reasonable request.
3. MR MADLANGA SC: It’s the highlighted
4. part, General. Thank you. “I spoke to an official in the
5. offices of the provincial commissioner and I was not
6. satisfied with the response I was given, they didn’t have
7. enough manpower in the SAPS. Then I tried to get the
8. number of the Minister’s office and I was able to talk to
9. somebody in his office and they left a message on his cell.
10. He called me back when I was on the way to Johannesburg and
11. I raised my concern to the fact that unless there were
12. enough number of SAPS personnel to restore law and order on
13. the mine, many lives will be lost.” And then Mr Tip, “And
14. what was the response of the Minister to your approach?”
15. Mr Zokwana, “The Minister promised to make all possible to
16. ensure that there was a deployment of SAPS on the mine to
17. prevent further deaths to the people.” You see that?
18. GENERAL PHIYEGA: Yes, I do.
19. MR MADLANGA SC: Please bear with me, Mr
20. Chairman, Commissioners. For the Minister to be able to
21. have more members of SAPS deployed at Marikana, I take it
22. that he would have had to make contact with you, not so?
23. GENERAL PHIYEGA: First let me say I see
24. what is being said here, and it talks about the provincial
25. commissioner, and as I’ve indicated that I am a National
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<td>I delegate powers to them. The provincial commissioner has a responsibility of running the province.</td>
<td>Does that -</td>
<td>Sorry to interrupt you.</td>
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<td>6876</td>
<td>You said you have nine national commissioners. That as, I take it, a slip of the tongue; you mean nine provincial commissioners?</td>
<td>Do you mean by that, that for the Minister to be able to carry out his promise to Mr Zokwana, he would have had to contact the provincial commissioner of the North West?</td>
<td>I am not aware. She can answer that.</td>
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<td>6877</td>
<td>I am advised that the final document is now to hand and that it will be distributed. So that is what, I was actually referring to the correct document. It’s just that it has not been distributed, and I apologise to Mr Semenya for the confusion.</td>
<td>The distinction I was just seeking to draw, Commissioner, is there was, we are also in possession of a transcript, what you said, what you actually said orally there was then transcribed. So what I wanted to make sure is whether you have in front of you is what was typed before you actually went to -</td>
<td>I delegate powers to them. The provincial commissioner has a responsibility of running the province.</td>
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<td>GENERAL PHIYEGA: Yes, Judge.</td>
<td>1</td>
<td>MR MADLANGA SC: And what do you mean by that? What do you mean by a person not being absolute? Or what do you mean when you qualify a yes by saying a person is not absolute? Just what do you mean by that?</td>
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<td>MR MADLANGA SC: Go to the penultimate paragraph. Are you there? It starts, “The dispersion action had commenced.” Do you see that?</td>
<td>2</td>
<td>GENERAL PHIYEGA: I say yes, except I would lend it to being on absolute.</td>
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<td>3</td>
<td><strong>Chairperson</strong></td>
<td>3</td>
<td>CHAIRPERSON: I still don’t understand that.</td>
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<td>4</td>
<td>GENERAL PHIYEGA: Yes, I do.</td>
<td>4</td>
<td><strong>Chairperson</strong></td>
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<td>5</td>
<td>MR MADLANGA SC: If you look at that paragraph in relation to the preceding paragraphs, in particular the one just above the penultimate paragraph, would you agree with me that the penultimate paragraph is dealing with scene 2?</td>
<td>5</td>
<td><strong>Chairperson</strong>: You’ll have to be patient with me. I could understand you saying the answer is yes to the best of my knowledge. That caters for the situation that there may be things you don’t know which would ultimately render your unequivocal yes to be slightly incorrect. But the way you put it doesn’t quite convey that to me. If what I’m putting to you “yes to the best of my knowledge” is the same as what you mean by the answer you gave, then I can understand you.</td>
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<td>6</td>
<td>GENERAL PHIYEGA: I would have to read this paragraph and then I’ll give you my response.</td>
<td>6</td>
<td>MR MADLANGA SC: Please do, General.</td>
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<td>7</td>
<td>MR MADLANGA SC: I’ve looked at both paragraphs. My response would be paraphrased as follows. What is represented in this statement are facts presented to me by my operational commanders and I read on behalf of the police facts as they were presented to me by my operational commanders, and as I said, I lead a team of very experienced professionals whose bona fides I believe in and some of them will be answering later, and I’m sure they would be able to articulately address those.</td>
<td>7</td>
<td><strong>Chairperson</strong></td>
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<td>[11:01] MR MADLANGA SC: But Commissioner, you are aware that there were killings at what has come to be known as scene 1, and there were killings at what has come to be known as scene 2, both on 16 August 2012. Are you aware of that?</td>
<td>8</td>
<td><strong>Chairperson</strong></td>
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<td>9</td>
<td>GENERAL PHIYEGA: Yes.</td>
<td>9</td>
<td><strong>Chairperson</strong></td>
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1  am not able to answer you on that one.
2  MR MADLANGA SC:  Are you aware that
3  during the - I’ll loosely refer to it as commotion – during
4  the commotion that resulted in the killings at scene 1, the
5  protestors who were involved in that moved away from the
6  koppie, which is referred to as koppie 1, towards the flat
7  ground and ended up next to the kraal where they were shot
8  dead? Are you aware of that? That is according to what
9  you were informed by those who brief you, are you aware of
10  that?
11  GENERAL PHIYEGA:  That part of the
12  question will better be answered by those who were at the
13  scene. I am not qualified to talk about those because I am
14  not aware of those specifics.
15  MR MADLANGA SC:  Besides the briefing
16  that you got in preparation for the media statement, what
17  more were you told about scene 1 when you were going about
18  informing yourself fully, albeit not absolutely?
19  GENERAL PHIYEGA:  My statement, as well
20  as this media statement, the internal briefing, carries the
21  high level strategic feedback that I was given.
22  COMMISSIONER HEMRAJ:  General, from where
23  would this statement have emanated, this media statement?
24  GENERAL PHIYEGA:  I was – this statement
25  was done by the team that was operating in this province,

1  that was in charge of the operation of Marikana.
2  COMMISSIONER HEMRAJ:  And who would have
3  been the author of this statement, General?
4  GENERAL PHIYEGA:  That team that was
5  operating, the commanders that were in charge of this
6  process, because as you can see it’s a multiplicity of
7  days, factors, and all that, and all these are the facts
8  that were constituted, that were put together by the team
9  for us to be able to account for what we were doing here.
10  MR MADLANGA SC:  And in paragraph 25 of
11  your statement you say that you were briefed by General
12  Mbombo, who was assisted by General Annandale, General
13  Naidoo, Brigadier Calitz, and Lieutenant-Colonel Scott, and
14  that at the close of the briefing you agreed to hold a
15  press briefing the next day, which was 17 August 2012. You
16  see that?
17  GENERAL PHIYEGA:  Yes, I do.
18  MR MADLANGA SC:  General, when you
19  received this briefing from the people that you mentioned,
20  were you aware that of the lot of them, only Generals
21  Naidoo – or rather, General Naidoo and Brigadier Calitz
22  were actually on the ground where the killings took place?
23  Were you aware of that?
24  GENERAL PHIYEGA:  No, I wasn’t aware.
25  MR MADLANGA SC:  You did not even
address a press conference with regards to the events of the 16th August 2012, as I understood them, given the information I had received from my commanders.” Now perhaps let me ask this question first. The further update that you received according to what you say in paragraph 26, was that additional information as part of your preparation for the press conference?

MR MADLANGA SC: Perhaps you should assist me, Commissioner; I’m totally getting confused. As you started testifying on Thursday last week, what did you consider to be your final, final statement in terms of dating, what is the date of what you consider to be your final statement? Is it the statement of the 7th March 2012, or is it the statement of 12th March 2012?

COMMISSIONER HEMRAJ: 2013, Mr Madlanga.

MR MADLANGA SC: I’m a year late, Commissioner, I’m sorry, my apologies. Read 2013 for, yes, my reference to 2012.

GENERAL PHIYEGA: I’m going to request to be guided on this one because I’m also confused to say what are we using and I’d like the Commissioner to guide me on this one, to say what are we working on.

MR MADLANGA SC: It is your statements, it is your evidence, Commissioner. You should be in a position to tell us on the basis of what statement are you giving your testimony before this Commission? I do realise, I do realise that as you testified, you even made further corrections even to what I understood to be your final statement; I will grant you that, but the simple point I’m making and which I would like to establish from you is, as you sit there what do you consider to be your final statement? Can it be the earlier statement of the 7th or is it the later statement of the 12th?

CHAIRPERSON: Mr Semenya, I think it would be helpful if you intervened at this point because even when she was giving evidence-in-chief there was a bit of confusion about what exactly the exhibit FFF2 is. Is it the statement of the 7th, is it the statement of the 12th, because there were other pages that were handed in, and that she herself made what amounted to an oral correction at one point in her evidence. So can you - you want to say something. What exactly do you want to say on that point?

MR SEMENYA SC: I can say with the attention of the Commissioner, the statement we’re working from, Chair, is the statement of the 12th, as corrected, the corrections made from the statement of the 7th into the statement of the 12th, but the witness is testifying through the statement dated the 12th, as corrected.

CHAIRPERSON: I have not got a copy of that myself, and I don’t know whether the witness has either, so it would be helpful perhaps if copies of what one can describe as the final version of exhibit FFF2 are made available so that there won’t be any further confusion and -

I want the final version of FFF - is it 3? I’m corrected, FFF3, so we don’t waste any further time with confusion as to what is the actual document that we’re busy with.

MR SEMENYA SC: We’ll certainly do that, Chair.

MR MADLANGA SC: Thank you, thank you Mr Chairman, thank you Mr Semenya. So to be able to move forward, General, look at both paragraphs 26 of your statements.

GENERAL PHIYEGA: Okay.

MR MADLANGA SC: Is there any difference between the two? Take your time, take your time and read both.

