

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 105 11 JUNE 2013 PAGES 11248 TO 11365



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1 [PROCEEDINGS ON 11 JUNE 2013]
 2 [10:10] CHAIRPERSON: The Commission resumes. We
 3 were asked to wait until certain documents were copied for
 4 us, which has now happened. I want to thank Ms Pillay for
 5 doing that. We're happy to see the National Commissioner
 6 back for what really will be the last lap, I take it. I
 7 think I'd better swear you in again. You probably forgot.
 8 Would you stand, please? You swear that the evidence
 9 you'll give before this resumed sitting of the Commission
 10 will be the truth, the whole truth, nothing but the truth?
 11 Please raise your right hand and say, "I swear, so help me
 12 God."
 13 MANGWASHI VICTORIA PHIYEGA: So help me
 14 God.
 15 CHAIRPERSON: Thank you. Please, you may
 16 be seated. Mr Gumbi.
 17 MS SELLO: Chair, before Mr Gumbi starts
 18 with his cross-examination, may I place myself on record.
 19 I will be attending to the National Commissioner during
 20 this period and doing her re-exam. The name is Sello, S-E-
 21 L-L-O.
 22 CHAIRPERSON: Yes, thank you, Ms Sello.
 23 MS SELLO: Thank you.
 24 CHAIRPERSON: So you'll do the re-
 25 examination –

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1 MS SELLO: Indeed, Chair.
 2 CHAIRPERSON: - once Mr Gumbi is finished
 3 the cross-examination?
 4 MS SELLO: Indeed, Chair.
 5 CHAIRPERSON: Thank you.
 6 MR GUMBI: Yes, thanks Chairperson, and
 7 Commissioners.
 8 CHAIRPERSON: You've given notice that
 9 you're going to use certain documents and Ms Pillay has
 10 very kindly marked them as exhibits already for us.
 11 MR GUMBI: Yes.
 12 CHAIRPERSON: I take it you know the
 13 exhibit numbers already, do you? So we can proceed quite
 14 smoothly.
 15 MR GUMBI: Yes, Chairperson. Some of
 16 them, but I think maybe it will be better if we go through
 17 all sets of documents I distributed, then I mark all of
 18 them as exhibits therefore.
 19 CHAIRPERSON: Alright, shall we do that
 20 now so that before you ask the National Commissioner any
 21 questions –
 22 MR GUMBI: Yes.
 23 CHAIRPERSON: - so that we proceed
 24 smoothly?
 25 MR GUMBI: Yes, Chairperson.

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1 CHAIRPERSON: What I'd been given firstly
 2 is marked FFF34.1, is a document headed "Statement issued
 3 by the South African Human Rights Commission to condemn the
 4 killing of police officers."
 5 MR GUMBI: Yes.
 6 CHAIRPERSON: Dated 24 May, that's
 7 FFF34.1. Is that correct?
 8 MR GUMBI: Yes, Chairperson.
 9 CHAIRPERSON: Then I don't know why it's
 10 34 – oh, then the next document is FFF34.2. It looks like
 11 a document downloaded from the internet. It's headed
 12 "Phiyega : Cop killed every 10 days."
 13 MR GUMBI: Yes, Chairperson.
 14 CHAIRPERSON: Then the next document,
 15 FFF34.3, is a document with two photographs at the top and
 16 then the first line is, "Mthethwa and National Police
 17 Commissioner General Bheki Cele strongly condemn the
 18 killing of two police officers."
 19 MR GUMBI: Yes, Chairperson. It has two
 20 copies, that one.
 21 CHAIRPERSON: There appear to be two
 22 pages of that.
 23 MR GUMBI: Yes.
 24 CHAIRPERSON: And then the next one,
 25 FFF34.4, is a document, "Two more cops gunned down – Bheki

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1 Cele." Is that correct?
 2 MR GUMBI: Yes.
 3 CHAIRPERSON: That bundle of –
 4 MR GUMBI: Yes, Chairperson.
 5 CHAIRPERSON: Then we've got FFF35, it
 6 looks like list of – what's the next word? List of
 7 shooters –
 8 MR GUMBI: Shooters scene 1.
 9 CHAIRPERSON: Shooters or shotists, scene
 10 1.
 11 MR GUMBI: Yes, Chairperson.
 12 CHAIRPERSON: That's 35. Then FFF36 is
 13 copy of the opening statement on behalf of POPCRU. Is that
 14 right?
 15 MR GUMBI: Yes, Chairperson.
 16 CHAIRPERSON: That's 36. Then we've got
 17 some documents which haven't been given exhibit numbers
 18 yet. Now I think these are documents that you gave us
 19 earlier.
 20 MR GUMBI: Yes, I gave it earlier while
 21 we were still in Rustenburg.
 22 CHAIRPERSON: Yes, well the first one is
 23 headed "Save our cops." Is that right?
 24 MR GUMBI: Yes, Chairperson.
 25 CHAIRPERSON: So you want that to be

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1 FFF37?

2 MR GUMBI: FFF37.

3 CHAIRPERSON: Do you?

4 MR GUMBI: Yes, Chairperson.

5 CHAIRPERSON: 37 it will be. Then the

6 next document, which presumably will be 38, FFF38, is "The

7 modus operandi of police killers in four provinces in South

8 Africa."

9 MR GUMBI: Yes.

10 CHAIRPERSON: It's an article by Prof

11 Herman Conradie of the Department of Criminology at UNISA.

12 MR GUMBI: Yes, Chair.

13 CHAIRPERSON: The next one, FFF39, is an

14 article from three surgeons, I think, from the Department

15 of Surgery at the University of Witwatersrand. It's headed

16 "Death and injury on duty : A study of South African police

17 officers." Is that right?

18 MR GUMBI: Yes, Chairperson.

19 CHAIRPERSON: FFF39. FFF40 is a

20 document, article by J Pienaar and S Rothman who are from

21 the North West University, Research Unit for People, Policy

22 and Performance. It's called "Occupational Stress in the

23 South African Police Service."

24 MR GUMBI: Yes, Chair.

25 CHAIRPERSON: FFF40, and then FFF41 is

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1 again an article by Pienaar and Rothman from North West

2 University, and this will be FFF41, as I said. It looks

3 like "Suicide Ideation in the South African Police

4 Service." Is that right?

5 MR GUMBI: Yes, Chairperson.

6 CHAIRPERSON: FFF42 is, looks like a

7 document downloaded from the internet. "Remarks by the

8 Minister of Police EN Mthethwa at the official opening of

9 the South African Police Service Medical Scheme House,

10 Lynnwood, Pretoria." Is that right?

11 MR GUMBI: Yes, Chairperson.

12 CHAIRPERSON: And then we've got FFF43,

13 looks like another speech by the Minister, this time

14 "Remarks by the Minister of Police EN Mthethwa MP on the

15 occasion of the summit against police killings, Birchwood

16 Hotel, Boksburg, Gauteng."

17 MR GUMBI: Yes, Chairperson.

18 CHAIRPERSON: And that appears to be, it

19 looks like the 8th of July 2011.

20 MR GUMBI: Yes.

21 CHAIRPERSON: So those are all the

22 documents that you're going to refer to?

23 MR GUMBI: Yes.

24 CHAIRPERSON: Well, the witness has been

25 sworn in and all the documents are now ready, so you can

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1 start cross-examining.

2 MR GUMBI: Thank you very much,

3 Chairperson, and the Commissioners. National Commissioner,

4 let me take this opportunity to greet you. As a point of

5 entry, National Commissioner, maybe through you,

6 Chairperson, there are a few housekeeping issues that I

7 wanted to convey to the Chairperson and the Commissioners

8 in this proceeding. I would like to place on record,

9 Chairperson and the Commissioners, that at the end of this

10 cross-examination POPCRU is going to withdraw from

11 participating in this Commission, until further notice, and

12 it appreciated the opportunity that has been given to them

13 to participate in this proceeding. They really appreciate

14 that, and furthermore we'd like to place on record that

15 we'll continue to participate in this proceeding,

16 representing Lieutenant-Colonel Baloyi and the families of

17 the late Warrant-Officer Lepaaku.

18 CHAIRPERSON: Sorry, what rank is Officer

19 Baloyi now?

20 MR GUMBI: Lieutenant-Colonel Baloyi.

21 CHAIRPERSON: Is he a Lieutenant-Colonel,

22 is he?

23 MR GUMBI: Yes.

24 CHAIRPERSON: I see, thank you. So we'll

25 still see you, but you'll only be wearing one hat and not

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1 two.

2 MR GUMBI: Yes, Chairperson.

3 CHAIRPERSON: Metaphorically speaking.

4 MR GUMBI: Yes.

5 CHAIRPERSON: Alright, is that the

6 housekeeping?

7 MR GUMBI: Yes, those are the

8 housekeeping issues.

9 CHAIRPERSON: So you're now ready to bowl

10 your first delivery at the witness?

11 CROSS-EXAMINATION BY MR GUMBI: Yes,

12 Chairperson. National Commissioner, maybe as a point of

13 entry let me identify the parties I represent as I'm cross-

14 examining you right now. In this proceeding I represent

15 POPCRU. I represent Lieutenant-Colonel Baloyi, the

16 families of the late Warrant-Officer Lepaaku who was hacked

17 to death by the armed protesters on the 13th of August 2012.

18 Maybe to make a correction on that, Chairperson, Lieutenant

19 Baloyi and the families of the late Warrant-Officer

20 Lepaaku. Ja, National Commissioner, the widow of the late

21 Warrant-Officer Lepaaku, her entire family, and the mother

22 of the late Warrant-Officer Lepaaku, they are also keen to

23 know the circumstances surrounding the brutal attack of

24 Warrant-Officer Lepaaku, and Lieutenant Baloyi also again

25 on the other hand, he's so keen to know the circumstances

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1 surrounding his attack on the 13th of August 2012. There
 2 are two topics I wanted to discuss with you, National
 3 Commissioner, and those two topics, they emanate from
 4 paragraph 11 of your statement, that is FFF3, is the
 5 reference in that regard. Can I refer you to your
 6 statement, paragraph 11. Are you in possession of that
 7 statement, FFF3, paragraph 11?
 8 GENERAL PHIYEGA: Yes, I am.
 9 MR GUMBI: Paragraph 11 of your
 10 statement, National Commissioner, you raise two issues; the
 11 issue of police killing in South Africa and the issue of
 12 Employee Health and Wellness. Do you see that?
 13 GENERAL PHIYEGA: Yes, I do.
 14 MR GUMBI: POPCRU's opening remarks in
 15 this Commission, we raised these issues of police killing.
 16 We made a submission that when the Commission makes its
 17 recommendation to be submitted to the President, one of the
 18 issues that the Commission must look at is the high rate of
 19 police killing in South Africa. That's why I wanted to
 20 discuss this topic with you, and the reason why we said
 21 this Commission must look at this issue, it is because the
 22 late Warrant-Officer Lepaaku and Lieutenant Baloyi, who
 23 survived the brutal attack of armed protesters on the 13th
 24 of August 2012, were our members as POPCRU. We further
 25 made a submission to this Commission that the working

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1 conditions of SAP members is one of the issues that this
 2 Commission must look at when compiling its report to be
 3 submitted to the President. So when we debate these two
 4 topics, National Commissioner, I want you and me to confine
 5 ourselves to facts presented, or to be presented in this
 6 Commission, especially the incident of the 13th of August
 7 2012 wherein two police officers were killed and one police
 8 officer survived the brutal attack of these armed
 9 protesters.
 10 Let's deal with the first topic, the one dealing
 11 with police killing in South Africa. Firstly I will deal
 12 with your general understanding of police killing in South
 13 Africa in brief; thereafter I will stick to the facts
 14 presented before this Commission. Paragraph 8 of your
 15 statement, you indicated that the SAPS have a staff
 16 complement of 200 000.
 17 GENERAL PHIYEGA: Yes, it is true.
 18 MR GUMBI: And you'll not deny that
 19 POPCRU has a membership of more than 150 000 members in the
 20 South African Police Service?
 21 GENERAL PHIYEGA: Yes, it is true.
 22 MR GUMBI: And you will not agree if I
 23 put it to you, National Commissioner, that the majority of
 24 those –
 25 CHAIRPERSON: You say "you will not

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1 agree." I think you mean "you will not disagree?"
 2 MR GUMBI: Yes, Chairperson. Thanks for
 3 that correct, Chairperson. I'm indebted. You'll not
 4 disagree if I put it to you, National Commissioner, that
 5 the majority of those men and women in blue who are killed
 6 in the line of duty, they are POPCRU members? The late
 7 Warrant-Officer Lepaaku and Lieutenant Baloyi, who survived
 8 the brutal attack on the 13th of August 2012, was POPCRU
 9 member.
 10 GENERAL PHIYEGA: Yes, it's true.
 11 MR GUMBI: And further in paragraph 11 of
 12 your statement, FFF8, you indicated that between 2010 to
 13 2012, there were 907 attacks on police both on duty and off
 14 duty, and 107 police officers had been killed on duty and
 15 off duty. You see that?
 16 GENERAL PHIYEGA: I see that.
 17 MR GUMBI: Will I be correct, National
 18 Commissioner, that these figures include those two police
 19 officers who were killed on the 13th of August 2012? That
 20 is the late Warrant-Officer Lepaaku and the late Warrant-
 21 Officer Monene, and Baloyi, who survived that attack?
 22 GENERAL PHIYEGA: It would not include
 23 the two because that was the financial year ending March.
 24 MR GUMBI: So will I be correct that they
 25 were included in the next financial year?

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1 GENERAL PHIYEGA: It is correct.
 2 MR GUMBI: Up to date, National
 3 Commissioner, is it possible to tell us how many police
 4 officers that had been killed in the line of duty since
 5 then, since March up to date?
 6 CHAIRPERSON: I'm sorry to interrupt you.
 7 You said FFF8. You're referring actually to FFF3.
 8 MR GUMBI: FFF3, the statement of the
 9 National Commissioner, Chairperson. I do apologise.
 10 GENERAL PHIYEGA: In the financial year,
 11 the financial year that ended last year, that ended in
 12 March this year, we had 82 deaths.
 13 MR GUMBI: Both police officers that were
 14 killed on duty and off duty?
 15 GENERAL PHIYEGA: Yes, it is true.
 16 [10:30] MR GUMBI: Let's move on. Furthermore,
 17 in paragraph 1 of your statement FFF3, you indicated that
 18 you were appointed as National Commissioner on the 12th of
 19 June 2012.
 20 GENERAL PHIYEGA: Yes, it is true.
 21 MR GUMBI: On the 13th of August 2012,
 22 shortly after you took office as the National Commissioner,
 23 you were vocal on this issue of high rate of police killing
 24 in South Africa. You were quoted by the media, if I can
 25 refer you to one of the exhibits, extracts, media extract

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1 we distributed, that is FFF34.2. Are you in possession of
 2 that, with the heading, "Phiyega : Cop killed in every 10
 3 days."
 4 CHAIRPERSON: This is FFF34.2. Is that
 5 right?
 6 MR GUMBI: Yes, 34.2. And this statement
 7 was, you were quoted on the 13th of August 2012, the day
 8 wherein the late Warrant-Officer Monene and Lepaaku were
 9 killed by armed protesters, you were quoted saying, "A
 10 police officer has been killed in every 10 days since
 11 National Commissioner Riah Phiyega took office." Do you
 12 see that?
 13 GENERAL PHIYEGA: Yes, I see that.
 14 MR GUMBI: The next paragraph you further
 15 said, "At least six officers have been murdered while on
 16 duty in the past 60 days that I have been in office," and
 17 down there you were further quoted that, "The people who
 18 murder police officers - our sons, nieces, nephews, and
 19 daughters - we need communities' help to fight this." As
 20 of now, National Commissioner, can you tell this honourable
 21 Commission whether in South Africa in every 10 days a cop
 22 is still killed in the line of duty?
 23 GENERAL PHIYEGA: I think the 10 days
 24 should be contextualised. It was 60 days of my being there
 25 and it was that six police persons who had died at that

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1 point in time, and I was saying for the period that I was
 2 there it meant every 10 days a police was being killed.
 3 MR GUMBI: You know the reason why I'm
 4 asking this question, National Commissioner, it is because
 5 I think yesterday my client received another bad news that
 6 another award-winning Gauteng top detective around Soweto
 7 yesterday was gunned down.
 8 GENERAL PHIYEGA: It's true.
 9 MR GUMBI: And he was attending a robbery
 10 scene and he was gunned down there. So that's why I'm
 11 asking you that as of today, are we still experiencing this
 12 problem of having police officers killed in the line of
 13 duty in every 10 days? I understand what you said on the
 14 13th of August 2012. I'm talking about the current
 15 situation, because my client is receiving bad news of
 16 police officers being killed in the line of duty now and
 17 then.
 18 CHAIRPERSON: What's your question for
 19 the witness?
 20 MR GUMBI: As of today –
 21 CHAIRPERSON: Well, if you take the
 22 figure she gave us, which is 82 in the financial year, that
 23 works out on just under four, every four and a half days a
 24 member of the police service is killed.
 25 GENERAL PHIYEGA: Thank you.