GENERAL PHIYEGA: The difference I see is that there is a numbering problem that was also I think part of the corrections, because, Sir, it doesn’t have a number. So let’s go to this one.

MR MADLANGA SC: Perhaps let me ask my question this way; let’s forget about the statements, because there’s a lot of confusion around them.

CHAIRPERSON: In order to move forward I’d like her to be agreed that the final version of - I understand the correct description is FFF3, so that we won’t have to spend any time on that -

MR MADLANGA SC: Yes, that’s why I’m saying let’s forget about them for now because it may be difficult to clarify any issue around them, Mr Chairman. I will now ask the evidence about what - rather the witness about what her evidence is. She must know that, certainly. As you sit there, General, is it your evidence that on 17 August you again visited Marikana? Is that so?

GENERAL PHIYEGA: It is true.

MR MADLANGA SC: That there you joined the SAPS team for a further update?

GENERAL PHIYEGA: It is correct.

MR MADLANGA SC: As well as to finalise preparations for the press announcement that was planned for that morning?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: You later proceeded to address a press conference with regards to the events of the 16th of August 2012?
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25 centre and the joint operations centre, as I've said, had

24 remember, these people were part of the joint operations

23 GENERAL PHIYEGA: I would say yes because

22 more people than those whose names I just gave to you?

21 people who gave you the update. Are you saying that it was

20 the press conference with you. I'm addressing myself to

19 sure, I'm not referring to people that might have attended

18 MR MADLANGA SC: I just want to make

17 not recall all their names.

16 MR MADLANGA SC: I just want to make

15 people that gave the update, and when I led my evidence

14 the lawyer asked me and I said there were others. I may

13 that gave you this update?

12 MR MADLANGA SC: That is so, Mr Chairman.

11 GENERAL PHIYEGA: Yes, they were part of

10 the people that gave the update, and when I led my evidence

9 that you received on 17 August 2012?

8 to your press statement. Is that what you mean?

7 question I was asking when Mr Semenya quite correctly

6 MR MADLANGA SC: I will go back to the

5 I go back to the

4 understood the events, given the information you had

3 received from your commanders, not so?

2 MR MADLANGA SC: And this you did as you

1 many people, but primarily I can say those people did brief

2 me.

3 MR MADLANGA SC: You have already told

2 the Commission that you did not even get to establish who

1 of the people that briefed you during the night of the 16

8 August had actually been on the ground when the killings

7 took place. Did you establish on the 17th whether the

6 additional people that gave you the update, additional to

5 the others that had been at the briefing of the 16th, did

4 you establish that the additional ones had actually been on

3 the ground when the killings took place?

2 GENERAL PHIYEGA: I did not, because I

1 had my commanders who were feeding back to me and I took it

28 Part of the information

27 that is sitting in that statement comes from them because

26 they were out there.

25 your statement doesn't

24 assist me in this regard, nor does the answer. General, my

23 question is about your knowledge. Did you or did you not

22 know as they were briefing you, that they had actually been

21 at the scene/scenes of the killings? Did you or did you

20 not know that?

19 GENERAL PHIYEGA: I do know.

18 MR MADLANGA SC: You do know now.

17 GENERAL PHIYEGA: I do know.

16 MR MADLANGA SC: Much as we know that

15 General Naidoo and Brigadier Calitz were on the ground, you

14 yourself did not know that.

13 GENERAL PHIYEGA: I knew that there were

12 commanders, part of the commanders' team that were

11 responsible for the operation.

10 MR MADLANGA SC: That was not my

9 MR MADLANGA SC: That was not my

8 MR MADLANGA SC: Much as we know that

7 MR MADLANGA SC: Much as we know that

6 MR MADLANGA SC: Much as we know that

5 MR MADLANGA SC: Much as we know that

4 MR MADLANGA SC: Much as we know that

3 MR MADLANGA SC: Much as we know that

2 MR MADLANGA SC: Much as we know that

1 MR MADLANGA SC: Much as we know that

16 August, that is night of the 16th, you were briefed by General

15 Mbombo, who was assisted by General Annandale, General

14 Naidoo, Brigadier Calitz and Lieutenant-Colonel Scott. Now

13 on the 17th, would it have been a different set of people

12 that you received on 17 August 2012 found its way

11 to your press statement. Is that what you mean?

10 So what update you received on 17 August 2012 found its way

9 to FFF5?

8 I might be mistaken on

7 question. Perhaps let me be more specific. Based on what

6 you have said, you did not know that Brigadier Calitz and

5 General Naidoo had actually been at the scene of the

4 killings at the time the killings took place. That you did

3 not know?

2 [11:54] GENERAL PHIYEGA: Part of the information

1 that is sitting in that statement comes from them because

28 Part of the information

27 that is sitting in that statement comes from them because

26 they were out there.

25 your statement doesn't

24 assist me in this regard, nor does the answer. General, my

23 question is about your knowledge. Did you or did you not

22 know as they were briefing you, that they had actually been

21 at the scene/scenes of the killings? Did you or did you

20 not know that?

19 GENERAL PHIYEGA: I do know.

18 MR MADLANGA SC: You do know now.

17 GENERAL PHIYEGA: I do know.

16 MR MADLANGA SC: That's still not

15 answering my question. My question is, did you know? At

14 the time of the briefing, did you know?

13 GENERAL PHIYEGA: Yes, I did know.

12 MR MADLANGA SC: I might be mistaken on

11 this, but the record will bear us out, you and me. My

10 recollection seems to be that you, of the people, all the

9 people mentioned as having participated in the briefing on

8 16 August 2012, you said that you did not know whether or

7 not they had been at the scene of the killings. Did you or did you

6 not say that? Perhaps before you respond, I will rely on

5 my learned colleague, Ms Pillay, who has a record. Thank
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<td>you. This is what she has typed out as my question. “When you received,” serious gremlins here. Please bear with me, Commissioners. Thank you. It’s probably “ntelezi,” Commissioners, and Mr Mpofu has everything to do with it.</td>
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<td>GENERAL PHIYEGA:</td>
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<td>CHAIRPERSON:</td>
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<td>GENERAL PHIYEGA:</td>
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<td>MR MADLANGA SC:</td>
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<td>GENERAL PHIYEGA:</td>
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<td>MR MADLANGA SC:</td>
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<td>MR MADLANGA SC:</td>
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GENERAL PHIYEGA: My focus, I was not aware, but my focus was on the report back that I was being given.

MR MADLANGA SC: Earlier you indicated that at the update of 17 August 2012 there were additional people. Were all the others whose names you and I have dealt with, were all of them still present during the update of 17 August 2012?

GENERAL PHIYEGA: Most of them were there, even though I may not recall specific names because they were very primary to the statement.

MR MADLANGA SC: The additional people on the 17th, did you at the time of the update, did you get to establish where they had been at the exact time that the killings took place?

GENERAL PHIYEGA: No.

MR MADLANGA SC: At the beginning of your testimony you gave quite an impressive résumé as a manager, and I would say it appears quite an accomplished manager.

Am I not misrepresenting your earlier professional life?

GENERAL PHIYEGA: I have said - I have shared my qualifications, I have shared my experience.

MR MADLANGA SC: Let me test something with you, based on your experience as a manager. If you are to take a decision, or if you were to take a decision on something that you either knew for a fact was a contentious issue in a sense that there were opposing views that bore relevance to that issue, or if you did not know for a fact, you realised there might well be such opposing facts and that the issue might well be a contentious one, would you take a decision without giving serious consideration to the opposing sides to the issue, or possible opposing sides to the issue? Would you do that?

GENERAL PHIYEGA: The question you've asked me is long and loaded. Let me try and deal with part of it.

MR MADLANGA SC: Yes.

GENERAL PHIYEGA: Firstly, what we were preparing for was to account to the nation from a SAPS perspective what happened on the 17th.

MR MADLANGA SC: Commissioner, I will accept I was not clear enough in my question. May I preface it by saying that I am now stepping off Marikana, put it aside for a moment and focus on you at a time when you were a manager at the various places that were mentioned during your evidence-in-chief. So my question is, in that scenario that I posited, would you in such contentious circumstances or circumstances that were in all likelihood contentious, would you take a decision without giving at least consideration, if not serious consideration, to those contentious issues?

MR MADLANGA SC: Both sides, Mr Chairman, or police side, or participants on the strikers' side, or both?

MR MADLANGA SC: Both sides, Mr Chairman, thank you.

GENERAL PHIYEGA: Yes, I do.
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<td>1 General, you repeatedly say that the commanders, your</td>
<td>1 General, you repeatedly say that the commanders, your</td>
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<td>2 least some of the statements say that the protesters</td>
<td>3 commanders are the people best placed to respond to my</td>
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<td>3 themselves were in the order of 3 000, not so?</td>
<td>4 questions. You yourself have said that this was not only a</td>
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<td>4 GENERAL PHIYEGA: Yes, I've noted those reports.</td>
<td>5 tragedy, but that it is one that was unprecedented, not so?</td>
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<td>5 MR MADLANGA SC: And quite a large number of police – I</td>
<td>6 And in this regard I refer you to paragraph 4 of your</td>
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<td>6 don't have the exact number, plus-minus 600?</td>
<td>7 statement. I hope there is no difference in the contents</td>
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<td>7 GENERAL PHIYEGA: Yes, could have been.</td>
<td>8 of that paragraph. Do you want to look at that?</td>
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<td>8 MR MADLANGA SC: And after a request by us, evidence</td>
<td>9 GENERAL PHIYEGA: You are correct.</td>
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<td>9 us, evidence leaders, the South African Police Service has</td>
<td>10 MR MADLANGA SC: It must have been quite</td>
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<td>10 indicated to us that police officers in excess of 160 fired</td>
<td>11 crucial, if not important, for you to establish for</td>
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<td>11 shots on the day. Do you accept that as well?</td>
<td>12 yourself as the National Commissioner of the South African</td>
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<td>12 GENERAL PHIYEGA: I'm not able to put my finger on that,</td>
<td>13 Police, what actually happened at Marikana. Is that not so?</td>
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<td>13 an I'm sure my commanders would be able to respond to that.</td>
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<td>14 MR MADLANGA SC: I assume that you must at least have</td>
<td>14 GENERAL PHIYEGA: Yes, and I have</td>
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<td>15 perused the presentation by SAPS, did you</td>
<td>16 established and that is the statement I gave on the 17th.</td>
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<td>16 GENERAL PHIYEGA: I have.</td>
<td>17 MR MADLANGA SC: From the responses that you give, the</td>
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<td>17 MR MADLANGA SC: And you must have seen from that that a very large number of rounds of</td>
<td>18 distinct impression I get, National Commissioner, is that you</td>
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<td>18 ammunition were fired, not so?</td>
<td>19 do not have any detail at all on what actually happened.</td>
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<td>19 GENERAL PHIYEGA: Yes.</td>
<td>20 MR MADLANGA SC: From the responses that you give, the</td>
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<td>20 MR MADLANGA SC: From that and the large number of deaths, I'm sure you'd accept at least, even if</td>
<td>21 distinct impression I get, National Commissioner, is that you</td>
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<td>1 you do not know the number, that there must have been a fairly</td>
<td>1 nothing wrong with that.</td>
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<td>2 large number of police officers who fired shots at the protesters,</td>
<td>2 MR SEMENYA SC: Any detail, Chair.</td>
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<td>3 wouldn't you?</td>
<td>3 CHAIRPERSON: He's putting that's his impression. If she does not agree, she can say so. If she does agree, she can also say so. It may not be an impression that you have, it may not be the correct one, but any way, her comment.</td>
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<td>4 GENERAL PHIYEGA: The reports, the data as represented as facts, I noted in our presentation.</td>
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<td>5 MR MADLANGA SC: No, no, no, I’m asking about your own take, based on the facts that I have put to you, so many rounds, a large number in fact, very large number of rounds of sharp ammunition were fired, a total of 34 people were killed, and plus-minus, or even in excess of 70 people were injured, and all that I’m putting to you is would you accept that cumulatively those facts indicate that a relatively large number of police officials must have fired shots at the protesters? Will you accept that?</td>
<td>5 MR MADLANGA SC: My learned friend seems to quarrel with “any.” Let me excise “any” from what I said.</td>
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<td>6 MR MADLANGA SC: And you must have seen from that that a very large number of rounds of ammunition were fired, a total of 34 people were killed, and plus-minus, or even in excess of 70 people were injured, and all that I’m putting to you is would you accept that cumulatively those facts indicate that a relatively large number of police officials must have fired shots at the protesters? Will you accept that?</td>
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<td>7 GENERAL PHIYEGA: Perhaps what would assist me to be able to deal with an appropriate response to this matter, given the fact that I’ve already said that the commanders who were in operations are better fit to understand that and to answer that. When you say “maningi,” there are many, what context should I use?</td>
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<td>8 MR MADLANGA SC: Do you have a copy of the presentation, exhibit L there, General?</td>
<td>8 MR MADLANGA SC: Thank you, Mr Chair.</td>
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<td>9 GENERAL PHIYEGA: Yes, I have.</td>
<td>9 CHAIRPERSON: She can comment as to whether that’s an impression which is justified.</td>
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<td>10 MR MADLANGA SC: Before I go there, or before I take you there, let me ask this question.</td>
<td>10 MR MADLANGA SC: Thank you. Thank you.</td>
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MR MADLANGA SC: And do you remember that either in response to that question or some other question that sought to elicit detail from you, you said that you are not in a position to answer that question and that your commanders are best suited or placed to answer?

GENERAL PHIYEGA: Yes, I did say so.

MR MADLANGA SC: And do you remember that you gave that same response when I asked you whether you would accept, based on facts that I put to you and suggested that cumulatively they suggest that there must have been a large number of police officers who fired shots, do you remember that in response to that question as well you said that it is your commanders who are best placed to respond to that question?

GENERAL PHIYEGA: I‘m not sure whether my response to you to say when we say large, in which context, because you were talking to your colleague. I didn‘t, and then you were going to go to the, to this thing, because I started asking when we talk about large police and those finer details, I asked in what context are we saying large.

MR MADLANGA SC: Please bear with me, Mr Chairman, Commissioners. And in response to a question that is recorded by Ms Pillay as follows, “SAPS has indicated to us, the evidence leaders, that police officers fired in excess of 160 shots on the day,” you said, “I am not able to put my finger on that. My commanders can comment.” Do you remember saying so?

CHAIRPERSON: I think that’s not right.

MR Madlanga. I think it’s 160, at least, policemen fired shots. The number of shots were substantially in excess of that, as appears inter alia from slide 211 of exhibit L.

MR MADLANGA SC: That’s where I was referring the witness, thank you, when I said she must please take out this. I was to refer her to slides 211 and 257.

CHAIRPERSON: I‘m sorry, another way to do it.

MR MADLANGA SC: - and 257.

CHAIRPERSON: Another way to do it is to look at the various groups that are summarised in slides, it’s effectively 138 and following, where one can see the numbers of TRT members and NIU members and so on, all of whom I take it were armed.

MR MADLANGA SC: Thank you, Mr Chairman, but in any event, I’ll step off that, Mr Chairman.

CHAIRPERSON: Maybe you should bring this point to a conclusion. Seeing you’re busy with slide 211 and 257, what they indicate is that well over 500 bullets were fire, that 284 sharp point ammunition were expended at scene 1 and 268 at scene 2. If one adds the two together, one sees that it’s well over 500. That’s essentially the point you’re making, and then if you look at the listing of the various people who were there at the time, which is a reference I gave earlier, which is, it really starts at 136, but in subsequent slides you get the number of TRT people, NIU people, STF people, and so on, all of whom obviously were armed, one can pretty clearly see that there were several hundred armed policemen on the scene, able to fire off sharp ammunition, and then when one looks at slides 211 and 257 one sees that it was well over 500 bullets that were fired. That’s the point, isn’t it? I think in fairness to the witness, if one gives her those references she can see and then she should be able to give an answer, certainly at this stage, based on the information available.

MR MADLANGA SC: Thank you, Mr Chairman.

General, look at slide 212 in exhibit L.

MR MAHLANGU: Slide 212, Sir?

MR MADLANGA SC: 211. 2-1-1. Do you see there that it’s headed “Munitions expended at scene 1?”

CHAIRPERSON: Yes.

MR MADLANGA SC: And it gives the total numbers of the police officers who fired the shots and against TRT the slide gives the total 45. Do you see that?

CHAIRPERSON: Another way to do it –

MR MADLANGA SC: And my question was, if you look at that, but of course as I realise that as at the time of the briefing you would probably not have known these exact numbers that are being given here, can I just take one step back and again try to put the proposition that I put to you, which was that looking at – just a minute. Please bear with me, Commissioners. Okay, looking at the large number of people that were killed, 16 at scene 1, 18 at scene 2, in excess of 70 injured, and the fact
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25 MR MADLANGA SC: And you had no idea what
24 had this finer finite detail.
23 and taking statistics. I do not think that we would have
22 17th the joint operation centre would still be calculating
21 GENERAL PHIYEGA: On the morning of the
20 idea how many fired shots?
19 MR MADLANGA SC: And of them you had no
18 your question to say would they know what the police had
17 GENERAL PHIYEGA: No, I was understanding
16 your question to say would they know what the police had
15 witnessed the killings would give? Are you saying that the
14 version each and every one of the
13 police at the joint operation centre would have known what
12 police, and police specifically, my last question or
11 participants who were there and who witnessed the killings
10 what story or version each one of the police officers who fired
9 shots would give, once they had been identified, did you?
8 GENERAL PHIYEGA: Yes.
7 MR MADLANGA SC: You also had no idea
6 what story or version each and every one of the
5 protesters were there and who witnessed the killings
4 GENERAL PHIYEGA: I would know what the
3 members of the joint operation centre would tell me, but
2 when you talk about individuals, it's a different
1 situation.

12 MR MADLANGA SC: Are you saying that
11 police at the joint operation centre would have known what
10 version each and every one of the protesters who had
9 witnessed the killings would give? Are you saying that the
8 people at the JOC would know that?
7 GENERAL PHIYEGA: No, I was understanding
6 your question to say would they know what the police had
5 done. If I misunderstood you about the protesters, they
4 would not know.
3 MR MADLANGA SC: And if the people at the
2 JOC did not know that version, that is the version of the
1 protesters, needless to say there is no way that you would

1 saying that your evidence is that your commanders did not
2 know as at 16 and 17 August what the versions of those
1 protesters were?