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1 CHAIRPERSON: So in her first 60 days,
 2 according to what she told the newspapers, it was six in 10
 3 days, which is one every 10 days. If you take the figure
 4 that she gave us, 82, and divide 365 by that, you get just
 5 under four and a half. So in fact it's worse over the
 6 whole financial year than it was over her first 60 days.
 7 Isn't that so?
 8 MR GUMBI: Yes, Chairperson, if I may
 9 establish that from the witness.
 10 CHAIRPERSON: That information she's
 11 already given us. So obviously she's aware of the
 12 seriousness of the problem and that just under every five
 13 days a member of the service is killed. That is so, isn't
 14 it?
 15 GENERAL PHIYEGA: It is true.
 16 CHAIRPERSON: I'm sure it's a matter of
 17 great concern to you and all your, the generals and others
 18 who assist you at The Wachthuis in Pretoria. Is that
 19 correct?
 20 GENERAL PHIYEGA: It is a very serious
 21 concern for us.
 22 MR GUMBI: Thanks very much, Chairperson,
 23 and National Commissioner. Will I be correct furthermore,
 24 while we are still on that aspect, National Commissioner,
 25 that you are not the only one who raised the issues of high

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1 rate of police killing in South Africa? Even your
 2 predecessor, Mr Bheki Cele, have raised these issues. If I
 3 can refer you FFF34.4 distributed before this Commission.
 4 Are you in possession of that extract, media extract?
 5 GENERAL PHIYEGA: Mmm.
 6 MR GUMBI: On the 26th of May 2012 Mr
 7 Bheki Cele was quoted by the media, wherein he described
 8 the high rate of police killing as a national crisis, if I
 9 can read it to you. Paragraph 4 of that newspaper article,
 10 or media statement issued by SABC, "The National
 11 Commissioner General Bheki Cele, has strongly condemned
 12 this killing. It is indeed a crisis. The rate at which
 13 our officers are being callously gunned down is extremely
 14 alarming." Is it correct, National Commissioner, do you
 15 share the same sentiment that the high rate of police
 16 killings in South Africa, it is a national crisis?
 17 CHAIRPERSON: I doubt whether the
 18 National Commissioner will disagree with her predecessor on
 19 that point, but I imagine you yourself regard this as a
 20 very serious matter which requires, and one hopes is
 21 receiving the greatest possible attention that can be given
 22 to it in the circumstances. Is that correct?
 23 GENERAL PHIYEGA: It is correct.
 24 MR GUMBI: And furthermore, even the
 25 Minister of Police in South Africa was once quoted by the

<p style="text-align: right;">Page 11264</p> <p>1 media, saying that the killing of a single police officer 2 robs the nation. Do you share those same sentiments with 3 the Minister of Police? 4 GENERAL PHIYEGA: It's correct, because 5 306 members – 306 citizens are robbed of proper security 6 and care by the police. 7 MR GUMBI: Would I be correct also again, 8 National Commissioner, that even other sectors of our 9 community have condemned this aspect of high rate of police 10 killing in South Africa? In that regard can I refer you to 11 a media statement issued by Human Rights Commission of 12 South Africa, that is FFF3.41. 13 CHAIRPERSON: Sorry to be pedantic, but 14 FFF34.1 15 MR GUMBI: Yes. 16 CHAIRPERSON: It relates to the same 17 incident that was dealt with in the other exhibits, namely 18 the killing of Warrant-Officer Matthee and Student- 19 Constable Cloete. 20 MR GUMBI: Yes. 21 CHAIRPERSON: And also which was referred 22 to earlier, in Kraaifontein in Cape Town. 23 MR GUMBI: Yes. 24 CHAIRPERSON: And also it refers to the 25 killing of Captain Hlengwa and Constable Hlangulela in</p>	<p style="text-align: right;">Page 11266</p> <p>1 been a very strong partner, and other labour unions that we 2 also have, and we are truly grateful for their efforts. 3 MR GUMBI: Under this campaign POPCRU is 4 demanding that when the police officer is killed in the 5 line of duty, like the late Warrant-Officer Monene and 6 Lepaaku, the South African flag and the SAPS flag in all 7 government institutions must fly lower to honour that 8 police officer killed in the line of duty. As the National 9 Commissioner, will you consider such initiative and 10 implement it? 11 GENERAL PHIYEGA: Perhaps what I could 12 say, Mr Gumbi, is that that was one of the recommendations 13 that came out of the summit, that you have as FFF34.3 of, 14 that the Minister held with many stakeholders. We are in 15 the process of implementing a number of those 16 recommendations, including training, including 17 interventions for the police, including looking at what we 18 do with the orphans. So it is, it's also under 19 consideration. 20 MR GUMBI: Thanks very much, 21 Commissioner. Let us focus now on facts presented before 22 this Commission, or facts to be presented before this 23 Commission on this topic of police killing in South Africa. 24 In that regard can I refer you to FFF6 that was distributed 25 during your evidence-in-chief? That's a tribute by General</p>
<p style="text-align: right;">Page 11265</p> <p>1 Durban. 2 MR GUMBI: Yes, and the Human Rights 3 Commission was quoted, saying that, "The killing of a 4 police officer undermined the proper functioning of the 5 criminal justice system. A proper functioning criminal 6 justice system is one of the key requirements in the 7 protection of human right and the stability of the 8 country's democracy." Do you see that at the bottom? 9 GENERAL PHIYEGA: Yes, I noted that. 10 MR GUMBI: Do you share the same 11 sentiment with the Human Rights Commission on this aspect, 12 National Commissioner? 13 GENERAL PHIYEGA: Yes, I do. 14 MR GUMBI: In wrapping up this aspect, 15 National Commissioner, your general understanding of this 16 topic, are you aware, National Commissioner, that my client 17 POPCRU has launched an anti-police killing campaign with 18 the theme saying, "Say no to police killing : Protect and 19 defend them," and the purpose of this campaign is to 20 educate the community about the role of the police in our 21 democratic country and try to change the mindset of our 22 community about the role of the police. 23 GENERAL PHIYEGA: I think POPCRU as a 24 stakeholder, I'm aware of their effort to assist also in 25 this regard, joining many other civil societies. They had</p>	<p style="text-align: right;">Page 11267</p> <p>1 Mbombo at the funeral service of the late Warrant-Officer 2 Lepaaku. 3 CHAIRPERSON: You remember the evidence 4 was that this was a speech prepared for delivery by the 5 Provincial Commissioner, but the National Commissioner 6 herself went to the funeral and delivered the speech in 7 person. 8 MR GUMBI: Yes, Chairperson. 9 CHAIRPERSON: So it's actually, despite 10 the heading, it's actually a speech delivered by this 11 witness. 12 MR GUMBI: But it was introduced during 13 her evidence-in-chief. 14 CHAIRPERSON: Yes, that's right, in the 15 course of her evidence – 16 MR GUMBI: Yes. 17 CHAIRPERSON: - she said, "I made a 18 speech at the funeral. It had been prepared for delivery 19 by the Provincial Commissioner, but I went to the funeral 20 and I delivered the speech myself." That's her evidence. 21 MR GUMBI: Yes, Chairperson. Ja, let us 22 focus, if I can refer you to page 3, paragraph 4 of that 23 exhibit FFF6. According to this tribute, National 24 Commissioner, if we are focusing on the resume of the late 25 Warrant-Officer Lepaaku, when he was killed by these armed</p>

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1 protesters on the 13th of August 2012 he had 23 years
2 experience as a police officer, no disciplinary action or
3 step ever taken against him until his death. In 2005 he
4 received SAPS 10 years commemoration medal. In 1998 he
5 received another SAPS 10 years loyal service medal, and a
6 20 years loyal service medal in 2008. Do you see that? So
7 the question is, National Commissioner, will you agree with
8 me that these are the qualities of a good police officer?
9 We need this type of police officer in our SAPS.

10 GENERAL PHIYEGA: You are very right.

11 MR GUMBI: The same applies to the late
12 Warrant-Officer Monene, who was killed by the armed
13 protesters on the 13th of August 2012 again, and when you
14 check his CV, it's not reflected on that exhibit FFF6, but
15 I've been advised that he had 23 years of experience as a
16 police officer, and no disciplinary action or steps ever
17 taken against him until his death.

18 [10:50] Warrant-Officer Monene had 10 years loyal service
19 medal, 20 years loyal service medal, awarded to him by
20 SAPS. Would you agree with me again, National
21 Commissioner, that even the late Warrant-Officer Monene was
22 a good police officer, and we need this type of police in
23 our service?

24 GENERAL PHIYEGA: Yes, I agree.

25 MR GUMBI: Okay, let us move on now. Let

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1 us deal with the general circumstances of police killing
2 and the motive for police killing in South Africa, and in
3 discussing this topic we'll try as much as we can to keep
4 to facts presented before this Commission. Can I refer you
5 to FFF37? That's the research conducted by the Centre for
6 the Study of Violence and Reconciliation, and the title of
7 that research is saying, "Save our cops : Prevent police
8 killing," and I hope, National Commissioner, you don't have
9 a reason to doubt their finding on this one. According to
10 this research it is suggested that one of the possible
11 explanations why South Africa has such a rate of police
12 killing, it's because South Africa is a violent society.
13 So when we checked evidence presented before this
14 Commission, exhibit L that was compiled by the police
15 wherein they explain how violence escalated around
16 Marikana, video footage is played before this Commission.
17 Do you agree with this finding that the reason why we have
18 such a high rate of police killing is because South Africa
19 is a violent society?

20 GENERAL PHIYEGA: There is violence, but
21 I think you have a mixed type of situation. There are
22 areas where there is violence, where we find ourselves
23 having to intervene as police, but also there are areas of
24 the society where one would say indeed we are having
25 peaceful sections of our existence as a society.

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1 MR GUMBI: The research further indicates
2 that the motive for police killing furthermore is to rob
3 them of their service pistols, and when you check an
4 address by the Minister of Police, that is FFF44 on the 8th
5 of July 2011 –

6 COMMISSIONER HEMRAJ: I think it's
7 exhibit FFF43.

8 MR GUMBI: 43, I'm sorry. I'm sorry,
9 Chairperson, sorry. FFF43, and thanks very much,
10 Commissioner. When you check there, the Minister indicated
11 that 8% of police officers that were killed were being
12 robbed of their service pistol. Do you see that?

13 GENERAL PHIYEGA: Mmm.

14 MR GUMBI: And when you check facts
15 presented before this honourable Commission, on the 13th of
16 August 2012 the police officers were robbed of two 9mm
17 pistol, one R5, one shotgun, and a police hand radio. So
18 do you agree with these findings, National Commissioner,
19 that one of the motives for police killing is to rob them
20 of their service pistol?

21 GENERAL PHIYEGA: It is true that we lose
22 guns in a number of incidences where there is confrontation
23 with the criminals.

24 MR GUMBI: And further the Minister in
25 that address further indicated that 20% of the police

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1 officers were killed while responding to a crime during
2 search and seizure or conducting follow-up operation. Do
3 you see that?

4 GENERAL PHIYEGA: Mmm.

5 MR GUMBI: And the facts presented before
6 this Commission indicates that Warrant-Officer Lepaaku, the
7 late Warrant-Officer Lepaaku, the late Warrant-Officer
8 Monene, and the Lieutenant Baloyi who survived the brutal
9 attack of protesters on that day, they were deployed there
10 at Marikana to maintain law and order. The same applies to
11 the police officer who was gunned down yesterday around
12 Soweto. He was killed while attending a robbery scene. Do
13 you agree with these findings?

14 GENERAL PHIYEGA: Yes, I do.

15 MR GUMBI: Let us move on again, National
16 Commissioner. Can I refer you to FFF38? That is the
17 research conducted by Prof Herman Conradie of the
18 University of South Africa, Department of Criminology. The
19 title of the research is titled, "The modus operandi of
20 police killers in four provinces in South Africa," and I
21 hope you don't have a reason to doubt his finding.

22 GENERAL PHIYEGA: Mmm.

23 CHAIRPERSON: Just for the record, as far
24 as I can see this article by Prof Conradie was published in
25 a journal called Crime Research in South Africa in April

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1 2001. Is that correct?
 2 MR GUMBI: Yes. He analysed the modus
 3 operandi of police killers in South Africa, and when we
 4 analyse his finding, National Commissioner, we'll also
 5 stick to facts presented before this Commission. I want
 6 you to focus on paragraph 6, dealing with his findings now.
 7 We'll go through some findings. I'm not going to go
 8 through all of them. The quite interesting finding he made
 9 is that the police attackers are on foot or they are using
 10 public transport, as a typical example. When you look at
 11 facts presented before this Commission, on the 13th of
 12 August 2012 the video footage of those armed protesters who
 13 later killed the late Warrant-Officer Lepaaku and Monene
 14 and they attacked Lieutenant Baloyi, they depict that those
 15 people, they were on foot, who attacked those police
 16 officers. Do you agree with that?
 17 GENERAL PHIYEGA: Yes, I do know that on
 18 the 13th the –
 19 MR GUMBI: Another finding also suggests
 20 that the police attackers use shooting, stabbing and
 21 physical force to attack. Do you see that? And when we
 22 check evidence presented before this Commission, the
 23 statement of Lieutenant Baloyi and the other police
 24 officers – we are not going to go through all those
 25 statements – they corroborate this finding on that the late

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1 Warrant-Officer Lepaaku and Monene and Lieutenant Baloyi,
 2 they all sustained stab wounds. And furthermore it also
 3 indicates that the police attackers, they also shoot, stab,
 4 and use force more on police officers than on female police
 5 officers. On the 13th of August 2012 the late Warrant-
 6 Officer Lepaaku, Monene, and Lieutenant Baloyi, who
 7 survived the attack, were male police officers. You agree
 8 with that finding?
 9 GENERAL PHIYEGA: Yes, I do.
 10 MR GUMBI: The research further suggests
 11 that the younger the attackers, the more they shoot, stab,
 12 and use physical force, and when you look at the video
 13 footage of the 13th of August 2012, those protesters who
 14 shot and killed the late Warrant-Officer Lepaaku and Monene
 15 and who attacked Lieutenant Baloyi, they were young. Those
 16 were the young attackers.
 17 GENERAL PHIYEGA: We noted that.
 18 MR GUMBI: And the research further
 19 suggests that these police attackers, they utilise handguns
 20 when executing attacks. So on the 13th of August 2012, it's
 21 indicated before this honourable Commission that four
 22 protesters who were responsible for the attack of the late
 23 Warrant-Officer Lepaaku, Monene, and Lieutenant Baloyi,
 24 they were pursued by TRT members and they were shot at with
 25 some of the weapons robbed from the SAPS members. Do you