12 MR MADLANGA SC: General, the distinct
11 impression that I get - and this is what we will submit at
10 the end of the Commission proceedings - is that you rushed
9 to issue a press statement that absolved the South African
8 Police Service from any wrongdoing, without having taken
7 steps to consider possible opposing versions. You rushed
6 headlong – I'm saying this with all due respect, but you
5 rushed headlong and issued that statement in such
4 circumstances. What's your comment to that?
3 GENERAL PHIYEGA: I cannot vouch for, or
2 dispute what you see as your judgment of this, but I shall
1 say to you that I did not rush and what I did was based on

12 MR MADLANGA SC: Did they suggest to you
11 that they knew? That is, that they knew those versions.
10 Did they suggest to you as at 16 and 17 August 2012?
9 GENERAL PHIYEGA: No, they did not, and I
8 did not ask them.
7 MR MADLANGA SC: General, the distinct
6 impression that I get - and this is what we will submit at
5 the end of the Commission proceedings - is that you rushed
4 to issue a press statement that absolved the South African
3 Police Service from any wrongdoing, without having taken
2 steps to consider possible opposing versions. You rushed
1 headlong – I'm saying this with all due respect, but you

11 MR MADLANGA SC: Do you, as you sit there
10 now, do you know what the versions of the several
9 protesters are? Do you know what those versions are, as of
8 today?
7 GENERAL PHIYEGA: Can you repeat your
6 question?
5 MR MADLANGA SC: Earlier I was asking you
4 about the position as at the time of the briefings that you
3 received on 16 and 17 August, and I was asking whether your
2 commanders knew what the versions of each one of the
1 protesters was regarding the killings, and you said not, and

8 MR MADLANGA SC: Yes, protesters. I
7 started with the police, but now I’ve moved from the
6 police, and police specifically, my last question or
5 questions related to those who fired shots. I’ve moved
4 from that and I’m now dealing with the versions of the
3 protesters who witnessed the killings. Am I correct in
2
1

2 saying that your evidence is that your commanders did not
3 know as at 16 and 17 August what the versions of those
2 protesters were?
1 GENERAL PHIYEGA: I should not answer for
0 those commanders. They would answer for themselves, but I
- did not know.
- MR MADLANGA SC: Did they suggest to you
- that they knew? That is, that they knew those versions.
- Did they suggest to you as at 16 and 17 August 2012?
- GENERAL PHIYEGA: No, they did not, and I
- did not ask them.
- MR MADLANGA SC: General, the distinct
- impression that I get - and this is what we will submit at
- the end of the Commission proceedings - is that you rushed
- to issue a press statement that absolved the South African
- Police Service from any wrongdoing, without having taken
- steps to consider possible opposing versions. You rushed
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- GENERAL PHIYEGA: I cannot vouch for, or
- dispute what you see as your judgment of this, but I shall
- say to you that I did not rush and what I did was based on
- the information given by my commanders who were in the JOC
- and on the ground, the bona fides of which I believed,
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1. unless I am proven otherwise I believed that and I made the statement on the basis of that.

2. MR MADLANGA SC: And if there is evidence suggesting that the content of your press statement was in fact incorrect, will you accept that that is indeed so?

3. That is, your press statement is not containing the true facts.

4. GENERAL PHIYEGA: I would still say at the time when I did this, the bona fides of the information that I was given by the commanders that were out there.

5. MR MADLANGA SC: General, I’m not quarrelling with the bona fides of the generals and commanders that briefed or updated you. The issue that I’m raising relates to you as the person who had to relay information not only to the nation, but to the world at large, as to what had happened at Marikana when 34 people were killed on 16 August 2012. That is what I am talking about. Bona fides aside, did you not think that on a matter of such gravity, unprecedented, as you call it, you should have taken time to consider what others that had knowledge of what had taken place had to say on the subject.

6. Did you not consider that the proper course to take?

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7. facts at hand were well considered and it was important for us from the South African Police Service to give an account as at the 17th of what we have observed had happened, and that is the statement we gave on the 17th.

8. MR MADLANGA SC: Well considered, but based on information received by you from only two people that you know to have been at the scene of the killings, and the rest being people who might well not have been at the scene of the killings, and you say the information was well considered?

9. GENERAL PHIYEGA: I’m on record saying the statement of the 17th is a collaborative product of the joint operation centre. The joint operation centre is a centre that was responsible for the entire operation, which involves everything that we as SAPS were doing in Marikana.

10. [12:54] MR MADLANGA SC: Correct me if I’m wrong.

11. In response to, not to my last question, but to the one before, you mentioned the 17th. The impression I got was that you were saying that as at 17 August 2012, what you said in your press statement was what the facts were, or what you understood the facts to be. I’m paraphrasing and I’m saying please correct me if I’m wrong.

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12. GENERAL PHIYEGA: Yes, I did say.

13. MR MADLANGA SC: Is that a recognition of the possibility that post 17 August 2012 the picture might have changed, and you might have come to understand the position differently?

14. GENERAL PHIYEGA: I would like you to ask that question again.

15. MR MADLANGA SC: If you say that as at 17 August 2012 you understood the true facts to be what you said in your press statement on 17 August 2012, is that suggestive of an acceptance that post 17 August 2012 the picture might well have changed, picture in the sense of your understanding of the facts?

16. GENERAL PHIYEGA: I would prefer for those facts to be presented to me to be able to say whether I accept or I don’t.

17. MR MADLANGA SC: Must I take that to mean that you are saying even as of today, according to you, the facts, the true facts are exactly as you stated them in your press statement of 17 August 2012? Is that what you mean by your last answer?

18. GENERAL PHIYEGA: I shall try again to answer the way you have asked me. You’ve asked me about the statement of the 17th. I have said you have asked me whether I have changed or I am still saying the statement of the 17th remains the same; I have answered that, and what I’m understanding you to say to me now, if there are new facts, would I still stand by my statement of the 17th, and...
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|---|---|
| 1 | contained in your press statement. |
| 2 | GENERAL PHIYEGA: I'll try again. To the best of my knowledge and to the best of the information I was given there, the facts that were sitting in the statement were informed by that information, and that represents the facts as I understood them by the 17th. |
| 3 | MR MADLANGA SC: And that understanding has never changed, remains the same today? |
| 4 | GENERAL PHIYEGA: I have then said I would appreciate knowledge of new facts because that then would then say there are other facts that you didn't know on the 17th which are this and this, because then I would be able to respond appropriately. |
| 5 | MR MADLANGA SC: No, General – |
| 6 | GENERAL PHIYEGA: To say to you I accept and not accepting in a vacuum makes it difficult for me. |
| 7 | MR MADLANGA SC: No, General, nothing takes us to any vacuum. I am asking you about your own knowledge. What I am debating with you is whether you say even as of today the knowledge that you had as at 17 August 2012 remains the same. That is the question. It has nothing to do with possible new facts. |
| 8 | GENERAL PHIYEGA: Let me say I have tried to answer this question to the best of my understanding. If I have missed that understanding, it means I'm failing to answer that. |

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|---|---|
| 1 | CHAIRPERSON: Can I put the question as I understand what Mr Madlanga is trying to convey to you? If I'm wrong, he'll correct me. Have you since the 17th of August had facts brought to your attention which cause you to think that what you said on the 17th was not accurate in some respects, and that you would not have said what you did say on the 17th if those facts had been brought to your attention? Has anything of that kind been brought to your attention between the 17th and now? That's your question, is it? |
| 2 | MR MADLANGA SC: Exactly, and thank you very much, Mr Chairman. |
| 3 | GENERAL PHIYEGA: I do stand by the statement that I gave by the 17th. |
| 4 | CHAIRPERSON: So that's the answer, is it? I think it's appropriate for us to take the adjournment. Until when do you suggest we take the adjournment? |
| 5 | MR MADLANGA SC: Can we just deal with this little statement which we handed up – |
| 6 | CHAIRPERSON: You want to do it now? |
| 7 | We'll have to bear that in mind when we fix the resumption time. |
| 8 | MR MADLANGA SC: Yes, thank you very much. Thank you very much, Mr Chairman. I want to lay emphasis to – |

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|---|---|
| 1 | CHAIRPERSON: I take it this is FFF6, or it will be. |
| 2 | MS PILLAY: Chair, it will be FFF7. |
| 3 | CHAIRPERSON: What is FFF6? |
| 4 | MS PILLAY: It's the tribute read at the funeral of Warrant-Officer Lepaaku. |
| 5 | CHAIRPERSON: I see. Alright, thank you. |
| 6 | MR MADLANGA SC: I will preface the questions that I'm going to ask by laying emphasis on what the Chairman said in articulating my last question. The Chairman referred to the issue of whether new facts ever came to your attention. You remember that? |
| 7 | GENERAL PHIYEGA: Apologies. I was just looking for my paper. |
| 8 | CHAIRPERSON: Has the witness got a copy of exhibit FFF7? |
| 9 | MR MADLANGA SC: I'm advised so, Mr Chairman. Thank you. |
| 10 | MR MAHLANGU: We do have it. |
| 11 | MR MADLANGA SC: I was saying, General, I will preface the questions that I'm going to ask by making reference to a point that was made by the Chairman in articulating my last question. The Chairman referred to
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1. the question whether any new facts had come to your
   attention post 17 August 2012. You remember that?

2. GENERAL PHIYEGA: Yes, I do.

3. MR MADLANGA SC: Now before you, you have
   the statement of Mr Hendrich Wouter Myburgh – the Hendrich
   ends with a C-H – and he says that he was one of the police
   officers that were posted at Marikana on 16 August 2012.

4. You see that?

5. GENERAL PHIYEGA: Mmm.

6. MR MADLANGA SC: And he is with the K9
   Unit. You see that?

7. GENERAL PHIYEGA: I note that.

8. MR MADLANGA SC: And in the second
   paragraph of paragraph 2 he says, “We were briefed by
   Major-General Naidoo for our duties at the koppies,
   searching for firearms and weapons, and as we approached
   the scene at the koppies from the southern side, there were
   miners shooting at us.” See that? “I emerged from the
   vehicle and took cover behind the driver and passenger
   doors as I moved to see clearly who is shooting at us.”
   And then in paragraph 3 he says, “After most of the
   shooting had stopped,” of course he says “has,” “I entered
   into koppies searching for suspects to arrest. I found
   about three injured people lying down and turned away from
   them, searching for other suspects. I suddenly heard a
   gunshot behind me. As I turned, I saw an NIU constable,
   who is unknown to me, putting his side firearm in his leg
   holster while he was standing next to the injured I first
   met, was having a jersey wrapped around his arm. I asked
   the NIU constable what is going on. He replied by saying,
   ‘They deserve to die,’ and he moved away. I cannot
   identify him facially and I could not read his surname on
   his name tag.” Assuming the facts stated by Mr Myburgh to
   be correct or true –

   MR SEMENYA SC: Objection, Chair.

   CHAIRPERSON: What was the objection?

   MR SEMENYA SC: What appears in the
   statement are allegations, are not facts.

   CHAIRPERSON: Well he asked her to make
   an assumption about them, but anyway, let him reformulate
   the question to avoid your objection. Mr Mdlalanga, would
   you like to rephrase your question so that Mr Semenyana won’t
   object –

   – thanks to Mr Semenya for the English lecture – assuming
   the allegations contained in paragraph 3 of this statement
   to be correct, I want to get an idea of the inference that
   you draw from them. What, if anything, do you think the
   NIU constable had done? Looking at those allegations in
   their totality, what is your own inference as to what had
   just happened there?