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1 agree with that finding, National Commissioner?
 2 GENERAL PHIYEGA: I noted that –
 3 MR MSIMANG: Chairperson, this evidence
 4 was never led, the evidence that my learned friend that
 5 they were pursued and they were shooting back, there's no
 6 such evidence on record.
 7 CHAIRPERSON: I understand there will be
 8 such evidence in due course, so perhaps he can put it –
 9 it's in the statements that we've seen. He can put it on
 10 the basis provisionally that that's what the statements
 11 indicate and we understand that evidence will be led to
 12 that effect.
 13 MR GUMBI: It is in exhibit L,
 14 Chairperson –
 15 CHAIRPERSON: The point is that that's
 16 not evidence yet. You see, it's evidential material.
 17 MR GUMBI: Yes.
 18 CHAIRPERSON: But your point, I take it,
 19 is it's evidential material before us; it's also covered I
 20 think in some of the statements we've received, and there
 21 will presumably be evidence, either oral evidence or
 22 evidence on affidavit to that effect. So you can
 23 provisionally put it.
 24 MR GUMBI: Thanks very much, Chairperson.
 25 And the research further indicates that the police

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1 attackers, they ambush the police officials. Do you see
 2 that?
 3 GENERAL PHIYEGA: I read the outcome.
 4 MR GUMBI: And also again they attack the
 5 police officers on duty.
 6 GENERAL PHIYEGA: Yes, it's true.
 7 MR GUMBI: The research further indicates
 8 that when the police are interacting with the public, they
 9 are most vulnerable. Do you agree with that finding?
 10 GENERAL PHIYEGA: I would say there are
 11 circumstances where they are very vulnerable and it becomes
 12 very challenging and traumatic, but in some of the
 13 instances, like I've mentioned that there are peaceful
 14 marches that we get involved in where the vulnerability is
 15 not as strong as that. So you have situations where there
 16 will be vulnerability. You have situations where there
 17 wouldn't be vulnerability.
 18 MR GUMBI: In wrapping up this aspect of
 19 police killing in South Africa, National Commissioner, I
 20 wanted to check with you as to what are the police doing to
 21 resolve this issue of high rate of police killing and
 22 robbery of their firearms, as a department?
 23 GENERAL PHIYEGA: I think we recognise
 24 the fact that policing is not an easy job. It is a very,
 25 very challenging task, particularly when you have to

<p style="text-align: right;">Page 11276</p> <p>1 confront criminals. We also recognise that as a result of 2 that, the members experience a lot of trauma, and it is for 3 that reason that we have a well-established Employee and 4 Health Wellbeing division to try and intervene and assist 5 members in such instances. 6 [11:10] We also try as much as possible through our 7 training processes to train them to be more cautious and to 8 be better equipped to intervene in such circumstances. 9 Included in that training is also tips on how to intervene, 10 never to operate alone, to try and be in teams, because 11 when they are in teams and not alone the vulnerability gets 12 significantly reduced. 13 MR GUMBI: Yes, Chairperson, I have noted 14 that it's almost quarter past 11 and I wanted to briefly 15 deal with a second topic – 16 CHAIRPERSON: I suppose, because we 17 started late for the reasons I explained when we began, I 18 thought that we could carry on till about quarter past 11, 19 but when you reach a suitable stage when you think it's 20 convenient for us to take the adjournment, we'll do so. 21 MR GUMBI: Yes. 22 CHAIRPERSON: Is this such a stage, or do 23 you want to make a point first before we adjourn? 24 MR GUMBI: We can adjourn, because I 25 wanted to deal with a second topic briefly, the issue of</p>	<p style="text-align: right;">Page 11278</p> <p>1 conducted by Mr Frank Blunt titled "Death and injury on 2 duty : A study of South African police officers." Do you 3 see that? 4 CHAIRPERSON: You haven't told us this, 5 but I see from the foot of one of the pages that this was 6 an article that was published in the South African Medical 7 Journal – 8 MR GUMBI: Yes, South African Medical 9 Journal. 10 CHAIRPERSON: - in November 2003. Is 11 that correct? 12 MR GUMBI: Yes, Chairperson. Can I refer 13 you to the last page of that research by South African 14 Medical Journal? This study, National Commissioner, 15 analysed injury sustained by members of SAPS on duty and 16 according to this study it indicates that there is a high 17 degree of psychological distress in the SAPS. When you 18 look at paragraph 2 of the last page, starting with, 19 "Although police officers have commonly been referred to as 20 high-risk group of suicide," do you see that? That 21 paragraph? 22 GENERAL PHIYEGA: Yes. 23 MR GUMBI: When you go down there, 24 National Commissioner, there is a sentence in that 25 paragraph, it starts with – can I quote it, it says, "In</p>
<p style="text-align: right;">Page 11277</p> <p>1 Employee Health and Wellness, with the National 2 Commissioner. 3 CHAIRPERSON: I see. Very well, we'll 4 now take the tea adjournment. 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [11:39] CHAIRPERSON: The Commission resumes. 7 National Commissioner, you're still under oath. 8 MANGWASHI VICTORIA PHIYEGA: s.u.o. 9 CHAIRPERSON: Mr Gumbi, you want to move 10 on to the next topic? 11 CROSS-EXAMINATION BY MR GUMBI (CONTD.): 12 Thank you very much, Chairperson and Commissioners. 13 National Commissioner, can I briefly discuss the second 14 topic you raise in paragraph 11 of your statement, FFF3, 15 the topic dealing with Employee Health and Wellness, and 16 again when we discuss this topic I will try as much as I 17 can to confine myself to facts presented or to be presented 18 before this Commission. Paragraph 11 of your statement you 19 indicated that, "Employee Health and Wellness Programme are 20 offered to SAPS members to address this aspect of 21 psychological, spiritual, and social aspect of SAP members 22 when executing their duties." Do you see that? 23 GENERAL PHIYEGA: Yes, I do. 24 MR GUMBI: In that regard, National 25 Commissioner, can I refer you to exhibit FFF39, the study</p>	<p style="text-align: right;">Page 11279</p> <p>1 addition, police officers who have been injured on duty may 2 express anxiety about returning to work as police officer, 3 or may not be able to return at all due to psychological 4 distress." Do you see that? When you check facts 5 presented before this Commission, Lieutenant Baloyi was 6 brutally attacked by armed protesters on the 13th of August 7 in full view of his colleagues on that day. So do you 8 agree with this finding that the police officer who has 9 been injured on duty may express anxiety about returning to 10 work as a police officer? 11 GENERAL PHIYEGA: Yes, I do. 12 MR GUMBI: Furthermore, in this medical 13 literature it also proposes that the interactions between 14 the department and the bereaved family of the killed police 15 officer can lower that psychological distress. So the 16 question is, I want to know from you, National 17 Commissioner, as to what the department is doing to address 18 this critical aspect on those police officers who have been 19 injured on duty? 20 GENERAL PHIYEGA: Advocate, as I've 21 indicated, we have a full department of Employee Health and 22 Wellbeing. In addition to that, maybe let me talk about 23 the department. The department has a multiplicity of 24 diverse professionals who are trained in the environment of 25 assisting our members in employee wellbeing. In that</p>

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1 department we have chaplains that are full-time employees
 2 of the department. We have employed psychologists. We
 3 have employed social workers. We have also engaged lay
 4 counsellors. In addition through the support of our
 5 medical aid POLMED, we also sourced, or outsourced some of
 6 the services to similar professionals as psychologists and
 7 social workers where the need arises.
 8 MR GUMBI: Are you done?
 9 GENERAL PHIYEGA: Yes, and ordinarily we
 10 expect the commanders to – there are certain instances
 11 where it is compulsory when there has been an action, for
 12 members to attend this counselling, but we are almost
 13 starting to move into a space where we are discussing
 14 policy to look at making this counselling mandatory for our
 15 members.
 16 MR GUMBI: Can I also, National
 17 Commissioner, refer you to another quite interesting study
 18 furthermore on this topic, FFF41, South African Journal of
 19 Psychology 2005, is a research conducted by North West
 20 University. According to this study, National
 21 Commissioner, this study indicates, or suggests that in the
 22 South African Police Service we have high suicide rate
 23 compared to the rate of the general population and those of
 24 other professions. It is further indicated that the low-
 25 rank police officers, they are more inclined to commit

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1 suicide, opposed to high-rank police officers, and the
 2 reason why they are more prone to commit suicide, that is
 3 the lower-ranking police officers, is because they are
 4 operational; they deal with operational issues on daily
 5 basis, and they also resort to alcohol abuse to reduce the
 6 high level of stress. Do you see that? Do you have a
 7 reason to doubt these findings?
 8 CHAIRPERSON: Before you answer the
 9 question, I want to ask you something, Mr Gumbi. This
 10 article was published in 2005 in the Journal of Psychology.
 11 MR GUMBI: Yes.
 12 CHAIRPERSON: It contains certain
 13 recommendations –
 14 MR GUMBI: Yes.
 15 CHAIRPERSON: That's eight years ago, or
 16 –
 17 MR GUMBI: Yes.
 18 CHAIRPERSON: Seven and a half, eight
 19 years. It contains certain recommendations. One of the
 20 documents you've given us is this document from the – which
 21 you've referred to in the medical journal –
 22 MR GUMBI: Yes.
 23 CHAIRPERSON: - which was admittedly
 24 published earlier in 2003, but that says on one of the
 25 pages you referred us to, on the third page, that – it's

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1 the second, it's on the left-hand side of the page on the
 2 third, second paragraph, the third page, "Although police
 3 officers are commonly being referred to as a high-risk
 4 group for suicide," and there's an American citation, "a
 5 minority of injuries in this series fell in that category."
 6 This of course is research done at the Milpark Hospital in
 7 Johannesburg. "This finding concurs with others recent
 8 studies that have explored suicide in police units and have
 9 been unable to show elevated suicide rates among police
 10 officers. Nevertheless, stress on SAPS members can be
 11 extreme and commanders must be alert to signs of
 12 psychological distress," and then there's the passage that
 13 you read.
 14 MR GUMBI: Yes.
 15 CHAIRPERSON: Now obviously this is an
 16 important aspect that we have to consider for purposes of
 17 our work as a Commission, but I would be interested in two
 18 things, and perhaps the Commissioner can help us. The
 19 first is, have the recommendations set out in the 2005
 20 article of the South African Journal of Psychology been
 21 considered by the police services and been implemented,
 22 number 1, and secondly, has recent research been done –
 23 recent, I mean 2011, 2012 – following up on the 2003
 24 article based on research done at Milpark Hospital, where
 25 the conclusion was that there are no elevated suicide rates

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1 among police officers – or no, sorry, that was not their
 2 conclusion. Their conclusion was that the minority of
 3 injuries fell in the category of suicide, and then they
 4 went on to say, "This finding concurs with other recent
 5 studies," the passage I've read, "that have explored
 6 suicide in police units, been unable to show elevated
 7 suicide rates among police officers," and there are two
 8 citations, one from a journal called Suicide Life Threats,
 9 I can't read the next word, and the other one is an article
 10 from an American Journal of Psychiatry, based on work in
 11 New York.
 12 MR GUMBI: Yes.
 13 CHAIRPERSON: Now you know, I understand
 14 you put these things to us, but perhaps the Commissioner
 15 can help us. Do you know, is there recent, has recent
 16 research been done on this problem of whether the suicide
 17 rates among members of the police service are elevated as
 18 compared with the general population? That's the first
 19 question, and the second question is, are you aware whether
 20 the recommendations contained in the literature to which
 21 counsel has very kindly referred us, have they been
 22 considered and are they to some extent being implemented?
 23 I know that's two questions in one, but if you can deal
 24 with them separately I'd be grateful. I'm sorry to
 25 interrupt you, Mr Gumbi. It seems you're dealing with an

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1 important matter –

2 MR GUMBI: Yes, Chairperson –

3 CHAIRPERSON: And we, the Commission

4 would obviously like to be assisted, but obviously with up-

5 to-date research and information.

6 MR GUMBI: I do understand that,

7 Chairperson. What I wanted to do was to take maybe the

8 National Commissioner to some of the evidence that has been

9 adduced before this –

10 CHAIRPERSON: Yes, yes, I understand.

11 Anyway, let's get her answer to my question and then you

12 can move on to yours. I'm not sure whether she's had an

13 opportunity yet to deal with these aspects.

14 GENERAL PHIYEGA: Judge, I think the

15 elevation part of thing we can come back and deal with, but

16 if I just look at the raw numbers that we are dealing with,

17 and I can take you for instance maybe to the last three or

18 four years, I'm aware that in 2010 we had 97 suicides. In

19 2011 we had 85. In 2012 we had 116 suicides, and I can

20 also say from the Marikana lot we also had something like

21 two suicides that came out of members that were in Marikana

22 –

23 CHAIRPERSON: Two suicides of members of

24 the police service –

25 GENERAL PHIYEGA: Yes.

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1 CHAIRPERSON: - who were involved in what

2 happened in Marikana?

3 GENERAL PHIYEGA: Yes.

4 CHAIRPERSON: Of course we don't know

5 what the figures for the general population are. I mean if

6 you've got 200 000 members of the service, what's the

7 latest figure that you've got? What's the latest you have

8 –

9 GENERAL PHIYEGA: That's 200 000 members

10 and when we looked at the three years that I've given you

11 and we were looking per 10 000 members, it was almost

12 something like five per 10 000 members of the population.

13 CHAIRPERSON: How does that compare – do

14 we know how that compares with the general population?

15 GENERAL PHIYEGA: We can do that quick

16 analysis and send you the information.

17 CHAIRPERSON: I think that will be

18 helpful, because this is a point that Mr Gumbi is rightly

19 concerned about.

20 MR GUMBI: Yes, Chairperson.

21 CHAIRPERSON: And POPCRU are, so I would

22 be grateful if that information could be given to us. The

23 recommendations in the literature, such as the literature

24 to which Mr Gumbi has referred to us, have been considered

25 by the police service and to some extent were found

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1 acceptable and been implemented?

2 GENERAL PHIYEGA: Ja. Judge, you also

3 asked the issue around the recommendations. We are trying

4 through the upgrading and the increasing of our capacity to

5 respond to the challenges that are there, but I would say

6 it's still work-in-progress. We hope that at some point we

7 would be able to optimise our capacity for intervention.

8 MR MPOFU: Chairperson, ja, I must

9 apologise, I came a bit late so I may be off the mark and

10 must have missed something. I'm just wanting to find what

11 the relevance of the suicide rate among police to do with

12 the Terms of Reference, because I just heard the

13 Chairperson saying that this kind of thing might be helpful

14 to the Commission, just so that I'm on the same page –

15 CHAIRPERSON: Perhaps Mr Gumbi can answer

16 that.

17 MR MPOFU: Yes.

18 MR GUMBI: Yes, Chairperson, in our

19 opening statement we indicated that the working conditions

20 of the police is one of the issues this Commission must

21 look at when compiling its report to be submitted before

22 the President. It's upon that spirit we are canvassing

23 this aspect and I was still going to elaborate more,

24 Chairperson, and deal with facts presented before this

25 honourable Commission, critically on this aspect. It is

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1 unfortunate that the Chairperson was far ahead of me when I

2 was about to deal with the –

3 CHAIRPERSON: I apologise for that, but

4 if we have to evaluate the conduct of the police, it's only

5 appropriate that their trade union should come before us

6 and say in evaluating their conduct please have regard to

7 the circumstances under which they operate, which include

8 these kind of matters that Mr Gumbi is referring to.

9 [11:59] So I think it is relevant, and we're also asked

10 to make recommendations at the end to try to prevent

11 recurrence of this kind of thing, and if the material

12 that's been put before us encourages us to make a

13 recommendation which can be implemented in future and lead

14 to members of the service reacting to this kind of

15 situation in what may be held to be a more appropriate

16 manner – that's if we hold that they reacted

17 inappropriately in this matter, that's obviously something,

18 we don't know whether we'll make that recommendation, but

19 we may well be faced with arguments that that is the case –

20 then obviously it's appropriate that we should be able to

21 make well-founded, well-grounded recommendations. So I

22 think that Mr Gumbi is in order and I'll allow him to

23 proceed.

24 MR GUMBI: Thanks very much, Chairperson.

25 While we are still on that study, National Commissioner –

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1 CHAIRPERSON: Can I add one further
 2 thing, before you carry on? What we've now heard is that
 3 two of the – I know it also applies to some of the victims,
 4 so that's another issue, but we've been told that two of
 5 the members of the service who were involved in Marikana,
 6 the events at Marikana, have since committed suicide, and
 7 which may well be caused by post traumatic stress or
 8 something of that sort. So this is the kind of material
 9 that we should have before us and so I think we should all
 10 be grateful to Mr Gumbi for his industry in assembling it
 11 for us. So please carry on, Mr Gumbi.

12 MR GUMBI: Thanks very much, Chairperson.
 13 National Commissioner, while we are still on that aspect of
 14 stress in the South African Police Service, can I refer you
 15 to the list of shooters at scene 1? It's FFF35. When you
 16 analyse the list of shooters at scene 1, according to the
 17 list of shooters there at scene 1 there were 47 police
 18 officers from TRT who discharged their live ammunition at
 19 scene 1, and 45 out of that 47 are constables. That's from
 20 TRT. Furthermore, when you check the rank of Public Order
 21 Policing unit, the rank of those police officers who
 22 discharged ammunition at scene 1, we have 28 constables
 23 from POP.

24 CHAIRPERSON: May I interrupt you to say
 25 this; it would be helpful if you could summarise this

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1 material for us in written form – I'm not going to stop you
 2 asking the question –

3 MR GUMBI: Yes.

4 CHAIRPERSON: - but it would be helpful
 5 if you could produce a piece of paper on which you've set
 6 out in brief summary form what you're now putting to us,
 7 you know, the ranks of people and the units to which they
 8 belonged, and so on. In other words not names, but just
 9 totals and ranks and so on.

10 MR GUMBI: Yes.

11 CHAIRPERSON: That would assist us, but
 12 you can carry on with your questions for the time being –

13 MR GUMBI: Yes, Chairperson –

14 CHAIRPERSON: But I would ask that you do
 15 that.

16 MR GUMBI: Yes, Chairperson, I did my own
 17 counting and then I also analysed the rank as they are
 18 reflected in this document, you know, from TRT and from
 19 POP. That's why I came to the conclusion of these numbers
 20 –

21 CHAIRPERSON: I'm sure you're right. I'm
 22 just saying I'd be grateful if you could give us on one
 23 piece of paper –

24 MR GUMBI: Yes.

25 CHAIRPERSON: - an analysis, you see.

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1 MR GUMBI: Yes.

2 CHAIRPERSON: But carry on with your
 3 questions.

4 MR GUMBI: I will do that, Chairperson.
 5 Thanks. From POP we have 28 constables who discharged
 6 their ammunition there at scene 1. I think it's also some,
 7 same apply when you analyse the list of shooters at scene
 8 2. That is FFF8, if I can refer you, FFF8, list of
 9 shooters at scene 2. It was introduced by Mr Madlanga
 10 during his cross-examination. Even from there we have 14
 11 constables from National Intervention Unit who discharged
 12 their ammunition at scene 2. Even from TRT, again we have
 13 10 constables who discharged their ammunition and one
 14 warrant-officer, I think so. Do you see that, National
 15 Commissioner, that the majority of them are constables?

16 GENERAL PHIYEGA: I note that.

17 MR GUMBI: And according to that study I
 18 referred you to earlier on, these are the low-ranking
 19 police officers. They have a high level of stress and they
 20 resort to alcohol abuse to reduce this high level of
 21 stress, and they are also inclined to commit suicide.

22 GENERAL PHIYEGA: I note that, and this
 23 is why our Employee Health and Wellbeing also focuses on
 24 things such as emotional competence and development.

25 MR GUMBI: To elaborate further on that

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1 critical aspect again, can I also refer you to FFF42? That
 2 is the remarks by the Minister of Police, EN Mthethwa, at
 3 the official opening of the South African Police Service
 4 Medical Scheme, the date 21 June 2012. Can I refer to page
 5 2 there, the third paragraph on page 2 of that address.
 6 Last year the Minister of Police indicated that there at
 7 10 636 members of the SAPS suffering from depression, 2 763
 8 members suffering from post traumatic stress disorder, and
 9 attempted suicide by SAPS members. Do you see that? So
 10 given those figures, National Commissioner, you cannot –
 11 would you agree with me that you cannot exclude the
 12 possibility that some of the police officers that were
 13 deployed at Marikana on the 13th or on the 16th of August
 14 2012, some of them it's possible that they were suffering
 15 from depression and post traumatic stress disorder, given
 16 these figures by the Minister of Police?

17 GENERAL PHIYEGA: I wouldn't be able to
 18 attest or not attest to that, because we didn't make that
 19 assessment.

20 MR GUMBI: I understand. My question is
 21 it is possible, you cannot exclude the possibility.

22 MR MADLANGA SC: Mr Chairman,
 23 Commissioners, what my learned friend is trying to have the
 24 witness do is that she must draw an inference. If it's an
 25 inference that's relevant at all, this Commission is in as

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1 good a position to do that as the witness is, and in short
 2 I think her view on this would be irrelevant.
 3 CHAIRPERSON: You'll remember, Mr Gumbi,
 4 we had this debate in other contexts and I invariably came
 5 down on the side of those who said that where the
 6 Commission is in as good a position as the witness to
 7 express an opinion on certain facts, then I wouldn't expect
 8 the witness to, wouldn't allow the witness to be asked to
 9 express a view, and that applied particularly in the case
 10 of a number of matters that were dealt with, with this
 11 particular witness herself.
 12 MR GUMBI: Chairperson, I don't have a
 13 problem; I can abandon that question and move to another
 14 one.
 15 CHAIRPERSON: Ja, alright, so you concede
 16 that Mr Madlanga's point is a valid one. So let's move on
 17 to another point, approach the point you're dealing with
 18 from another angle perhaps.
 19 MR GUMBI: No, Chairperson –
 20 CHAIRPERSON: Can I ask a question to
 21 perhaps help you along the way? If you look at this
 22 document that you've got, FFF42, as you've said it's an
 23 address given by the Minister of Police, the official
 24 opening of the South African Police Service Medical Scheme
 25 House in Lynnwood, and having given some statistics in

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1 relation to members of the service who suffer from post
 2 traumatic stress disorder and also those who suffer from
 3 depression and substance abuse and so forth, he then says
 4 near the foot of the page that there are 515 service
 5 providers providing debriefing services to the active SAPS
 6 members. But he says that that number is insufficient to
 7 reach all SAPS members who require help, and then on the
 8 next page he says this, and that's relevant to the present
 9 witness, "I have therefore requested the National
 10 Commissioner [the present witness] as part of her immediate
 11 priorities to capacitate these important units as a matter
 12 of urgency." Now perhaps we could ask her what she's done
 13 about that in response to that specific request which is
 14 addressed to her by the Minister shortly after, nine days I
 15 think, after she took up her office.
 16 MR GUMBI: Yes, that was going to be my
 17 next point, Chairperson. I really appreciate that.
 18 CHAIRPERSON: I'm sorry to have asked
 19 your question. I hope you don't mind.
 20 MR GUMBI: Ja, no I don't mind,
 21 Chairperson. Yes, National Commissioner, I hope you heard
 22 the Chairperson what he said. If you go down there at the
 23 bottom of that page toward the last paragraph wherein it
 24 says, "There are 515 service providers, psychologists,
 25 social workers and chaplain, providing debriefing service

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1 to the active SAP members. However, if one considers the
 2 fact that there are over 160 000 active SAP members, the
 3 reality is that the available 515 providers are
 4 insufficient to reach all SAP members that require help.
 5 There are currently between 3 000 and 4 000 SAP members
 6 that are receiving debriefing consultation via the Employee
 7 Health and Wellness Services within the SAPS." And the
 8 next paragraph, next page, page 3, the Minister of Police
 9 said, "I have therefore requested the National Commissioner
 10 of Police, General Phiyega, as part of her mandate
 11 priorities to capacitate this important –
 12 CHAIRPERSON: "As part of her immediate
 13 priorities."
 14 MR GUMBI: Yes, "immediate priorities, to
 15 capacitate this important unit as a matter of urgency." Do
 16 you see that, National Commissioner?
 17 GENERAL PHIYEGA: Yes, I do.
 18 MR GUMBI: Can you elaborate, National
 19 Commissioner, what your department is doing to address this
 20 shortcoming?
 21 GENERAL PHIYEGA: Advocate, you'd
 22 appreciate the fact that to produce a psychologist and to
 23 produce a social worker takes many years and we know
 24 nationally that those are very scarce resources that we are
 25 all competing for, and being a government department with

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1 the type of salaries that we offer for some of those areas,
 2 we are not top of the list in terms of those who are able
 3 to get those. Having said so, I can indicate that, (1), on
 4 a very immediate basis this is why we adopted a mixed
 5 approach of providing the services from inside, as well as
 6 outsourcing parts of that. I've already indicated that
 7 through POLMED we've gone through a process of getting
 8 private providers that could extend our services in the
 9 immediate term, and we are also secondly, through our
 10 bursary programme have identified students that are now in
 11 training in those various fields so that we can be able to
 12 in the next few years increase our internal capacity. So
 13 the mix model is to assist us to use that which we have as
 14 well as to buy that which we don't have. I may also add
 15 that we have a collaboration with some of the SETAs that
 16 are assisting us with some of the learnerships because
 17 where we are running short they are able to assist us in
 18 getting some of the learnerships to assist us in that
 19 space.
 20 MR GUMBI: Is it possible, National
 21 Commissioner, maybe to give us some figures to that effect,
 22 if possible? You can do that?
 23 CHAIRPERSON: If you haven't got them at
 24 your finger tips this morning, you can perhaps –
 25 GENERAL PHIYEGA: Okay.

<p style="text-align: right;">Page 11296</p> <p>1 CHAIRPERSON: - at some stage through 2 your counsel provide them to the Commission and in that way 3 they'll come to Mr Gumbi's attention as well. 4 GENERAL PHIYEGA: I will do so, Judge. 5 MR GUMBI: Thank you very much, 6 Chairperson. Can I move to my last point – 7 CHAIRPERSON: Before you go to your last 8 point, while we're busy with this exhibit, the question I 9 would like to ask you and you can give us information about 10 – not now, but later. You'll see on the second page of the 11 speech of the Minister at the opening of Parliament House 12 he refers to the fact that there are various psychiatric 13 programmes for members of the service who are in need of 14 assistance in various ways because they are suffering from 15 psychiatric ailments and problems, and he refers to the 16 fact that many of them are not forthcoming in coming 17 forward to enrol for these programmes for various reasons, 18 and he mentions the reasons, which we don't have to read 19 them out. But one can understand why some members of the 20 service might be reluctant to come forward for the reasons 21 that he gives, and then he says this, it's about the fourth 22 paragraph from the foot of the page, "To this end we also 23 want to specifically make a call to police unions to play a 24 prominent role in encouraging their members to enrol in 25 such programmes. The management must continue to review</p>	<p style="text-align: right;">Page 11298</p> <p>1 client in terms of getting detailed information on this 2 critical aspect, Chairperson. I really appreciate that. 3 Towards conclusion, National Commissioner, can I also refer 4 you to FFF40? That's a researched titled "Occupational 5 stress in the South African Police Service." Do you see 6 that? 7 GENERAL PHIYEGA: Yes, I do. 8 MR GUMBI: According to this research, if 9 I can refer you – I don't know the page number, but it's 10 towards the end. It should be page – 11 CHAIRPERSON: It's published, I see, in 12 the South African Journal of Industrial Psychology, 2006. 13 MR GUMBI: Yes, it should be page 76, 14 Chairperson. 15 CHAIRPERSON: Page 76. 16 MR GUMBI: Discussion, under the topic 17 "Discussion," at the bottom of that topic, the last 18 paragraph. 19 CHAIRPERSON: This has been numbered as 20 page 5 for our benefit. 21 MR GUMBI: Yes, Chairperson. 22 CHAIRPERSON: Last paragraph on the 23 right-hand side under the heading "Discussion." 24 MR GUMBI: On the left-hand side. 25 CHAIRPERSON: The left-hand side, the</p>
<p style="text-align: right;">Page 11297</p> <p>1 whether the programmes are adding value to the wellbeing of 2 members." Now that is a remark which the Minister 3 addressed to the unions, inter alia to POPCRU, and I would 4 appreciate it if you would in due course give us 5 information – you can do it in writing obviously, you don't 6 have to lead evidence on it – as to what POPCRU is doing, 7 to use the Minister's words, to play a prominent role in 8 encouraging its members to enrol in these programmes. 9 [12:19] I don't know whether the National Commissioner 10 from her own knowledge can tell us whether she's aware of 11 efforts being made by POPCRU and the other unions to do 12 what the Minister suggested they should do. 13 GENERAL PHIYEGA: I'm sure they're doing 14 something, but I'm not quite – I wouldn't have particulars. 15 They can share them. 16 CHAIRPERSON: Yes, obviously when we get 17 this information from Mr Gumbi your counsel will see it and 18 they can pass it on to your office so that, and possibly, 19 depending what the answer is, it may be necessary for 20 efforts to be redoubled – 21 MR GUMBI: Yes, Chairperson – 22 CHAIRPERSON: - in this regard, because 23 it's obviously an important point the Minister makes that 24 applies to your clients. 25 MR GUMBI: Yes, I will liaise with my</p>	<p style="text-align: right;">Page 11299</p> <p>1 third factor, that paragraph? 2 MR GUMBI: Yes, the third factor, yes, 3 Chairperson. According to this research it indicates that, 4 it identifies some stresses in the South African Police 5 Services, and it indicates that "Lack of recognition for 6 good work, inadequate or poor quality equipment, inadequate 7 salaries, and seeing criminals go free," is some of the 8 stresses in the South African Police Services. Do you see 9 that? Can you elaborate, National Commissioner, what the 10 department is doing to identify – I mean to address some of 11 these stresses identified by this research? 12 GENERAL PHIYEGA: Let me start off with 13 the issue of insufficient staff. You would note that since 14 1994 we've almost increased the staff complement of the 15 police by almost 80% and in my statement I also indicate 16 how we compare with other countries in terms of police to 17 population ratio, that shows you how the country has ramped 18 up the numbers of police in the service. This is why we 19 are sitting at a ratio of 1 to 306. So a lot has been done 20 in terms of increasing our establishment in order to 21 achieve some of the objectives that we've set for ourselves 22 – visible policing, bold attempts to fight crime in this 23 country. We've also gone further to deal with issues of 24 looking at dealing with the salary, remuneration of 25 members. Over the past few years there have been quite</p>