   GENERAL PHIYEGA: Not being a lawyer and
   being asked these type of questions, and using things as
   allegations, suggestions, it makes it very difficult for me
   at a serious occasion like this when we are dealing with
   such a very emotional and sensitive matter. I would be
   very cautious to use the allegations to express my opinion.

   MR MADLANGA SC: Do the allegations, even
   at their lowest, do the allegations not tend to indicate
   that the NIU constable might well have shot at one of the
   injured protesters?

   GENERAL PHIYEGA: I do not know.

   MR MADLANGA SC: If allegations like
   these were to be brought to your attention, would you not
   consider that at the very least they warranted
   investigation, if they were to be brought to your
   attention?

   GENERAL PHIYEGA: They would warrant an
   investigation.

   MR MADLANGA SC: Let us go to paragraph 4
   –

   CHAIRPERSON: - paragraph 5 on the second
   page.

   MR MADLANGA SC: Yes.

   CHAIRPERSON: 5 at the foot of the first

GENERAL PHIYEGA: General Naidoo as the commander, if there was anything emerging he would pursue the matter because he's the commander of those people.

MR MADLANGA SC: Did you yourself instruct anybody to do something about these allegations?

GENERAL PHIYEGA: I am saying General Naidoo as the commander he would pursue if there was anything, if there was anything.

CHAIRPERSON: The question is whether you gave any instructions, not leaving it to Lieutenant-General Naidoo to something if he felt like doing it or considered it necessary, but did you yourself give any instructions?

GENERAL PHIYEGA: Judge, I am saying when the matter was brought to us it was brought by a commander who is in charge of people. In our engagement with the commander we sought to understand the route and the merits of the matter, and I also say the same problems that are being stated in the statement, to say "I cannot identify the person, I do not know the name," confronted us.

MR MADLANGA SC: General, I will use something that you yourself did to try to get an answer to this very same question. Do you remember the tampering at least I'm not.

CHAIRPERSON: For a moment I thought that maybe it was another exhibit but it is, Mr Chairman.

MR MADLANGA SC: Yes, I might be mistaken.

CHAIRPERSON: It is an exhibit, is it not?

MR MADLANGA SC: I do not think that it is, Mr Chairman.

CHAIRPERSON: Well, there are so many exhibits; I thought it was, but -

MR MADLANGA SC: Yes, I might be mistaken.

MS PILLAY: Chair, it's exhibit DD. D for donkey, D for donkey.

CHAIRPERSON: It is an exhibit?

MS PILLAY: Yes.

CHAIRPERSON: For a moment I thought that I was losing it. I'm pleased to think that in this respect at least I'm not.
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25 of her.

24 on the General Naidoo statement unless she has it in front

22           CHAIRPERSON:          You can't cross-examine – I
21 understand.
20           MR MADLANGA SC:          I understand.  I
19           CHAIRPERSON:          All I'm saying is you –
18 examination.  It is not matters that one had pre-planned.
17 Commissioner.  Some of these things arise from the cross-
16           MR MADLANGA SC:          I apologise,
14 but if you want to question her about it, to be fair, she
13 the witness.  Presumably we don't have to have copies yet,
12 afternoon?  But presumably you've given a copy already to
11 the statement available to us in the course of the
10 a page, not a bottom note.  Are you going to make copies of
9 speak of pages as having feet.  It's more appropriate to
8           MR MADLANGA SC:          Thank you, I was exactly
7 refer to the page numbers, is it the fax page numbers?
6 seems to have been faxed.  Is that the one?  So when you
5 make an enquiry?  The version of the statement that we have
4           MR MPOFU:          Sorry, Chairperson, can I just
3 Chairman.  General, in the version of –
2 MR MADLANGA SC:          I accept that fully,
1 fully, and without any reservations.  Thank you, Mr
Chairman. General, in the version of –

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10 towards the second line of rocks, we came under fire from
9 the strikers to my left and the bullets narrowly missed me
8 and struck the rocks around me. I immediately returned
7 fire with two rounds from my pistol Z88,” and so on, “at
6 the individual I could see taking cover between rocks and
5 trees, with a firearm in his hand. Several other members
4 also returned fire in the direction of the shots, which
3 immediately stopped. We later arrested two individuals in
2 that area with firearms in their possession, one of whom
1 admitted to firing on the police as they advanced.” You

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11 that area with firearms in their possession, one of whom
10 immediately stopped. We later arrested two individuals in
9 also returned fire in the direction of the shots, which
8 the individual I could see taking cover between rocks and
7 trees, with a firearm in his hand. Several other members
6 also returned fire in the direction of the shots, which
5 immediately stopped. We later arrested two individuals in
4 that area with firearms in their possession, one of whom
3 admitted to firing on the police as they advanced.” You
2 see that?
1           GENERAL PHIYEGA:          Yes, I do.

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11 he made that report to you, did you even consider that
10 General Naidoo, who was at the scene of the killing - you
9 said you knew this – did you even consider that he might
8 well have been involved in the shooting himself? Did that
7 cross your mind at all?  Did you even consider that?
6           GENERAL PHIYEGA:          I did not.  I will be
5 able to answer you if you ask me the question. No, at that
4 point I didn’t.
3 MR MADLANGA SC:          You are a senior in the
2 police force. Yes, I realise what your experience is, but
1 you are a commissioner.

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10 tried and see whether I’m understanding you. You’ve
9 asked your question, you’re confusing me, and maybe let me
8 try and see whether I’m understanding you. You’ve
7 presented to me the statement of Wouter. You asked me all
6 those relevant questions to say did I investigate it or I
5 did not investigate, and I said we engaged Wouter. The
4 issue that is raised in the statement that he’s not unable,
3 he’s not able to identify or to point at the person,
2 continued to present to us. You then asked me whether I
1 followed up to investigate, and I said the commanders that

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general phiyega: the focus of our engagement was to say which police officer has done it, because he was talking about a police officer.

chairperson: no, no, i understand that, and he couldn't identify the police officer.

general phiyega: yes.

chairperson: but what i'm asking you, isn't it reasonable to suppose that an experienced detective who was put on to the case, might have been able to identify the police officer. do you know whether anyone was asked to look into this matter?

I asked them to look into this matter.

Chairperson: the next question you were asked is did you yourself give instruction as to anybody to investigate the case further?

General phiyega: General Mbombo and General Naidoo had to look into this matter. I, and I may just – "On the same day, on 1st August – on 1st October 2012, I once again narrated the same story to Major-General Naidoo. Major-General Naidoo was the second person I reported this shooting incident to ever since it happened, whereafter Lieutenant-General Mbombo and the National Commissioner were informed by myself as per arrangement on the 2nd of October."

chairperson: did you speak to him? did you ask him questions. Did you have a face to face interview with him?

Chairperson: yes, so you say you asked him questions. Did you have a face to face interview with him?

Chairperson: yes, so you say you asked him questions. Did you have a face to face interview with him?

Chairperson: yes, both myself, General Mbombo, and General Naidoo, engaged Warrant- Officer, the warrant-officer, asked questions about this very shooting that he's talking about, and we wanted to know who this person is so that we can understand the facts that were being presented to us as per this allegation, and again he wasn't able to say to us, he said he could not point the person, he does not know the person, he hasn't seen the name tag.

chairperson: yes, so you say you asked him questions. Did you have a face to face interview with him?

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1 myself, I did not understand Mr Madlanga to be meaning -
2 CHAIRPERSON: No, no, Mr Madlanga only
3 referred to he was involved in the shooting and the idea of
4 a motive came from me and I prefaced it by the word
5 “possibly,” but whether Mr Madlanga asked the question or
6 not, it’s one which I think the witness should be
7 encouraged to answer.
8 MR SEMENYA SC: Can I complete that,
9 Chair? The concern that I have, I understand that General
10 Naidoo would have been involved in the shooting, i.e. he
11 shot, not that he was involved in the shooting which is
12 described by Mr Myburgh.
13 CHAIRPERSON: Those are all questions
14 that the witness can deal with, but even if he wasn’t
15 involved physically in shooting, if he was accompanying the
16 person who did and approved his behaviour, it might be a
17 form of involvement. Alternatively, even if he wasn’t
18 involved in the shooting, if he was present and saw it and
19 took no steps to bring the offender to book, that would
20 also be a motive for him not to investigate further –
21 MR SEMENYA SC: But those are -
22 CHAIRPERSON: So the question I think is,
23 even though it is my own question, I think is an
24 appropriate question and I suggest that we give the witness
25 a chance to answer it.

[14:36] GENERAL PHIYE: The person who brings
2 this to my attention and the attention of General Mbombo is
3 first and foremost Major-General Naidoo. We request Major-
4 General Naidoo to then bring the warrant-officer to talk to
5 us. We ask the questions we asked, and we still find that
6 he is saying “I cannot point at the police who did it, I
7 don’t know his name,” and this is when I ask General Mbombo
8 and General Naidoo to further look into this matter, and it
9 is that process that even produces the very statement that
10 we are discussing, because there wasn’t a statement.
11 MR MADLANGA SC: And from that statement
12 and the interaction you had with Mr Myburgh, you came to
13 the conclusion that because he could not give you the
14 identities of the people concerned, this was near
15 impossible to investigate?
16 GENERAL PHIYE: It is not my statement
17 that it was near impossible to investigate. I said I had
18 asked General Mbombo and General Naidoo to pursue this
19 thing, and I think this is how it even lands with the IPID.
20 MR MADLANGA SC: When did you leave it to
21 them to follow up? Was it after you had received Mr
22 Myburgh’s statement?
23 GENERAL PHIYE: On the day it was
24 reported to me, and the progress I was given was that a
25 statement was made, and also that that statement has been

1 handed over to IPID.
2 MR MADLANGA SC: If you say that it is
3 not your statement or evidence that it was near impossible
4 for this matter to be investigated, why then did you even
5 bother to tell this Commission about the fact that you had
6 not been given detail identifying the persons concerned?
7 Of what relevance was that to the questions that I was
8 asking you?
9 GENERAL PHIYE: May I ask you to repeat
10 your question?
11 MR MADLANGA SC: Not so long ago, perhaps
12 in response to one or two questions earlier, or just before
13 now, you said that it is not your evidence that it was near
14 impossible to investigate this matter. Do you remember
15 saying so?
16 GENERAL PHIYE: Yes.
17 MR MADLANGA SC: You spoke at the same
18 time with Mr Hanabe. Can you please repeat your response?
19 There may be problems with the transcription.
20 GENERAL PHIYE: Am I asking you to -
21 MR MADLANGA SC: No, no, no, will you
22 just repeat the answer, the last answer you gave? You
23 spoke at the same time with Mr Hanabe next to you and there
24 may be problems with the transcription.
25 GENERAL PHIYE: Maybe I missed the
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**MR MADLANGA SC:** You have made mention of IPID. Do you have a record of an IPID docket in respect of this matter? I’m not suggesting there isn’t, but this is information that perhaps may be important or relevant for completeness on this subject.

**GENERAL PHIYEGA:** No, we don’t keep those because we are being the police.

**MR MADLANGA SC:** I know that very well. I know that very well. All I’m asking is this; do you know, do you know whether or not there is such a docket, an IPID docket?

**GENERAL PHIYEGA:** No, I don’t, but I’m hoping that the response I was given by General Mbombo that this statement was submitted to IPID, that they had pursued the matter.

**MR MADLANGA SC:** May I refer you to a document that I believe has been placed in front of you, it’s a spreadsheet with several columns. At the top in a horizontal column it has scene 2, and then in vertical columns there’s rounds fired, there’s firearms, rounds fired, cartridges found, and then number, Persal, rank, initials, name, and then below that there are people’s names and a whole lot more information. Do you have that?

**GENERAL PHIYEGA:** No, we don’t keep those numbers and you’re not looking for an interpretation, it’s just from the top to the foot of the first page.

**MR MADLANGA SC:** Yes, yes, first page top to the foot –

**GENERAL PHIYEGA:** It’s just from the top to the foot of the first page.

**MR MADLANGA SC:** Yes, yes, first page top to the foot –

**CHAIRPERSON:** And that’s all the NIU people at scene 2 –

**MR MADLANGA SC:** Yes, yes.

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| **MR MADLANGA SC:** I see there are only four NIU members with 9mm firearms.
| **MR MADLANGA SC:** That’s the next point I was getting to. Now General, if you run your eyes through this, and do you confirm that there are only four NIU members who fired 9mm pistols, and their names appear against numbers 3, 6, 7, 23. Have I given all? Yes. Do you see that?
| **GENERAL PHIYEGA:** I really cannot – I see, 3, 6, 7, 8, but the question you are asking me, I’m not the right person to answer it.
| **MR MADLANGA SC:** General Phiyega, I am not asking you whether for a fact, whether you know for a fact that on the day - and you know this yourself – on the day these four people fired shots there. What I’m asking you is, do you see that this record which we have been furnished by SAPS itself says that of the NIU members who fired shots at scene 2, only four fired shots from 9mm pistols? Do you see that this is what this document reflects? That is my question.
| **GENERAL PHIYEGA:** I would still say to you, you gave me this document two minutes ago. I need time to look at it and I want you to walk me through what you say is NIU and four. If you want me just to look at numbers and you’re not looking for an interpretation, it’s a different story.
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<td>GENERAL PHIYEGA: Yes, I see 23.</td>
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<td>2</td>
<td>MR MADLANGA SC: And that is Constable</td>
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<td>GENERAL PHIYEGA: Correct.</td>
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<td>MR MADLANGA SC: And he is said to have</td>
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<td>fired two rounds with a 9mm pistol.</td>
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<td>7</td>
<td>GENERAL PHIYEGA: Yes, I'm walking now.</td>
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<td>8</td>
<td>MR MADLANGA SC: And I see no other</td>
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<td>constable who is reflected as having fired rounds from a</td>
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<td>9mm pistol. Do you see any other?</td>
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<td>11</td>
<td>GENERAL PHIYEGA: The two you mentioned,</td>
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<td>I've seen. Probably there isn't, because you've had an</td>
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<td>opportunity of perusing this document.</td>
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<td>[14:56] MR MADLANGA SC: Would you accept that</td>
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<td>based on what I've just done now – and to use your</td>
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<td>language, walking you through – do you accept that it would</td>
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<td>he would be able to identify them? But of course, a proper</td>
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<td>CHAIRPERSON: It would be sensible –</td>
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<td>MR MADLANGA SC: A proper identification</td>
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<td>parade might have had to be done, but do you accept that it</td>
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<td>picked out and to be part of an identification parade?</td>
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| 1        | 1        | MR MADLANGA SC: And then go back to the | 1        |
| 2        | 2        | top again, the top of the document, and you will see there, | 2        |
| 3        | 3        | there is 9mm, there's R5, there's shotguns, then there is | 3        |
| 4        | 4        | R5 to the right of the 9mm. Or do you see the 9mm there? | 4        |
| 5        | 5        | GENERAL PHIYEGA: Yes, I do. | 5        |
| 6        | 6        | MR MADLANGA SC: Then you also see under | 6        |
| 7        | 7        | rank, do you see the column marked “Rank?” | 7        |
| 8        | 8        | GENERAL PHIYEGA: Yes, I do. | 8        |
| 9        | 9        | MR MADLANGA SC: And go down again, still | 9        |
| 10       | 10       | against the number 3, do you see that the rank is given as | 10       |
| 11       | 11       | constable? CST, and I assume that means constable. | 11       |
| 12       | 12       | GENERAL PHIYEGA: Yes, I see that. | 12       |

| 1        | 1        | MR MADLANGA SC: And I see no other | 1        |
| 2        | 2        | GENERAL PHIYEGA: And he is said to have | 2        |
| 3        | 3        | fired two rounds with a 9mm pistol. | 3        |
| 4        | 4        | GENERAL PHIYEGA: Yes, I'm walking now. | 4        |
| 5        | 5        | MR MADLANGA SC: And I see no other | 5        |
| 6        | 6        | constable who is reflected as having fired rounds from a | 6        |
| 7        | 7        | 9mm pistol. Do you see any other? | 7        |
| 8        | 8        | GENERAL PHIYEGA: The two you mentioned, | 8        |
| 9        | 9        | I've seen. Probably there isn't, because you've had an | 9        |
| 10       | 10       | opportunity of perusing this document. | 10       |
| 12       | 12       | based on what I've just done now – and to use your | 12       |
| 13       | 13       | language, walking you through – do you accept that it would | 13       |
| 14       | 14       | have been a matter of relative ease for these two | 14       |
| 15       | 15       | constables to be brought to Mr Myburgh in order to see if | 15       |
| 16       | 16       | he would be able to identify them? But of course, a proper | 16       |
| 17       | 17       | – | 17       |
| 18       | 18       | CHAIRPERSON: It would be sensible – | 18       |
| 19       | 19       | MR MADLANGA SC: A proper identification | 19       |
| 20       | 20       | parade might have had to be done, but do you accept that it | 20       |
| 21       | 21       | would have been a matter of relative ease for them to be | 21       |
| 22       | 22       | picked out and to be part of an identification parade? | 22       |

| 1        | 1        | GENERAL PHIYEGA: It could have been, | 1        |
| 2        | 2        | depending on what time the facts are presenting, and I'm | 2        |
| 3        | 3        | hoping that those that I've asked to investigate can answer | 3        |
| 4        | 4        | these questions that you are posing. | 4        |
| 5        | 5        | MR MADLANGA SC: Commissioner, I’m asking | 5        |
| 6        | 6        | this of you. | 6        |
| 7        | 7        | GENERAL PHIYEGA: I have answered to say | 7        |
| 8        | 8        | it could have been. | 8        |
| 9        | 9        | MR MADLANGA SC: Maybe I got confused by | 9        |
| 10       | 10       | the long addition after the “it could have been.” Thank | 10       |
| 11       | 11       | you. Thank you very much, General. General, the next | 11       |
| 12       | 12       | question I’m going to ask refers back to what you said in | 12       |
| 13       | 13       | the media statement, which is that the police shot at the | 13       |
| 14       | 14       | protesters in self defence. That is what I am referring | 14       |
| 15       | 15       | back to, and that is what the context of my next question | 15       |
| 16       | 16       | is. It is not so much that you should anticipate what the | 16       |
| 17       | 17       | findings of this Commission should be. So that is not what | 17       |
| 18       | 18       | I’m asking you. It will be in the context of what you | 18       |
| 19       | 19       | yourself have said. Do you understand that? | 19       |
| 20       | 20       | GENERAL PHIYEGA: Mmm. | 20       |
| 21       | 21       | MR MADLANGA SC: If this Commission were | 21       |
| 22       | 22       | to ultimately draw an inference that the constable that Mr | 22       |
| 23       | 23       | Myburgh saw putting back a firearm into the side or leg | 23       |
| 24       | 24       | holster, had in fact shot at one of the injured people who | 24       |
| 25       | 25       | were lying on the ground, would you still continue to hold | 25       |
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1. the view that in respect of all the people that the police
fired shots at, they did so in self defence? Would you say
that even in respect of such a shot if this Commission were
to find it finally in fair that Mr Myburgh, or rather, in
fair from Mr Myburgh’s evidence, that the constable had
fired a shot at a person lying on the ground?

2. I am consistent in my
view that given the sensitivity, the gravity of this matter
and what it means to all of us, I would be very, very
cautious to answer such a question on presuppositions. I
would answer when I have the real facts. To say it's
hypothetical, I find it difficult to say I would change on
the basis of a hypothesis.