<p style="text-align: right;">Page 11300</p> <p>1 some continued efforts to improve those salaries, and that 2 continues to be work-in-progress because you can never say 3 you're optimal in how you deal with that, but I think with 4 the level of budget that we've received, as I've said as a 5 budget, as a department, you know, we have a budget of 6 about 63 billion, 70% of which goes to staff, which shows 7 you that we recognise the fact that we are a resourcing, a 8 human resource intensive department. So those type of 9 things are being taken into account and I think the 10 allocation that we continue to be given recognises that 11 fact by our national Treasury.</p> <p>12 On issues of good work, we continue to have a 13 number of recognition that we give to our members. You've 14 alluded already to some of the 10 year loyalty medals, 20 15 year loyalty medals. We have what we call monetary and 16 non-monetary awards for members who do, you know, excellent 17 work and do different things. So we do have a number of 18 things that we do to recognise the good work that is done 19 by our colleagues, and we have a very solid performance 20 management system that is also linked to incentives.</p> <p>21 MR GUMBI: Thank you very much, 22 Chairperson, we don't have any further cross-examination, 23 and we're going to submit some of the information 24 identified by the Chairperson.</p> <p>25 CHAIRPERSON: Thank you. There's one</p>	<p style="text-align: right;">Page 11302</p> <p>1 be further refined and retested in other police samples, so 2 possibly among other Southern African police forces, 3 illustrating concurrent validity, etcetera.</p> <p>4 Now the question I would like to know the answer 5 to is had that follow-up work that was recommended been 6 done, it looks as if the South African National Research 7 Foundation was involved in the research and I would imagine 8 that there would have been ongoing work after 2006. So 9 obviously these are important points that are being made, 10 but if you expect us to deal with this material and make 11 recommendations, obviously we must be given up-to-the- 12 minute information. So whether it's for the National 13 Commissioner to give us the information or for POPCRU, I 14 don't really mind from who it comes, but I think it should 15 be given to us, and perhaps you could liaise with the 16 representatives of the police service to see to it that 17 this material, insofar as it exists, is put before us.</p> <p>18 MR GUMBI: I will do that, Chairperson.</p> <p>19 CHAIRPERSON: And you've heard what I 20 said, National Commissioner. I take it you agree with 21 that?</p> <p>22 GENERAL PHIYEGA: Thank you very much.</p> <p>23 CHAIRPERSON: Thank you. That's the end 24 of your cross-examination, Mr Gumbi?</p> <p>25 MR GUMBI: Thank you very much.</p>
<p style="text-align: right;">Page 11301</p> <p>1 other point that arises. I don't know whether you should 2 provide it or the police service should provide it, but 3 you'll notice that the end of this article that you've just 4 been quoting from, which was published in 2006, their 5 recommendations suggested that "The SAPS focus on providing 6 officers with resources they need, both organisationally 7 and personally, sources of stress that should be a first 8 priority for stress managing programmes have been 9 identified." That's what the article seeks to do. "This 10 type places the onus on the government for the provision of 11 additional funding, such funding could contribute directly 12 to the internal stability of the country and the economy." 13 Then the recommendations continue. "This study is the 14 first step in developing a comprehensive profile of police 15 stress in that it identified operant stresses in the SAPS. 16 The next step will be to study stress holistically, both 17 work and non-work domains, and the additive and interactive 18 effects of stress source," and there's a reference to 2001 19 article. "It's further suggested that the equivalence of 20 stress factors be studied in different racial and language 21 groups," and then they went on to say that the instrument 22 which they had developed in the study, because you'll 23 notice it's a study which has been funded by the South 24 Africa National Research Foundation. They say the 25 instrument that they developed in their research needs to</p>	<p style="text-align: right;">Page 11303</p> <p>1 CHAIRPERSON: Adv Sello, do you have re- 2 examination for the witness? I understand you, as you've 3 told us, you're standing in for your learned leader Mr 4 Semanya, who is not available today.</p> <p>5 MS SELLO: Indeed I am, Chair. Chair, 6 before I put questions to the Commissioner, with the 7 permission of the Chair I would like to place on record 8 certain facts that can be confirmed by Ms Pillay, and this 9 is because it will be quicker to get the facts through in 10 this manner than having to work through further 11 photocopying and further exhibits and through the witness. 12 I have conferred with Ms Pillay on this, and she has 13 confirmed the following; that on the 7th of March at 17:52 14 SAPS forwarded her a copy of the National Commissioner's 15 statement, pointing out that that statement is signed but 16 not commissioned. The statement itself did not have an 17 indication that it was not for distribution, but the email 18 through which it was sent to Ms Pillay did state that a 19 properly signed and commissioned statement was yet to be 20 submitted. SAPS believes that that last point which was 21 contained in the body of the mail was not immediately 22 apparent to Ms Pillay when she received it because she then 23 forwarded the very uncommissioned statement to all members 24 of the Commission on the 8th of March at 7:16 in the 25 morning.</p>

<p style="text-align: right;">Page 11304</p> <p>1 CHAIRPERSON: Not only to the members of 2 the Commission, but to the parties as well. 3 MS SELLO: To the parties, indeed Mr 4 Chair, to the parties. So as at the morning of the 8th of 5 March the parties had, or received a statement by the 6 National Commissioner, signed by her, but not commissioned. 7 On the same day, the 8th of March at 17:06 an email was 8 forwarded to Ms Pillay, attaching, (1), the signed and 9 properly commissioned statement of the National 10 Commissioner – 11 CHAIRPERSON: That's the statement that 12 didn't have her initials on page 7? 13 MS SELLO: Indeed so, Chair, and it is 14 this statement of the 8th of March, signed and commissioned, 15 that was intended for distribution. That very statement 16 was distributed to all parties on the 8th of March by Ms 17 Pillay at 21:45. The effect of this, of all this, Chair, 18 is over a course of two days, 7th of March and 8th of March, 19 two statements by the National Commissioner were 20 distributed, one signed but uncommissioned, the other one 21 signed and commissioned. 22 CHAIRPERSON: Not initialled by her on 23 page 7. 24 MS SELLO: Both of which are not 25 initialled on page 7, and I think Ms Pillay can confirm</p>	<p style="text-align: right;">Page 11306</p> <p>1 – 2 CHAIRPERSON: This point was covered in 3 cross-examination by Mr Burger, and the facts that you're 4 now mentioning are not the times when Ms Pillay did the 5 distribution – impressive to hear she starts work at 7 in 6 the morning and still at work after half past 9 in the 7 evening – 8 MS SELLO: Impressive. 9 CHAIRPERSON: But that's what one expects 10 of counsel who are briefed as part of the evidence-leading 11 team. But Mr Burger did establish the basic facts that 12 you've mentioned, so we don't have to go any further than – 13 MS SELLO: Yes, Chair. It was necessary 14 I do this because other – I won't call them statements, but 15 we now have a series, FFF31.1 to FFF – sorry, 33.1 to 33.4. 16 It was mentioned when these documents were submitted that 17 they shall be used in re-examination. Now it was necessary 18 that I point this out quickly because the context of those 19 documents will only make sense once we have reminded 20 ourselves of that. The result of what I just put before 21 the Commission was that the Commission had what is now 22 annexure FFF2 and FFF2A. So those are the statements as 23 they stand. Then there is a FFF3 and a FFF3A, which I will 24 clarify through the witness now. 25 RE-EXAMINATION BY MS SELLO: National</p>
<p style="text-align: right;">Page 11305</p> <p>1 that, if she's able to. Then the statement of the 8th of 2 March, or distributed on the 8th of March, dated the 7th, is 3 signed by the person commissioning it on the 7th, but does 4 not have her initials on page 7. Ms Pillay, I don't know 5 if – 6 CHAIRPERSON: I take it if those facts 7 are correct, she'll confirm them. Are they correct, Ms 8 Pillay? 9 MS PILLAY: Chair, save for pointing out 10 that page 7 of the version, the so-called final version 11 that was eventually commissioned and signed, bears an 12 initial. I'm not sure whose initial it is and I can't say 13 which one, whether it's the Commissioner's initial or the 14 commissioner of oaths' initials, I'm not sure, but it does 15 bear an initial. Save for that, I confirm. 16 CHAIRPERSON: Save for that you agree 17 with what's been put by Ms Sello. 18 MS PILLAY: That's correct, yes. 19 MS SELLO: Chair, I can clarify that the 20 initial that is found on page 7 is the person who 21 commissioned the statement. 22 CHAIRPERSON: The commissioner of oaths – 23 MS SELLO: The commissioner of oaths. If 24 one has regard to all the, both statements, National 25 Commissioner, the witness's initials her pages with MV, and</p>	<p style="text-align: right;">Page 11307</p> <p>1 Commissioner, you have followed my submissions to the 2 Commission. I would like us to attempt, hopefully for the 3 last time, to clarify this issue of statements. There 4 seems to have been a lot of confusion and we hope to 5 resolve it today. If we fail, we fail. 6 CHAIRPERSON: Don't be so pessimistic. 7 Obviously one assumes from your point of view you will 8 succeed. 9 MS SELLO: Chair, I guess one becomes – 10 because the moment we mention statements, as far as I know 11 none of my colleagues here in the room want to hear 12 anything about these statements anymore, but we shall try 13 again. 14 CHAIRPERSON: We as Commissioners can't 15 be bound by their lack of interest in what may be an 16 important point. 17 [12:38] MS SELLO: I'm indebted to the 18 Commission. Commissioner, you have before you a statement, 19 exhibit FFF2. 20 GENERAL PHIYEGA: I do. Yes, I do. 21 MS SELLO: And if our order is correct, 22 that statement must be signed by you and commissioned. 23 GENERAL PHIYEGA: Yes. 24 MS SELLO: You are on record having 25 stated that this is your statement. This is the statement</p>

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1 you intended for this Commission to have before it. Is
 2 that correct?
 3 GENERAL PHIYEGA: It is correct.
 4 MS SELLO: The statement therefore that
 5 is marked exhibit FFF2A, whilst also your statement, was
 6 not intended to be placed before this Commission. You
 7 confirm that?
 8 GENERAL PHIYEGA: Yes.
 9 MS SELLO: You have also before you
 10 another statement, exhibit FFF3.
 11 GENERAL PHIYEGA: Yes.
 12 MS SELLO: Can you explain to this
 13 Commission how this statement ended up before the
 14 Commission? And before you do so, for the record, that
 15 statement is dated the 12th of March. Please confirm.
 16 GENERAL PHIYEGA: That is correct.
 17 MS SELLO: Would you then just give the
 18 Commission a brief explanation of how this statement ended
 19 up before the Commission?
 20 GENERAL PHIYEGA: I was informed that the
 21 Commission has an incomplete signing, statement that did
 22 not have a signature on page 7.
 23 MS SELLO: Yes?
 24 GENERAL PHIYEGA: I was presented with
 25 the statement that you've just referred to as – is it FFF3?

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1 This statement that is dated the 12th, and my signing of
 2 that statement was intended to correct the unsigned page 7.
 3 I have indicated that when I signed that statement, because
 4 I thought it is the same statement that I've submitted for
 5 the 7th, I did not go through it, I signed it, and when we
 6 came to the Commission I realised that that was not my
 7 statement, and this is why I said to my lawyers that my
 8 statement, and the message is the one of the 7th, because
 9 that was the statement that was corrected to produce the
 10 one of the 7th.
 11 MS SELLO: So at the time you signed
 12 FFF3, is it your evidence that you were under the belief,
 13 mistaken, that it is a carbon copy of FFF2?
 14 CHAIRPERSON: That's what she said in
 15 chief.
 16 MS SELLO: Okay, Chair.
 17 CHAIRPERSON: Or under cross-examination
 18 by Mr Burger. That's what she said. You don't repeat it
 19 now.
 20 MS SELLO: I'm happy to accept that,
 21 Chair.
 22 MR BURGER SC: Yes, Chair, I don't want
 23 to object. I had the privilege of cross-examining the
 24 National Commissioner, but I'm very loath to give the same
 25 honour to my learned friend. She's not entitled to lead

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1 the evidence on what is a contentious issue in this –
 2 CHAIRPERSON: Apart from that she's
 3 leading evidence at the moment on a point which has already
 4 been covered in evidence, so it's not a re-examination –
 5 MR BURGER SC: That's another ground, but
 6 –
 7 CHAIRPERSON: Yes, you understand the
 8 point Mr Burger raises –
 9 MS SELLO: I'll accept that, Chair, and
 10 I'll move –
 11 CHAIRPERSON: Be careful not to cross-
 12 examine, otherwise we may have objections.
 13 MS SELLO: I will indeed, Chair.
 14 Commissioner, you have before you a series of documents
 15 marked FFF33.1 to 33.5.
 16 GENERAL PHIYEGA: Correct.
 17 MS SELLO: Could you please to the
 18 Commission what these documents are, briefly?
 19 GENERAL PHIYEGA: The documents are
 20 purely just to show how my statement evolved. When I
 21 started writing my statement the base document that doesn't
 22 carry any other information – you know, carries some base
 23 information where I started, you see the statement
 24 evolving, adding on the statistics in terms of members that
 25 we are employing, the budget and all that you see me taking

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1 some of the things out as I refined the statement going
 2 forward. You see where I correct the, where we start
 3 introducing my articulations regarding the Minister. You
 4 see me correcting it to make it ultimately the statement
 5 that I submitted on the 7th. That was just to show how my
 6 statement evolved and how I've been adding, subtracting, to
 7 the one that I submitted on the 7th.
 8 MS SELLO: And do any of these documents,
 9 these exhibits, correspond with the statements that are
 10 filed, and if so, in what respect?
 11 GENERAL PHIYEGA: I think so.
 12 MS SELLO: And are you able to correspond
 13 each one to the filed statements?
 14 GENERAL PHIYEGA: Yes, because when I
 15 looked at the evolution and I compared with what was
 16 submitted, I could immediately work back everything.
 17 MS SELLO: Could you point out how they
 18 correspond?
 19 GENERAL PHIYEGA: The statement of the 7th
 20 of March that is signed and commissioned is the same what I
 21 have as block 4 on that evolution of statements.
 22 MS SELLO: And for the record, that is
 23 FFF33.5.
 24 GENERAL PHIYEGA: That would be that one,
 25 yes. The block, the one with block 3 talks to what one may

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1 say is triple – is the statement that is signed but not
 2 commissioned. I don't know, I think you have it as FFF2A.
 3 MS SELLO: FFF2A, and by block 3 you're
 4 referring to exhibit FFF33.4.
 5 GENERAL PHIYEGA: Yes, that's – on my one
 6 it will be block 3.
 7 MS SELLO: Yes.
 8 MR MPOFU: Sorry, Mr Chairperson, on that
 9 block, as it is called, you must remember that there's 3
 10 and 3A, so can we just –
 11 CHAIRPERSON: I take it she's referring
 12 to 3 and not 3A. If she refers to 3A she'll refer to 3A.
 13 GENERAL PHIYEGA: I'm talking about 3.
 14 MS SELLO: I thought she was just –
 15 CHAIRPERSON: The one with 3 in the block
 16 is 33.3 and the one with 3A in the block is 33.4. I take
 17 it Ms Sello and the witness are referring to 33.3. If I'm
 18 wrong –
 19 MR MPOFU: No, they just said 33.4,
 20 that's exactly the confusion.
 21 CHAIRPERSON: Alright, well take a step
 22 back, as Mr Mpofu is fond of saying –
 23 MS SELLO: I will.
 24 CHAIRPERSON: - and move forward again
 25 and hopefully you'll have me with you next time.