3. I am not asking you to
hypothesise. There was a conscious choice of words on my
part, and I said if ultimately - and I'm not asking you to
hypothesise - if ultimately this Commission were to infer
from what Mr Myburgh says that the unidentified constable
in fact fired a firearm at a protester who was lying
injured on the ground, would you still say, would you still
say that the firing of such a shot was in self defence?

4. I agree fully with what
Mr Bizos is saying, Mr Chairman.

5. The statement goes on
related to scene 2 and you said that you do not know.

6. The witness has given a
reason why she declines to answer this hypothetical
question, which may or may not be a good reason. I don't
think there's any point in pressing her on this particular
issue. As I said, a declension by a witness to answer a
question, albeit a hypothetical one, may in appropriate
circumstances lead to an inference being drawn against her.
If she's prepared to take that chance, that's her choice.

7. Chairperson, you wish to add anything?

8. I agree fully with what
Mr Bizos is saying, Mr Chairman.

9. Yes, it is a hypothetical
question. I'm not sure that the fact that it's a
hypothetical question is the reason why a witness can
refuse to answer it, but if a witness does decline to
answer it and gives that reason, the very declension can
lead to inferences being drawn at a later stage. I don't
know that one need take it further at this stage. The
witness will be aware of the fact that inferences maybe
drawn in the case of questions that she declines to answer.

10. No, but Chair, with
respect, the witness has answered.

11. She said it's a very grave
matter and in the circumstances it wouldn't be appropriate
for her to answer. That's a declension in any language,
but Mr Bizos, you've got a point as well?

12. I merely want to support my
learned friend, because my learned friend on my right has
learned -

13. - microphone on.

14. The police members encircled the area and
attempted to force the protesters out by means of water
cannons, rubber bullets, and stun grenades.” You see that?

15. Yes, I did.

16. The statement goes on
and says, “The police members encircled the area and
attempted to force the protesters out by means of water
cannons, rubber bullets, and stun grenades.” You see that?

17. Yes, I do.

18. You remember that in
response to one of my earlier questions you said that you
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<td>1 did read the SAPS presentation?</td>
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<td>2 GENERAL PHIYEGA: Yes.</td>
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<td>3 MR MADLANGA SC: And you were aware that that presentation so to speak charts the path or course that SAPS proposed to follow by way of the evidence it would present before this Commission. Was that your understanding of the presentation?</td>
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<td>4 GENERAL PHIYEGA: It is my understanding.</td>
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<td>5 MR MADLANGA SC: And without doubt therefore this would have been a very important document, not so?</td>
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<td>6 GENERAL PHIYEGA: Which document? The statement or the presentation?</td>
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<td>7 MR MADLANGA SC: No, no, the presentation. The presentation.</td>
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<td>8 GENERAL PHIYEGA: Yes, it is true.</td>
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<td>9 MR MADLANGA SC: And as such, General, I take it that it is not a document that you would read perfunctorily. It’s a document that you would read with a view to following the contents, not so?</td>
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<td>10 GENERAL PHIYEGA: Yes, it is true.</td>
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<td>11 MR MADLANGA SC: And you did indeed also not read it perfunctorily; you read it in order to understand the contents, not so?</td>
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<td>12 GENERAL PHIYEGA: I sought to do so.</td>
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<td>13 MR MADLANGA SC: No, no, no, I want to make sure that we are still walking together, so to speak, General.</td>
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<td>14 GENERAL PHIYEGA: Yes.</td>
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<td>15 MR MADLANGA SC: Now you say you sought to do so.</td>
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<td>16 GENERAL PHIYEGA: Mmm.</td>
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<td>17 MR MADLANGA SC: I want to know whether you in fact did so, whether you yourself read, in order to understand.</td>
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<td>18 GENERAL PHIYEGA: I did try to read to understand.</td>
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<td>19 MR MADLANGA SC: In that reading, and reading with a view to understanding, would you agree with me that the one bushy area that the police encircled during the operation was scene 2?</td>
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<td>20 GENERAL PHIYEGA: Yes, it could be.</td>
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<td>21 MR MADLANGA SC: I’m not sure I understand the “yes, it could be.” What do you mean by that?</td>
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<td>22 GENERAL PHIYEGA: I am actually saying yes, it could be, because I’m also starting from the fundamental that by the time the statement was done we did not have a scene 1 and a scene 2 and a what and a what. So I think,</td>
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<td>23 I’m actually saying I accommodate that, and I’m saying yes, it could be, based on the fact that I’m mentioning that it took place at scene 2. So you accept that? Or again you at the very least say, could be.</td>
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<td>24 GENERAL PHIYEGA: If I may be allowed just to read that paragraph so that I can answer you.</td>
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<td>25 MR MADLANGA SC: And perhaps you may also have to read the paragraph before that.</td>
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<td>1 have to read the paragraph before that.</td>
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<td>2 GENERAL PHIYEGA: I’ll read it -</td>
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<td>3 CHAIRPERSON: Perhaps, it’s quarter past 3. When is it appropriate that we can take the tea break?</td>
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<td>4 MR MADLANGA SC: It is appropriate now, Mr Chairman.</td>
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<td>5 CHAIRPERSON: It may help the witness to give her a chance to read this -</td>
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<td>6 MR MADLANGA SC: Yes.</td>
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<td>7 CHAIRPERSON: - during the adjournment.</td>
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<td>8 If that can -</td>
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<td>9 MR MADLANGA SC: Yes, Mr Chairman.</td>
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<td>10 CHAIRPERSON: Very well, we’ll take the tea adjournment at this stage.</td>
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<td>11 [COMMISSION ADJourns COMMISSION RESUMES] [15:33]</td>
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<td>12 CHAIRPERSON: The Commission resumes.</td>
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<td>13 National Commissioner, you’re still under oath.</td>
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<td>14 MANGWASHI VICTORIA PHIYEGA: Yes.</td>
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<td>15 MR MADLANGA SC: Mr Madlanga?</td>
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<td>16 MR MADLANGA SC: Mr Mpofu has just signalled to me, Mr Chairman.</td>
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<td>17 MR MPOFU: Yes, thank you, Chairman, just before we – so that we don’t interrupt, there is a small matter that we’d like to dispose of concerned the subpoenaed people. Chair, you’ll remember that they had...</td>
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been remanded for yesterday, the 18th, when we were not
sitting. What has happened is that because of that
confusion, two of them are not here; four are here, and
when we were negotiating with our colleagues to deal with
that situation, it has now become academic in the sense
that the decision has been made by the evidence leaders in
any event to withdraw the subpoenas. So what we propose to
do, Chairperson, subject to confirmation by our colleagues,
is simply to address those that are here and we will then,
the other two that are not here, we will convey to them the
decision. Thank you, Chairperson.

CHAIRPERSON: Do you want them called up,
or are you just happy that you and Mr Madlanga can perhaps
speak to them after we adjourn, and will you see to it
they're paid their witness fees for coming today?

MR MPOFU: Yes, Chairperson, we will.

Thank you.

CHAIRPERSON: I'm sure we don't have to
worry about the present witness; I'm sure she'll be looked
after.

CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
Thank you. Thank you, Mr Chairman. National Commissioner,
I'm sure you have considered the paragraph that I referred
you to, but I can apologise and say that I want to take you
back to the matter relating to Mr Myburgh, just to ask one
thing posed, they would invariable have been involved in the
process.

MR MADLANGA SC: Again my apologies if I
will make you or cause you to repeat what you may have said
already. Are you in a position to give us details of the
feedback that General Mbombo gave you on this subject?

GENERAL PHIYEGA: I will repeat the
issues I have said earlier on, that the warrant-officer was
still not able to point to a person –

MR MADLANGA SC: Commissioner, I'm very
sorry, I'm very, very sorry, General, it's not in my nature
to interrupt a witness in the middle of a response, but I'm
not asking you now about the warrant-officer, who I assume
is Mr Myburgh. Is that so? Mr Myburgh is a warrant-
officer, you say?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: I'm not asking you about
him now. I'm being specific on what you referred to as
feedback. Can you give us details of the feedback that you
yourself were given by General Mbombo? What did General
Mbombo say to you by way of this feedback?

GENERAL PHIYEGA: I was attempting to
give you that feedback. The warrant-officer could still
not point to a person and identify a person that he was

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or two questions around that, and I will then move back to
where I had taken you, that is to the media statement.
Commissioner, I'd like to refer to what you did in respect
of the tampering report at scene 2. The very fact that
I've referred to a tampering report, after you had
instituted an investigation, you actually got a formal
report in writing. You confirm that?

GENERAL PHIYEGA: Yes.

MR MADLANGA SC: The investigation having
been done by Major-General Johnson and the report itself
being signed by I think Lieutenant-General, I think that's
the rank, and the name is Moono, I think it's M-O-O-N-O,
yes. You confirm that?

GENERAL PHIYEGA: It is true.

MR MADLANGA SC: Now did you receive
anything approximating that, did you receive anything with
the appearance of a formal and written report in respect of
the issue that Mr Myburgh had raised?

GENERAL PHIYEGA: I did not receive
anything written down, but I received feedback and the
statement is also part of that feedback.

MR MADLANGA SC: I'm sorry to appear to
belabour this, and the feedback, was it by both Generals
Mbombo and Naidoo, or was it by only one of them?

GENERAL PHIYEGA: The feedback was from

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General Mbombo, and I took it that they, because they were

1 referring to.

2 MR MADLANGA SC: Are you saying this –

3 GENERAL PHIYEGA: What I'm saying is that

4 further to that the warrant-officer had now written a
5 statement, and then I've also said that that statement had
6 been given to IPID.

7 MR MADLANGA SC: Oh, thank you. Thank

8 you, because you started by referring to the warrant-

9 officer I had no idea that in fact what you were saying
10 was, “General Mbombo reported to me that the warrant-

11 officer,” and then, and so on and so on. My apologies

12 there, Commissioner. Now let me take you back to your

13 media statement and the penultimate, or second-last

14 paragraph of page 2. My question, when you said you would

15 have to look at the paragraph, my question was – and I said

16 I would use the word that you had been using – my question

17 was, could it be that what you are referring to there are

18 the events that took place at scene 2 on 16 August 2012?

19 GENERAL PHIYEGA: And I requested to

20 answer you by reading and responding. Remember, reading

21 and responding.

22 MR MADLANGA SC: Please respond, General.

23 GENERAL PHIYEGA: The paragraph that is

24 here, Sir, is “The dispersion action had commenced at this

25 time and the armed protesters were driven from their
### Page 6963

| 1 | strong hold to a high bushy ground in the vicinity. “ | **Page 6964** | 1 | and I used the words, “without qualification” - what other word did I use? But basically whether she says this is what happened and she’s not even willing to qualify it, that was one of the questions that I raised with the witness when I first introduced this subject. Yes, it is so, it is so that not only in response to this, but in response to a whole lot of other questions she did refer to her commanders, but, but as she is testifying here today, she has indicated that she as General Phiyega is willing to say that this she continues to stand by. She went so far, Mr Chairman, she went so far as to say that unless other facts were to be suggested to her, and for as long, effectively therefore for as long as there was no such suggestion of new facts to her, she continued, or rather, she continued to stand by what she had said in this statement. |
| 2 | read that paragraph, it talks about “The dispersion action had commenced at this time,” which means at the source point some dispersion was starting to take place, “and the armed protesters were driven from their stronghold to a high bushy,” high bushy is the second part, so I’d like to understand your question, which side of the sentence are we talking about? | 2 | MR MADLANGA SC: Is the high bushy ground which, when you read that part with the sentence that follows, which says the police encircled it, is that high bushy ground that was encircled not at scene 2? |
| 3 | Mr Chairman, | 3 | Chair, I object. The statement, in particular that a group stormed towards the police, firing shots and wielding dangerous weapons,” and the next sentence reads, “Police retreated systematically and were forced to utilise maximum force to defend themselves,” and that too, you accept, in context must be or could be a reference to scene 2? |
| 4 | these events happened at the scene. To then ask her whether she still insists on this to be fact or not, is completely unfair. | 4 | MR MADLANGA SC: |**Page 6965** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 5 | Commissioners, I asked the question right at the beginning | 5 | Mr Chairman, | 3 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 6 | to them in the context that what they must surely mean is that what is stated in them, that is the two sentences, is something that took place at scene 2. I will proceed to read. “The militant group stormed towards the police, firing shots and wielding dangerous weapons,” and the next sentence reads, “Police retreated systematically and were forced to utilise maximum force to defend themselves,” and that too, you accept, in context must be or could be a reference to scene 2? | 6 | **Page 6966** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 7 | to you continues to be fact and you stand by it, at scene 2? | 7 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 8 | Mr Chairman, | 8 | MR MADLANGA SC: |**Page 6967** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 9 | to you continues to be fact and you stand by it, at scene 2? | 9 | MR MADLANGA SC: | 3 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 10 | to her. We also know that she was present when these events happened at the scene. To then ask her whether she still insists on this to be fact or not, is completely unfair. | 10 | **Page 6968** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 11 | to you continues to be fact and you stand by it, at scene 2? | 11 | MR MADLANGA SC: | 3 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 12 | MR MADLANGA SC: Mr Chairman, | 12 | **Page 6969** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 13 | And I have said yes, it could be. | 13 | MR MADLANGA SC: | 3 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 14 | Now I take you to the last two sentences of that paragraph and you should listen to them in the context that what they must surely mean is that what is stated in them, that is the two sentences, is something that took place at scene 2. I will proceed to read. “The militant group stormed towards the police, firing shots and wielding dangerous weapons,” and the next sentence reads, “Police retreated systematically and were forced to utilise maximum force to defend themselves,” and that too, you accept, in context must be or could be a reference to scene 2? | 14 | **Page 6970** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 15 | And I have said yes, it could be. | 15 | MR MADLANGA SC: | 3 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. |
| 16 | MR MADLANGA SC: You will recall that I said that my next questions are still in the context of what you said, which is that you stand, even as of today you stand by what you said in the media statement. So you even stand by what these two sentences say? | 16 | **Page 6971** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 17 | MR MADLANGA SC: You will recall that I said that my next questions are still in the context of what you said, which is that you stand, even as of today you stand by what you said in the media statement. So you even stand by what these two sentences say? | 17 | **Page 6972** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 18 | CHAIRPERSON: But the point you’re making is - as I understand it, although you don’t quite phrase it that way, but she still says that to the best of her knowledge those are the facts, and if those words are inserted, I think the problem falls away. So please proceed on that basis. | 18 | **Page 6973** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 19 | to you continues to be fact and you stand by it, at scene 2? | 19 | **Page 6974** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 20 | MR MADLANGA SC: You will recall that I said that my next questions are still in the context of what you said, which is that you stand, even as of today you stand by what you said in the media statement. So you even stand by what these two sentences say? | 20 | **Page 6975** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 21 | MR MADLANGA SC: You will recall that I said that my next questions are still in the context of what you said, which is that you stand, even as of today you stand by what you said in the media statement. So you even stand by what these two sentences say? | 21 | **Page 6976** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 22 | no | 22 | **Page 6977** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 23 | no | 23 | **Page 6978** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 24 | no | 24 | **Page 6979** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
| 25 | no | 25 | **Page 6980** | 1 | Yes, yes, yes. | 2 | CHAIRPERSON: She can only rely on the information she was given. |
1. CHAIRPERSON: He added that obviously if other facts come to your knowledge later which contradict that, then it will be different. But please proceed.

2. MR SEMENYA SC: I'm objecting to the question, not to her answer.

3. CHAIRPERSON: No, I know you're objecting to the question –

4. MR SEMENYA SC: The question is, do you still stand by that fact. I'm saying this witness cannot account for facts.

5. CHAIRPERSON: Mr Madlanga, I think Mr Semenya is semantically correct. I think you can alter the phraseology of the question in a way that will permit you to, allow you to proceed.

6. MR MADLANGA SC: Mr Chairman, I don't see this unfairness. I just do not. It is the Commissioner who stood before this nation - and indeed the world, because this was a matter of interest to the world as a whole – she stood there and she is the one who owned what is contained in this press statement. I accept that obviously she was not there, she does not have first-hand information, which is why I am not saying to her is this what actually happened. I am asking her what her view is of what she said to the nation and the world on the day, is she saying today, I continue to say so even today. That is all that I'm asking this witness and I do not, I do not for the life of me understand the objection.

7. CHAIRPERSON: Let me rephrase the question. On the basis of what you know at this stage, do you still stand by the statement that you made?

8. GENERAL PHIYEGA: Judge, I have said to the best of my knowledge and the facts that were presented to me, I would still say those were the facts that I presented on the 17th.

9. [15:53] CHAIRPERSON: I think that's the answer that you sought, Mr Madlanga. I suggest you proceed.

10. MR MADLANGA SC: Thank you, Mr Chairman. I don't see any reason I say, couldn't identify the person; he didn't know his name, couldn't identify his face. But he made allegations about an unknown policeman who behaved, according to him, in a particular way, and so that the fact that one can't find out who it was, although as we've seen it's not necessarily as difficult as you were led to believe, but the fact that one can't identify the policeman concerned doesn't mean that one has to reject in total the possibility of the accuracy of the general statement being not correct. So that's the difficulty I have about that, but anyway, perhaps that can be followed up by Mr Madlanga.

11. I think the point is clear.

12. MR MADLANGA SC: Thank you. Thank you, Mr Chairman. I will look at the transcript in that regard, but I seem to recall that I did refer to standing by them, with or without qualification, so that's all. She might well still stand by what she said, but maybe say "Ag, now in the light of A, B, C, D, I would qualify what I said by saying Y," the letter Y, that is. Now anyway, I was at the point, Mr Chairman, Commissioner, where I was saying I would now take the witness to other facts by means of which I would seek to demonstrate that what the witness said in respect of scene 2 may well not have been correct.

13. CHAIRPERSON: Is that going to take some time? Is your first fact going to take some time? The reason I say that is it's about 1 minute to 4.

14. MR MADLANGA SC: It certainly will, Mr Chairman, and again after taking the witness through that I will ask her whether as of today she still says "What I said on the 17th of August 2012 to the nation and the world..."
was correct" on -

CHAIRPERSON: So she may -
MR MADLANGA SC: On, based on the - yes.
CHAIRPERSON: On the facts, sorry,
whether she will say that is a matter to which we will know
the answer on Monday morning.
MR MADLANGA SC: Yes.
CHAIRPERSON: I'm going to adjourn these
proceedings as far as the hearing of evidence is concerned
until Monday at 10 o'clock, because I understand that the
National Commissioner is not available to be with us
tomorrow because she is required to be at parliament. But
we are going to adjourn the proceedings to have an
inspection in loco tomorrow. We're only able to have an
inspection in loco at the scene of the events of the 13th,
that is to say we will go to – in fact, the suggestion that
I make is that we resume the proceedings at the spot near
the K3 Shaft, the Karee Hostel area, near the railway line
where General Mpembe addressed the group of protesters who
were armed with weapons and suggested that they lay them
down -
MR MADLANGA SC: May I make another
suggestion, Mr Chairman?
CHAIRPERSON: Yes.
MR MADLANGA SC: Some of my colleagues
may be as bad as I am with directions. Would perhaps the
Marikana Police Station not be the best place to meet? I
would imagine it's easier to find, and then from there we
then proceed -
CHAIRPERSON: I'm proposing to be at the
scene, the spot to which I referred, at 9:30.
MR MADLANGA SC: Thank you, Mr Chairman.
CHAIRPERSON: Those who may need
assistance of some kind could possibly go to the Marikana
Police Station at 9:15. So the order I make, insofar as an
order, is the proceedings stand adjourned till tomorrow
morning at 9:30 at the spot near the K3 Shaft at the Karee
Hostel area by the railway line where General Mpembe
addressed a group of the strikers, and we will continue
with the evidence of the National Commissioner on Monday
morning here in Rustenburg at 10 o'clock.
[COMMISSION ADJOURNED]