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1 MS SELLO: I will indeed, Chair. I have
 2 no intention of adding further confusion to this. National
 3 Commissioner, you referred to a statement that you say is
 4 block 3.
 5 GENERAL PHIYEGA: Yes.
 6 MS SELLO: On our record, if my record is
 7 correct, block 3 is exhibit FFF33.4.
 8 MR MPOFU: It's 33.3. That's the point.
 9 MS SELLO: Okay –
 10 MR MPOFU: The other one is the one –
 11 MS SELLO: Ms Pillay probably can settle
 12 this matter for us.
 13 MR MPOFU: Well okay, if you want to hear
 14 it from Ms Pillay that's fine.
 15 MS SELLO: Chair, if we could get clarity
 16 on whether block 3 is 33.3 or -
 17 CHAIRPERSON: The one marked – I can
 18 answer that for you, I think, I hope. The one that's
 19 marked 33.3 is, has got a 3 in the block. The one that's
 20 marked 33.4 has got 3A in the block.
 21 MS SELLO: The error is mine, M'Lord.
 22 MR MPOFU: Thank you.
 23 MS SELLO: The error is mine. Thank you,
 24 Mr Mpofu, I'm indebted to you.
 25 CHAIRPERSON: Mr Mpofu once again has

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1 made a valuable contribution.
 2 MS SELLO: Okay, if I'm correct, the
 3 witness said block 3 is consistent with FFF2A. Is that
 4 correct? I have now corrected it; that is our current
 5 FFF33.3. Okay. Please continue, General. Is there any
 6 other?
 7 GENERAL PHIYEGA: The statement of the
 8 12th of March, which is signed and commissioned, which I
 9 said was wrong, is in my blocks 3A.
 10 MS SELLO: And that we have then as
 11 exhibit 33.4.
 12 GENERAL PHIYEGA: Yes.
 13 MS SELLO: Thank you, Chair, I hope that
 14 I will assist the Commission and I assist the members to
 15 understand –
 16 CHAIRPERSON: I have a problem, but I
 17 don't know whether I should ask it now – perhaps I should
 18 ask it now so you can follow.
 19 MS SELLO: Yes, Chair.
 20 CHAIRPERSON: What happened, according to
 21 your evidence, is that at some stage after you signed the
 22 document the first time on the 7th of March, two insertions,
 23 or two bits of misinformation were put into your statement,
 24 one at the end of para 23 and the other at the end of
 25 paragraph 24. In the one case there was an addition, that

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1 was 23, and in the case of 24, para 24, there was a change.
 2 Now perhaps we should just look at those first before I
 3 carry on, so we know what we're talking about.
 4 GENERAL PHIYEGA: Maybe, Judge, if you
 5 could just repeat? I missed something.
 6 CHAIRPERSON: I'll take it slowly.
 7 GENERAL PHIYEGA: Okay.
 8 CHAIRPERSON: 33.4 – yes, in FFF3, which
 9 is the statement dated the 12th of March, at the end of para
 10 23 – have you got that?
 11 GENERAL PHIYEGA: FFF3?
 12 CHAIRPERSON: FFF3 is dated the 12th of
 13 March.
 14 GENERAL PHIYEGA: Dated 12 March, yes.
 15 CHAIRPERSON: The end of paragraph 23 the
 16 words "which information I relayed to the Minister" appear.
 17 They do not appear in the document FFF2, which is the one
 18 of the 7th of March and the various other documents from
 19 that school of documents, if you know what I mean. So 23
 20 on the 12th of March document reads, "On the afternoon of
 21 August 16, 2012, I received a call from Lieutenant-General
 22 Mbombo, who informed me of a decision to implement stage 3
 23 of the plan, which information I relayed to the Minister,"
 24 and as I've said, the words "which information I relayed to
 25 the Minister" had been added, and in fact there's been a

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1 change also to the earlier part because the earlier part
 2 said that Lieutenant-General Mbombo informed you of the
 3 decision to implement stage – sorry, to implement a
 4 dispersal operation of the plan. So the words “a dispersal
 5 operation of the plan” have been taken out and substituted
 6 there for are the words “stage 3 of the plan,” and then the
 7 words “which information I relayed to the Minister” have
 8 been added. So that’s the first piece of misinformation,
 9 according to your evidence, which appears in the statement
 10 of the 12th of March.

11 The second one is at the end of paragraph 24
 12 where you say that the correct wording should be, of the
 13 last sentence at the end of 24 should be “I then related
 14 the same information,” this is after Lieutenant-General
 15 Mbombo had telephoned you and informed you of the tragedy.
 16 “I then related the same information to the Minister of
 17 Police telephonically and advised him that I should be
 18 attending to the matter personally.” Now what had happened
 19 is that the words “and advised him that I should be
 20 attending to the matter personally” had been deleted, and
 21 substituted there for are the words, “who [that’s relating
 22 back to the Minister] advised me to attend to the matter
 23 personally so that I can have a firsthand account of the
 24 incident.” So that’s the second piece of missing
 25 information which is now in the statement of the 12th.

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1 Now when we look at these documents that were
 2 given to us recently, if you look at FFF33.4, that’s the
 3 one with 3A in the block, one notices that there’s a
 4 heading which says “Statement of the National Commissioner”
 5 on the front page, and below that appear the words,
 6 “Amendment on paras 23 and 24.” Now if you look, however,
 7 at paragraph 23, it doesn’t appear to be an amendment
 8 because it simply reads, “who informed me of the decision
 9 to implement a dispersal operation of the plan,” which you
 10 say is okay. There’s no missing information there, and the
 11 further piece, the reference to stage 3 isn’t there, and
 12 the further words which were added, “which information I
 13 relayed to the Minister” aren’t there. So there’s nothing
 14 wrong as far as I can see with para 23. Para 24 of course
 15 does contain the second piece of misinformation to which
 16 you refer because it contains the words at the end of the
 17 last sentence, “who advised me to attend to the matter
 18 personally so that I can have a firsthand account of the
 19 incident.”

20 Now what it appears from this analysis of the
 21 document is this: is that there were a number of stages in
 22 the sort of editing of the document. At one stage
 23 something was added at the end of para 24, but 23 was left
 24 as it was. Then whoever was responsible for inserting the
 25 misinformation then had another go at dealing with the

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1 document and then also tinkered with para 23.
 2 Now the first point is as I’ve said by adding the
 3 words, “which information I relayed to the Minister.” So
 4 there’s something wrong with FFF33.4 because it doesn’t
 5 reflect an amendment on para 23 and 24. That’s the first
 6 point. So that’s my difficulty. But perhaps I can put the
 7 further points I want to put to you all in one so you can
 8 deal with them properly.

9 I take it when you discovered that your statement
 10 had been tampered with and that two pieces of
 11 misinformation had been inserted in it, you must have been
 12 a bit distressed and concerned, and I assume that you
 13 caused investigations to be made as to find out who the
 14 culprit was, who the person was who tampered with your
 15 statement on two occasions and inserted bits of
 16 misinformation. Am I correct in making that assumption
 17 that you caused investigation to be made to identify the
 18 culprit?

19 GENERAL PHIYEGA: Judge, I did not have
 20 the sense that there was a culprit. I knew that, you know,
 21 as I indicated that as my statement evolved one of the
 22 issues we needed to deal with was I did not factor in the
 23 communication with the Minister. If you see my base
 24 document I put question marks around whether the Minister
 25 was there on the 17th and whatever, and I’m asking my team

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1 to say give me facts and give me information that I need to
 2 factor in terms of that. When my statement evolves and we
 3 go on I say to them I have that omission, can we factor in
 4 the omission, and I have said to you that I requested that
 5 that be factored. When it came I said that’s not how it
 6 happened, I correct it, and this is how I end up with the
 7 factored information that I had to correct to say the
 8 actual representation of that is this, but at the end of
 9 the day the whole notion was to say I did have engagement
 10 with the Minister and it had to appear in my statement.

11 [12:58] CHAIRPERSON: Yes, yes, I understand
 12 that, but who then added the information, the first bit of
 13 misinformation, namely that you relayed the information
 14 that you’d received about the implementation of the
 15 dispersal and disarmament plan, who was responsible for
 16 inserting the first bit of misinformation into the draft?
 17 You’ve explained how the documents evolved. Now if you put
 18 it in, then fine, that’s the other to the question. You
 19 inserted it, but I understood the evidence to be you
 20 didn’t, it wasn’t correct. So somebody else did it. So
 21 what I want to know is who was that person? Do you know?

22 GENERAL PHIYEGA: I have two people who
 23 assisted me in that regard, Brigadier Sithole in my office,
 24 and Major-General Zuma, who’s been assisting me in this
 25 process of the hearing.

<p style="text-align: right;">Page 11320</p> <p>1 CHAIRPERSON: So would one of them – 2 would that be fair? – one of them must have been 3 responsible for inserting those words, “which information I 4 relayed to the Minister,” in para 23 of the draft at some 5 stage of its evolution to finality? Would that be fair? 6 GENERAL PHIYEGA: I beg your pardon? 7 CHAIRPERSON: I say one of those two 8 people, the Brigadier or the – I think you said Major- 9 General – one of those two must have been the person who 10 inserted those words, “which information I relayed to the 11 Minister” in the draft at paragraph 23 of your statement on 12 its route to finality. Is that correct? 13 GENERAL PHIYEGA: That is inserted by me. 14 I told me that the way you’ve captured it, you haven’t 15 captured it correctly; “which information I relayed to the 16 Minister,” that is me saying that. 17 CHAIRPERSON: Oh, you said that? 18 GENERAL PHIYEGA: Yes. 19 CHAIRPERSON: I see, alright. So that’s 20 the first point. 21 GENERAL PHIYEGA: Which wasn’t inserted 22 here. 23 CHAIRPERSON: Now let’s move on to the 24 second point. Sorry, Mr Mahlangu, forgive me. Alright, 25 it’s now 1 o’clock, so perhaps we can deal with the second</p>	<p style="text-align: right;">Page 11322</p> <p>1 me with the Minister. So when it came to me I then said I 2 need to correct it to reflect what the actual state of 3 issues are and that’s what sits in my statement of the 7th. 4 CHAIRPERSON: Why would they have put in 5 these words, for one of them, I don’t know which one it was 6 – 7 GENERAL PHIYEGA: Yes. 8 CHAIRPERSON: And I don’t think you know 9 either, “who advised me to attend to” – where did the idea 10 come from that the Minister had given you that advice 11 rather than your informing him what is reflected in the 12 earlier version of the statement? 13 GENERAL PHIYEGA: I did say, Judge, that 14 I requested my office to factor in this issue. How they 15 captured, it came from me but it wasn’t captured the way I 16 wanted it to be captured. That’s why, when it came I 17 corrected it to the version to say it is not well captured 18 and the very same people that I’ve been using to work on my 19 statement are the people that have been taking my 20 instructions, doing what they are doing, correcting and 21 putting it into the version that I wanted it to – 22 CHAIRPERSON: Do I understand you to mean 23 that they misunderstood you, one or the other or both of 24 them misunderstood you and thought that you said that the 25 Minister gave you this advice, rather than you – whereas in</p>
<p style="text-align: right;">Page 11321</p> <p>1 piece of misinformation after the lunch adjournment. We’ll 2 adjourn till 2 o’clock. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [14:09] COMMISSIONER: The Commission resumes. 5 National Commissioner, you’re still under oath. 6 MANGWASHI VICTORIA PHIYEGA: s.u.o 7 CHAIRPERSON: - that I want to ask you 8 about relates to what I call the second bit of 9 misinformation, which is the statement at the end of para 10 24 in the final version, in the version, the final version 11 that is before the Commission from a date point of view, 12 the one signed on the 12th of March. If we look at exhibit 13 FFF33.4 which is 3A, that is described on the front as 14 “Statement of the National Commissioner, amendment on paras 15 23 and 24.” As we saw, 23 wasn’t really amended but 24 16 was, by the deletion of what appeared in your earlier 17 statement and the substitution of the words “who advised 18 me”, that “the Minister who advised me to attend to the 19 matter personally so that I can have a first account of the 20 incident.” Now who effected the change there? Who was 21 responsible for the substitution of that piece of 22 misinformation in the statement which was signed on the 12th 23 of March? 24 GENERAL PHIYEGA: As already indicated, 25 Judge, I requested that they factor in this engagement of</p>	<p style="text-align: right;">Page 11323</p> <p>1 fact the true facts were that you gave him the information 2 which is set out in the earlier version of the statement? 3 GENERAL PHIYEGA: Judge, the truth of the 4 matter, is I don’t know whether it’s misunderstanding or 5 whatever but the truth of the matter is, there is no way 6 the Minister would say to me I must do that because he is 7 not there, the person or whatever, and I corrected it to 8 say this is what – 9 CHAIRPERSON: Yes, yes, no, I understand 10 that but I want to know, if it’s possible for us to find 11 out, where this piece of misinformation came from. Was it 12 based on a misunderstanding of what you told the Brigadier 13 and the Major-General or did they get information from 14 somewhere else? 15 GENERAL PHIYEGA: Not anywhere else. It 16 was my communication with the team which was with me to 17 finalise it. There was no other person who was in this, it 18 was myself and the team, iterating to say factor in the 19 issue of the Minister, you know that I spoke to him 20 telephonically, I’ve been giving him progress, so – 21 CHAIRPERSON: So it does sound as if what 22 you are telling us is that they must have misunderstood 23 you. I mean you didn’t tell them, did you, that the 24 Minister advised you to attend to the matter personally so 25 that you could have first-hand account of the incident?</p>

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1 GENERAL PHIYEGA: That is, the Minister
2 never told me that.

3 CHAIRPERSON: Did you never tell that to
4 them? You see I'm not – for the moment I'm concerned how
5 this bit of misinformation, as you describe it, found its
6 way into the statement.

7 GENERAL PHIYEGA: Perhaps maybe the best
8 way of putting it is that there could have been a
9 misunderstanding in terms of what I was trying to say in
10 terms of my message and that's why I corrected it to carry
11 my full message.

12 CHAIRPERSON: I mean is it, is it that
13 there must have been a misunderstanding and therefore there
14 was, or is it that there could have been a misunderstanding
15 because if there could've been a misunderstanding then
16 there could have been something else but I mean, but if it
17 had been a case of there must have been a misunderstanding
18 and therefore there was a misunderstanding then I can
19 understand it. What is the position? I don't mean to be
20 difficult but, you know, it's a point that's come up –

21 GENERAL PHIYEGA: Yes.

22 CHAIRPERSON: It does cause a bit of
23 puzzlement and we must try to get to the bottom of it some
24 way or the other, so I'd be grateful if you'd help me on
25 that.

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1 GENERAL PHIYEGA: Certainly for it to be
2 written like this, my instruction was not understood and
3 that is why I corrected it.

4 CHAIRPERSON: That presupposes that they
5 weren't aware of the exact nature of the engagement that
6 you had with the Minister.

7 GENERAL PHIYEGA: They wouldn't be.

8 CHAIRPERSON: Now what – the other point,
9 of course, that I asked you about is, it does appear that
10 both of these bits of misinformation didn't find their way
11 into the statement at the same time because as we saw, the
12 one we've been busy with now, the one I've called the
13 second bit of misinformation came in first and the other
14 one about your relaying information to the Minister earlier
15 on when you were told about the proposed implementation of
16 the plan, that was only added later. How did that happen?

17 GENERAL PHIYEGA: Judge, as I've said,
18 there have been iterations and iterations of my statement
19 and it culminated in the one of the 7th.

20 CHAIRPERSON: I've got more trouble, I
21 must tell you, with the second, sorry, with the first bit
22 of misinformation because as we can see from –

23 GENERAL PHIYEGA: Apologies, Chair,
24 please proceed with your questions.

25 CHAIRPERSON: Because as we can see, the

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1 statement at one stage as far as paragraph 23 was concerned
2 simply ended up by saying that Lieutenant-General Mbombo
3 had telephoned you, informed you of the decisions implement
4 operation of the plan and that's where it stops. There was
5 no mention of the Minister at all.

6 GENERAL PHIYEGA: Yes.

7 CHAIRPERSON: As we can see from, as we
8 can see from exhibit FFF33.4, what I call the second bit of
9 misinformation, the wrong statement that the Minister gave
10 you certain advice after you'd informed him of the tragedy,
11 that was put in but paragraph 23 had no mention of the
12 Minister. And what happened thereafter, it would seem, was
13 that the bit about your relaying the information to the
14 Minister that the decision had been taken to implement the
15 plan, was inserted later. How did that happen? Sorry Ms
16 Sello, forgive me, I was going to ask these questions later
17 but I thought you were dealing with the point so it seemed
18 appropriate to put my difficulties to her now so that you
19 can, if necessary, take the matter further and assist by
20 throwing further light on the matter if you wish to do so.

21 MS SELLO: Thank you, Chair. I'm in full
22 agreement with the Chair on that. National Commissioner,
23 you are on record having said that over the course of the
24 Marikana issue you had conversations with the Minister.

25 GENERAL PHIYEGA: Hmm.

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1 MS SELLO: Yes. Did you in your
2 discussions with the Minister discuss the plan for Marikana
3 which now is known as FFF3, the detail of that plan – FF3,
4 rather, my apologies.

5 GENERAL PHIYEGA: No, I did not.

6 MS SELLO: From your conversations with
7 the Minister, would the Minister have understood that the
8 plan has got various stages?

9 GENERAL PHIYEGA: No, he wouldn't because
10 those are operational intricacies.

11 MS SELLO: And if you, during one of the
12 conversations with him, had told him that General Mbombo
13 advised they will be moving to stage 3, would the Minister
14 have understood, based on your previous conversations?

15 GENERAL PHIYEGA: No, he wouldn't.

16 MS SELLO: Regarding the planned action
17 for the 16th, what did you communicate with the Minister?

18 CHAIRPERSON: What, if anything?

19 MS SELLO: What, if anything, thank you
20 Chair.

21 GENERAL PHIYEGA: What I said to the
22 Minister was that we are looking at dispersing the crowds
23 that were converging on the koppie.

24 MS SELLO: If I may refer you then to
25 FFF3, paragraph 23, you just dealt with it with the Chair

<p style="text-align: right;">Page 11328</p> <p>1 now.</p> <p>2 GENERAL PHIYEGA: FFF?</p> <p>3 MS SELLO: FFF3. The statement at</p> <p>4 paragraph 23 currently reads, "I received a call from</p> <p>5 Lieutenant-General Mbombo who informed me of the decision</p> <p>6 to implement stage 3 of the plan, which information I</p> <p>7 relayed to the Minister." FFF3 is the statement dated 12th</p> <p>8 March, okay? Do you see that paragraph?</p> <p>9 GENERAL PHIYEGA: Yes, I do.</p> <p>10 MS SELLO: Before we broke for lunch you</p> <p>11 confirmed to the Chair that you had relayed information to</p> <p>12 the Minister. Do you recall that? In light of the answers</p> <p>13 you have given regarding the Minister's knowledge as</p> <p>14 obtained from you regarding the various stages, what you</p> <p>15 relayed to the Minister, is it correctly reflected in 23,</p> <p>16 paragraph 23?</p> <p>17 GENERAL PHIYEGA: No, what I relayed is</p> <p>18 sitting in my statement of the 7th because the Minister</p> <p>19 would not know what stage 3 is.</p> <p>20 MS SELLO: Thank you, National</p> <p>21 Commissioner, I'm going to move to a different point now.</p> <p>22 During the cross-examination of Adv Madlanga there was a</p> <p>23 discussion regarding the statement of Myburgh. I think is</p> <p>24 his statement is FFF7, it's not necessary for you to refer</p> <p>25 to it. Unfortunately his statement does not state his rank</p>	<p style="text-align: right;">Page 11330</p> <p>1 MS SELLO: Going back to Marikana, you</p> <p>2 have said in your evidence on a number of occasions that</p> <p>3 you took decisions regarding Marikana. I want to clarify</p> <p>4 one aspect with you and in order for me to do so would you</p> <p>5 very briefly describe the nature of decisions you took in</p> <p>6 respect of Marikana?</p> <p>7 GENERAL PHIYEGA: I have indicated during</p> <p>8 my testimony the decisions that I took in line with my role</p> <p>9 and responsibility were of a strategic and enabling nature</p> <p>10 for those who should operate.</p> <p>11 MS SELLO: And when you say they were of</p> <p>12 an enabling nature, what do you mean, just for clarity?</p> <p>13 GENERAL PHIYEGA: I would mean if for</p> <p>14 example one looks at the deployment of resources from one</p> <p>15 province to the other, I needed to take a decision that</p> <p>16 says yes, that can happen, so that those that facilitate</p> <p>17 that would have the enabling environment to be able to do</p> <p>18 so.</p> <p>19 MS SELLO: It was suggested during cross-</p> <p>20 examination, in fact you were asked whether you took</p> <p>21 operational decisions regarding Marikana and by operational</p> <p>22 decisions I would understand, and I want to know if you</p> <p>23 share my understanding, that that refers to decisions on</p> <p>24 what must be done and how it must be done. Is that how you</p> <p>25 would understand operational decisions too?</p>
<p style="text-align: right;">Page 11329</p> <p>1 but you do remember, I think it's Botha Myburgh.</p> <p>2 GENERAL PHIYEGA: Yes, I remember.</p> <p>3 MS SELLO: At the end of that cross-</p> <p>4 examination or during the course of cross-examination on</p> <p>5 that, the Chair enquired from you whether you had been</p> <p>6 furnished with a report by IPID of the investigation into</p> <p>7 the allegations by Myburgh, do you remember that?</p> <p>8 GENERAL PHIYEGA: Yes, I recall.</p> <p>9 MS SELLO: The transcript has you as</p> <p>10 saying you did not have a report then –</p> <p>11 CHAIRPERSON: When you quote the</p> <p>12 transcript it would be helpful if you give the page number,</p> <p>13 so when one reads the transcript, you know, one can refer</p> <p>14 back pretty easily if you have the page number available.</p> <p>15 MS SELLO: The discussions between Adv</p> <p>16 Madlanga and the witness on Myburgh are on day 66 from the,</p> <p>17 that's the 19th March 2013 and that will be from pages 6940</p> <p>18 to 6943.</p> <p>19 CHAIRPERSON: Thank you.</p> <p>20 MS SELLO: Thank you, Chair. What I want</p> <p>21 to find out from you now is – that was in March, now that</p> <p>22 it's June have you since been furnished with a report by</p> <p>23 IPID of the Myburgh investigation?</p> <p>24 GENERAL PHIYEGA: No, I haven't received</p> <p>25 any report.</p>	<p style="text-align: right;">Page 11331</p> <p>1 GENERAL PHIYEGA: Those type of decisions</p> <p>2 are left to those who are in operations because they have</p> <p>3 the necessary delegation and responsibility as clearly</p> <p>4 outlined by our prescripts, so those people would be able</p> <p>5 to take those operational decisions.</p> <p>6 [14:29] MS SELLO: And did you take any</p> <p>7 operational decisions regarding Marikana?</p> <p>8 GENERAL PHIYEGA: No.</p> <p>9 MS SELLO: There were further discussions</p> <p>10 with you regarding the use of R1, R5 and Chairman, I'll try</p> <p>11 and get the reference to the transcript, and further, it</p> <p>12 was around the use of those weapons and you were asked</p> <p>13 whether you have done anything about what the SAPS expert</p> <p>14 says regarding the reassessment of the employment of R5s.</p> <p>15 Do you remember that discussion?</p> <p>16 GENERAL PHIYEGA: Yes, I remember that.</p> <p>17 MS SELLO: A specific question was put to</p> <p>18 you whether you have done anything about what De Rover</p> <p>19 states in his statement and your answer was that you</p> <p>20 hadn't.</p> <p>21 GENERAL PHIYEGA: It is true.</p> <p>22 MS SELLO: Can you explain to the</p> <p>23 Commission why it is you haven't done anything about the</p> <p>24 employment of R5s in crowd management situations yet?</p> <p>25 GENERAL PHIYEGA: Matters relating to the</p>

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1 nature of equipment we use are not things that you can
 2 change overnight. They are a matter of policy and we
 3 believe that some of the recommendations that are going to
 4 come out of here, we will sit down and look at those and
 5 get into a policy process to check whether indeed those are
 6 some of the recommendations that we should consider being
 7 able to implement. So at this point in time, you know, I
 8 wouldn't say those - those policy processes would wait for
 9 the total outcome, would look at the recommendations that
 10 have been made and we will take them through the policy
 11 processes of SAPS.

12 MS SELLO: I would like to refer you to
 13 an exhibit that was distributed this morning. It's FFF42,
 14 that's the speech by the Minister of Police of the 21st June
 15 2012. Adv Gumbi dealt with this statement with you. It's
 16 FFF42, have you located it?

17 GENERAL PHIYEGA: I've reduced my papers,
 18 I'll read with you.

19 MS SELLO: National Commissioner, do you
 20 have it before you now?

21 GENERAL PHIYEGA: Yes –

22 CHAIRPERSON: Which page are you
 23 referring to?

24 MS SELLO: I am referring to page 2 and
 25 Adv Gumbi dealt with paragraph 3 on page 2 with you, which

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1 referred to the number of members suffering from depression
 2 and those suffering from post-traumatic stress disorder.
 3 Do you see that part?

4 GENERAL PHIYEGA: Yes, I do see that.

5 MS SELLO: I would like to refer you to
 6 paragraph 7 on that page which is about three paragraphs
 7 below the one I've just referred you to and that paragraph
 8 starts with the statement, "Other factors might be that
 9 SAPS members are prohibited access to personal firearms if
 10 they suffer from a psychiatric condition." Do you see
 11 that?

12 GENERAL PHIYEGA: Yes, I do.

13 MS SELLO: Is that a correct policy of
 14 SAPS, as you understand things?

15 CHAIRPERSON: Perhaps for the benefit of
 16 those in the auditorium and watching it on the worldwide
 17 web, it would be helpful if the full context of that were
 18 given. The Minister was speaking about SAPS members who
 19 were not utilising counselling programmes because they have
 20 the wrong perceptions and he then suggests that one of the
 21 factors may be that because SAPS members are prohibited
 22 access to personal firearms if they suffer from a
 23 psychiatric condition, that may be reason why they're not
 24 prepared to go forward to participate in psychiatric
 25 programmes. That's the context. Now what exactly is the

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1 question you want to ask the witness about that?

2 MS SELLO: Following on that statement,
 3 as the Chair has properly contextualised, I want to find
 4 out whether or not SAPS members are indeed prohibited
 5 access to personal firearms if they suffer from a
 6 psychiatric condition.

7 GENERAL PHIYEGA: Yes, it is the correct
 8 policy position. Once we have identified a member that
 9 they have a challenge in that regard, we do remove that
 10 type of equipment from the member.

11 CHAIRPERSON: Wouldn't there in fact be a
 12 danger of the service being held liable, civilly liable, if
 13 someone who was known to have a psychiatric condition who
 14 was a member of the service, was known to have a
 15 psychiatric condition, was allowed to remain in possession
 16 of the firearm and that firearm were used to kill or injure
 17 somebody? Would there not be a distinct danger of civil
 18 liability on the part of the police for allowing that to
 19 happen?

20 GENERAL PHIYEGA: It would be a danger
 21 and this is why we have a policy to remove the arms.

22 MS SELLO: We are in full agreement with
 23 the Chair on the dangers of deploying such people and if I
 24 may just round off this question, if a member has had his
 25 personal firearm, or he's been denied access to his

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1 personal firearm because he's been diagnosed with a
 2 psychiatric condition, does that member or is that member
 3 ever deployed in operations without any personal firearm?

4 GENERAL PHIYEGA: Once we identify a
 5 member such as that one, first step is that, you know, once
 6 that diagnosis has been given, the assessment has been
 7 given, we remove the equipment but then we don't leave the
 8 member, we put the member through the necessary counselling
 9 treatment, attention of doctors, and that that member will
 10 not be deployed to active operations. That member will do
 11 a lot of back room work, office work and those type of
 12 things. It is only after that member is reassessed and be
 13 found to be fit that that member can be given back his
 14 equipment and then redeployed.

15 MS SELLO: And lastly, National
 16 Commissioner, may I revisit the issue of statements? I
 17 want to find out from you, with the confusion that has
 18 arisen with the statements, the Chairperson at times refers
 19 to the information you disagree with contained in
 20 particular in exhibit FFF3 as misinformation. I want to
 21 find out from you whether it is your view that the wrong
 22 information, as you termed it, in FFF3 was inserted by any
 23 one of your team with an intention to mislead this
 24 Commission. Did you ever hold such a view?

25 MR MPOFU: Sorry, Chairperson, I object.

<p style="text-align: right;">Page 11336</p> <p>1 I thought the evidence before lunch was that the witness 2 said it was her doing that – or rather the information 3 emanated from her and she did not seek to blame the persons 4 that she mentioned. 5 MS SELLO: No Chair, that's not correct. 6 What the witness said before lunch was in response to the 7 Chair's question regarding culprits and she said she did 8 not deem anyone a culprit. About how the information as 9 reflected in FFF3 came to be, that discussion was had with 10 the witness by the Chair after lunch where – 11 CHAIRPERSON: It's not as simple as that. 12 Do you remember there were two items, the one was para 23 13 and the other one was, I think it's paragraph 234. 14 MS SELLO: That's correct, Chair. 15 CHAIRPERSON: And after lunch I dealt 16 with paragraph 24 and before lunch I dealt with 23 and I 17 think it's probably best to let the transcript speak for 18 itself on what was said and what wasn't said. But you're 19 asking a different question and let's – I'm not sure it's 20 strictly relevant but I don't want you to complain later 21 that you were prevented from asking a question that was 22 relevant that I mistakenly thought was irrelevant. Are you 23 suggesting that anyone put any bit of misinformation into 24 your statement in order to deceive anybody? I think that's 25 the question. What's your answer to that?</p>	<p style="text-align: right;">Page 11338</p> <p>1 would have been the significance and all those type of 2 issues, but at no point was I informed that the muti issue 3 informed the plan and the interventions that were being 4 made by the police. 5 CHAIRPERSON: I'd like to ask you a few 6 questions, if I may. The first relates to the briefing 7 that you received, the first topic I want to cover relates 8 to the briefing that you received on the evening of the 16th 9 of August when you arrived at Marikana. Now on the evening 10 of the 16th of August you were briefed by Lieutenant-General 11 Mbombo, General Annandale, General Naidoo, Brigadier Calitz 12 and Lieutenant-Colonel Scott. That's the evidence that we 13 have. Did they brief you that there were two incidents or 14 one and that some protesters or strikers were wounded, some 15 fatally, at two scenes? 16 GENERAL PHIYEGA: The scenes were not yet 17 termed scenes but they mentioned that there was the area 18 where the wire was and there was the busy area, as I also 19 mention it in my statement, where the other people died 20 from. 21 CHAIRPERSON: So there were effectively 22 two, if the word "scene" wasn't used, there were 23 effectively two places or spots where things happened. 24 GENERAL PHIYEGA: How it came across, 25 Judge, was that they were, where they were working and then</p>
<p style="text-align: right;">Page 11337</p> <p>1 MS SELLO: National – 2 CHAIRPERSON: You weren't listening, you 3 were making a note. I'll repeat the question. The 4 question was asked - I'm not sure it's relevant but on the 5 other hand I want to give your counsel an opportunity to 6 get the answer to the question she's asked – are you 7 suggesting that any misinformation that found its way into 8 your statement was put there by anybody with the intention 9 of deceiving anybody, putting them under a wrong 10 impression? 11 GENERAL PHIYEGA: No. 12 MS SELLO: Thank you, Chair, those are 13 the questions we have in re-examination. 14 CHAIRPERSON: My colleague, Adv Tokota, 15 wishes to ask you a question or questions. 16 COMMISSIONER TOKOTA: General, we are 17 aware that you were not present during all of that 18 operation but you were kept informed at all stages. Were 19 you informed about the muti story and, if so, were you 20 informed as to what extent was it taken into account, if it 21 was at all, during the decision to implement stage 3 of the 22 plan? 23 GENERAL PHIYEGA: I was made aware of the 24 muti issues because when we looked at some of the pictures 25 with the skull on the chest you were asking yourself what</p>	<p style="text-align: right;">Page 11339</p> <p>1 there were some running away and following to the busy 2 area. That's how it came - 3 CHAIRPERSON: I see. At what stage, 4 according to what they told you, did the police have to use 5 force to protect themselves from a charging mob? Did they 6 tell you that the police had to use force to protect 7 themselves from a charging mob? If so, did they tell you 8 at what stage that was? 9 GENERAL PHIYEGA: The understanding was 10 that as they were, they tried to put the barbed wire so 11 that they can stop and talk to those that, the protesters, 12 and at some point they broke through the barbed wire or 13 came through the other side of the barbed wire. 14 CHAIRPERSON: And it was at that stage 15 that they had to use force to protect themselves against 16 this charging mob. 17 GENERAL PHIYEGA: That was my 18 understanding because they, the people that came in kept on 19 approaching. 20 [14:48] CHAIRPERSON: Thank you. I'd now like to 21 move to another topic, it's the topic of demilitarisation. 22 Mr Madlanga raised with you the question of 23 demilitarisation and drew your attention to the relevant 24 chapter of the report of the National Planning Commission 25 in which a strong recommendation was made that the police</p>

<p style="text-align: right;">Page 11340</p> <p>1 service which had been demilitarised in 1994 and had become 2 remilitarised subsequently, should be re-demilitarised, if 3 I can use that expression. Now I take it that the re- 4 demilitarisation issue raises what we may call a "when" 5 question rather than a "whether" question. 6 Demilitarisation is going to take place, the only question 7 is when. Would you agree with that? 8 GENERAL PHIYEGA: I would not agree with 9 that, Judge. No, no, I don't agree, I would not agree with 10 that. 11 CHAIRPERSON: Are you saying that you or 12 possibly those who work with you at Wachthuis in the 13 headquarters of the police service don't agree with that 14 recommendation of the National Planning Commission? 15 GENERAL PHIYEGA: Judge, I can say even 16 this weekend we were with the Planning Commission because 17 the whole issue of interpretation of militarisation and 18 demilitarisation, we are asking the question whether a rank 19 is militarisation or the way we do things talks to the 20 militarisation or demilitarisation. We asked that question 21 to say at the time when it was decided that there was 22 militarisation, what was the background philosophy that 23 informed that discussion? And actually in the discussion 24 that we were having we agreed that we need to re-engage 25 because it appears from, we are starting from different</p>	<p style="text-align: right;">Page 11342</p> <p>1 say are we defining demilitarisation as rank, 2 militarisation as rank, we need to find each other. We 3 need to contextualise this thing and agree that at the end 4 of the day that militarisation and demilitarisation talks 5 to what the Constitution requires of us and at all times as 6 the police service our commitment is to ensure that we 7 offer services to the citizens in accordance with what our 8 Constitution requires us to do. 9 CHAIRPERSON: I didn't understand that 10 chapter of the National Planning Commission's report to be 11 based solely on the need to bring the organisation and 12 structures and so forth and the mindset of the police 13 service or police force, as the National Planning 14 Commission calls it, in line with the Constitution. It was 15 concerned with broader questions of sound policy and so on 16 but I won't debate that with you now, but I want to ask you 17 something else. Do you know, have you been informed 18 whether the Commission communicated with the police service 19 before its report was published? The report was published 20 on the 15th of August, the day before the events at Marikana 21 on the Thursday, which culminated in our being here – but 22 do you know whether before that report was published, while 23 the plan was being prepared, the National Planning 24 Commission communicated with the police service and set out 25 their prima facie views and sought a response from the</p>
<p style="text-align: right;">Page 11341</p> <p>1 vantage points. What we know is that policing in this 2 country, given the Constitution that we are having, it 3 should respect all those principles, the rights of people, 4 the responsibilities of the citizens to abide with the law, 5 our responsibility to ensure that we give policing within a 6 human rights environment. 7 CHAIRPERSON: I won't go through the 8 passages in chapter 12 of the report of the National 9 Planning Commission which was handed in as exhibit FFF13 10 because Mr Madlanga did that, but the clear view was 11 expressed in that chapter that the – it's not just a 12 question of formal military ranks, it's a question of 13 mindset and general approach and the attitude of the public 14 and the community at large to the police, whether they see 15 the police not as a service but as a force which adopts a 16 military approach towards them in certain circumstances, 17 but I don't want to repeat that because that's already on 18 record, but do I understand you then to say that it's by no 19 means an open and shut question that, whether the police 20 will be re-demilitarised, that the thinking of you and your 21 senior colleagues is that it may not happen and that that 22 recommendation of the National Planning Commission may not 23 be implemented? Is that what you're telling us? 24 GENERAL PHIYEGA: Mm-mm. Judge, I'm not 25 telling you that. I'm saying we need to find each other to</p>	<p style="text-align: right;">Page 11343</p> <p>1 South African Police? 2 GENERAL PHIYEGA: I would not say they 3 were discussing the report. Like all other citizens and 4 various entities in this country, in the various chapters, 5 police were also engaged, discussed with, made inputs but 6 they didn't come to discuss the report with us as such. 7 CHAIRPERSON: I'm asking a different 8 question. What I want to know is, before the report was 9 finalised by the Commission, did the Commission communicate 10 with the South African Police Service and inform it of its 11 prima facie views on the matter, which we now find set out 12 in chapter 12, and did it seek response from the police 13 service on those views? 14 GENERAL PHIYEGA: Judge, I wouldn't know 15 about that one. All I know is that, as I've said, they 16 were engaged, they deliberated on issues, they participated 17 in workshops, we made submissions. 18 CHAIRPERSON: Do you know whether the 19 police service made any submissions to the National 20 Planning Commission while it was busy with the preparation 21 of its report on the demilitarisation or the re- 22 demilitarisation issue as it's set out in chapter 12 of the 23 report? 24 GENERAL PHIYEGA: Yes, the police did 25 make submissions.</p>

<p style="text-align: right;">Page 11344</p> <p>1 CHAIRPERSON: Do you know what those 2 submissions were? 3 GENERAL PHIYEGA: I haven't gone through 4 them but I know that they made submissions. It was before 5 my time. 6 CHAIRPERSON: Were they made in writing 7 or orally? 8 GENERAL PHIYEGA: Writing. 9 CHAIRPERSON: In writing. Perhaps we 10 might be favoured with a copy at some stage. The next 11 question I want to ask you is this, at page 387 of the 12 report, that's exhibit FFF13, the Commission referred to 13 what it called the militarisation of the police in recent 14 years and said this about it, it said "It has not garnered 15 greater community respect for police officers, nor has it 16 secured higher conviction rates." And it said that, at 17 page 392, that from 2000 the police service gradually 18 started resembling a para-military force and that this 19 process was formalised with the reintroduction of military 20 ranks in 2010. Now I take it you read that passage in the 21 report. In other words, the culmination of the process of 22 remilitarisation was the reintroduction of military ranks 23 and that occurred with effect from the 1st of April 2010 24 when the regulations under the South African Police Service 25 Act were amended by Government Notice No. R254 of the 1st</p>	<p style="text-align: right;">Page 11346</p> <p>1 alter the militarised mindset, if there is such a mindset 2 present in the police force, but the formal outward 3 manifestation of that inward mindset would be the military 4 ranks and in fact it appears, this is what the argument 5 would be, that the reintroduction of military ranks was 6 done as a culmination of a process of remilitarisation 7 which had begun 10 years earlier in 2000 - but it's not for 8 you and me to debate that, that may well be covered in the 9 argument but that would be the view which I presume would 10 be put by those who would support the recommendation of the 11 National Planning Commission, but anyway you've told us - 12 GENERAL PHIYEGA: Maybe can I just- 13 CHAIRPERSON: Sorry? 14 GENERAL PHIYEGA: - respond to that, 15 Judge. I just want to say to you, Judge, in terms of our 16 strategy and our approach, our commitment towards the mind 17 change, towards the behaviour of police, our code of 18 conduct clearly articulates the direction we would like to 19 take. Our strategy is very, very articulate also in terms 20 of where we would like to take this organisation because we 21 believe that it should be a service that serves the 22 citizens of this country. It is not the rank, and we are 23 doing as much as we can to ensure that, on a continuous 24 basis, we work on that and I want to say you would also 25 recall that we put together 11 agencies of police, so the</p>
<p style="text-align: right;">Page 11345</p> <p>1 of April 2010, which did away with the previous 2 demilitarised ranks which were introduced in 1994 and went 3 back to the military ranks which had been in existence in 4 the apartheid days before 1994. That was done by 5 regulation. Now it would be possible, I take it, for those 6 regulations to be amended by the reintroduction of civilian 7 ranks and in doing away with military ranks, without going 8 to parliament, simply by the preparation of a regulation in 9 terms of the relevant section of the Police Service Act, 10 section 24. Has any consideration been given to doing 11 that, repealing the regulation to which I've referred of 12 the 1st of April 2010 and going back to the situation as it 13 was before that and as it was from the introduction of 14 democracy in this country in 1994? 15 GENERAL PHIYEGA: At this point in time 16 no consideration has been given to that because again, 17 Judge, as I've said, does changing the title of a person 18 change the behaviour of a person? That's the debate that 19 we are in right now. 20 CHAIRPERSON: You ask a question and it's 21 not for me to answer you, but some people might answer you 22 by saying that of course you don't just change the police 23 from being a para-military or a militarised organisation 24 into a demilitarised one by changing ranks. You'd have to 25 go far further than that. You'd have to do something to</p>	<p style="text-align: right;">Page 11347</p> <p>1 change management process is going to take quite a while 2 and it is an area we are prioritising and that we are 3 focusing on. 4 CHAIRPERSON: But you've now put it on 5 record that the reintroduction of civilian ranks has not 6 even been considered in the police force as of yet. Now 7 I'd like to move on to another matter. Apart from the 8 letter you sent on the 23rd of March 2013 to Provincial and 9 Divisional Commissioners asking them to prepare short two- 10 slide presentations on the topic of demilitarisation - or 11 actually more accurately the recommendations of the 12 National Planning Commission, which is exhibit FFF16 - has 13 anything been done to implement the National Planning 14 Commission's recommendation that what it calls the South 15 African Police Force be militarised - sorry, be 16 demilitarised as "a short-term objective which should 17 happen in the immediate term," to quote from page 393 of 18 exhibit FFF13. Has anything been done at all to implement 19 that recommendation? 20 GENERAL PHIYEGA: Yes, Judge, over this 21 weekend we had a huge workshop, consolidated information, 22 input that came from the provinces was received. We also 23 invited to that workshop the chairperson of the committee 24 that was responsible for safety and security coming from 25 the Planning Commission, a commissioner, and we had quite</p>

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1 some robust engagement and he did indicate to us that one
 2 of the areas where they felt more work needed to be done
 3 was this area and he has committed himself to work with us
 4 further so that as we prepare our first action, strategies,
 5 we could actually be, you know, we could actually engage on
 6 issues where we are feeling that some of the submissions
 7 and the issues that we put across were not taken into
 8 account. And maybe also just to indicate, Judge, that
 9 we're also looking at the end of quarter 3, quarter 4, for
 10 us to have a position that we will be taking to our
 11 portfolio committee.

12 CHAIRPERSON: The last question I'd like
 13 to ask you on this topic is the following, at page 393 of
 14 the exhibit FFF13, the National Planning Commission
 15 recommends that the – and I'm quoting – “that the
 16 organisational culture and sub-culture of the police be
 17 reviewed,” again to quote, “to assess the effects of
 18 militarisation, demilitarisation and remilitarisation.”
 19 Has such review been undertaken or considered, that's to
 20 review the organisational culture and sub-cultures of the
 21 police?

22 GENERAL PHIYEGA: I think a lot has been
 23 done in that space, Judge, because even our curriculum for
 24 the students that we are taking in, the whole human rights
 25 education has now been factored in. I also wish to mention

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1 that this year and the following year have been declared
 2 the year of the frontline service because we are saying the
 3 face facing, community facing platforms of our delivery, we
 4 need to do a lot around that. We are busy with plans to
 5 look at how, over the next two years, we'd also be using
 6 that as a platform of accelerating our behaviour, change
 7 management process, to look at how we become customer
 8 focused and that we look at some of the issues that you are
 9 mentioning.

10 [15:08] CHAIRPERSON: I can understand customer
 11 focus but the thrust of this particular recommendation of
 12 the National Planning Commission is more specific than
 13 that. It talks about an assessment being made of the
 14 effects of militarisation, demilitarisation and
 15 remilitarisation. Is that something that's been reviewed
 16 or even been considered for review at the moment?

17 GENERAL PHIYEGA: I have mentioned that
 18 the issue of rank is under debate and the whole issue of
 19 culture, it's part of our change management process and we
 20 will definitely look into those type of aspects because
 21 it's crucial if we are to achieve what we say we will need
 22 to achieve, we need to look into those but also what we've
 23 also, what I would say – and this is not what the police
 24 are saying – I would also say that it's a mutual process.
 25 The police are also going to be aided by a citizenry that

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1 understands what it means to be law-abiding.
 2 CHAIRPERSON: Yes, no, I think the
 3 [inaudible]. Before I deal with the next topic, we'll take
 4 the tea adjournment.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [15:28] CHAIRPERSON: Sorry, I did say I was
 7 going to leave that topic of militarisation and so on, but
 8 there was one question I forgot to ask you, and that is
 9 were you aware of the fact that POPCRU was opposed to the
 10 remilitarisation of the police, and particularly to the
 11 introduction of military ranks and that they put up and
 12 motivated submissions as to why that shouldn't happen?
 13 Were you aware of that?

14 GENERAL PHIYEGA: I have learned of that,
 15 because it was before my time.

16 CHAIRPERSON: Yes, I understand.
 17 Alright, now I want to move on to the final topic I want to
 18 deal with, with you, and that's your media statements and
 19 the internal brief that was sent to the Department of
 20 International Relations. Let's deal first with your media
 21 statement, that's exhibit FFF5. Who drafted it?

22 GENERAL PHIYEGA: We had a communications
 23 team there, Adriano, Mashego and –

24 CHAIRPERSON: Sorry, who drafted it?
 25 GENERAL PHIYEGA: I have indicated,

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1 Judge, that we had a communications team.
 2 CHAIRPERSON: Yes.
 3 GENERAL PHIYEGA: Adriano was there and a
 4 Mashego.
 5 CHAIRPERSON: I see.
 6 GENERAL PHIYEGA: Yes.
 7 CHAIRPERSON: So can we regard them as
 8 the two main draft persons, if one can call them that, of
 9 the statement?

10 GENERAL PHIYEGA: Yes, what they were
 11 doing was to collate information and they were the
 12 drafters.
 13 CHAIRPERSON: I see. When did they draft
 14 it?

15 GENERAL PHIYEGA: The night of the 16th to
 16 the early hours of the 17th.
 17 CHAIRPERSON: Thank you. Now the
 18 internal brief for the Department of International
 19 Relations, which was also for the eyes of the President,
 20 which is exhibit FFF4, who drafted that?

21 GENERAL PHIYEGA: At the same time when
 22 we were doing that, we had to prepare the internal brief
 23 because we needed to also brief the Minister, as indicated.
 24 CHAIRPERSON: So did the same people who
 25 drafted your media statement, FFF5, did they draft the

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1 internal brief, exhibit FFF4?
 2 GENERAL PHIYEGA: Yes.
 3 CHAIRPERSON: Did you have a chance to
 4 read it before it was sent to the Minister of International
 5 Relations and the President?
 6 GENERAL PHIYEGA: Yes, I did.
 7 CHAIRPERSON: Have you read it since?
 8 GENERAL PHIYEGA: Yes, I did.
 9 CHAIRPERSON: Now the briefing you
 10 received on the night of the 16th of August, was it the same
 11 essentially as what was contained in the internal brief
 12 which went for the eyes of the President?
 13 GENERAL PHIYEGA: Largely so.
 14 CHAIRPERSON: I see. Thank you. Now did
 15 you notice before you read out exhibit FFF5 at the media
 16 briefing that there appears to be an important change
 17 between these two statements? Did you notice any change,
 18 or any important change between these two statements before
 19 you read out exhibit FFF5 at the media briefing?
 20 GENERAL PHIYEGA: I'm not sure, Judge,
 21 what that change –
 22 CHAIRPERSON: Well, let me explain.
 23 GENERAL PHIYEGA: Yes.
 24 CHAIRPERSON: You see, FFF4, that's the
 25 internal brief, speaks of two separate incidents and gives

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1 two separate casualty figures, and it talks of the police
 2 having to defend themselves at the end of the first
 3 incident from a charging group, resulting in the death of
 4 16 protesters and the wounding of 13 more at that scene.
 5 So in other words it describes separately what happened at
 6 scene 1, with separate casualty figures, and the statement
 7 at the end of that incident, the police had to defend
 8 themselves from a charging group, whereas one doesn't see
 9 that in exhibit FFF5. It doesn't talk in terms of two
 10 separate incidents. It doesn't give two separate casualty
 11 figures for each of the two scenes, and it describes – and
 12 this is perhaps the most important point – it describes the
 13 whole operation as having ended with the militant group
 14 having "stormed towards the police, firing shots and
 15 wielding dangerous weapons, and the police retreating
 16 systematically and being forced to utilise maximum force to
 17 defend themselves."
 18 Now the effect of these changes is to create the
 19 distinct impression in the mind of the listener and the
 20 reader that the police at the end of scene 1, which could
 21 be seen, the reactions of the police at the end of scene 1,
 22 which could be seen on the media video clips and which were
 23 arguably covered by the principles of private defence,
 24 occurred not at the end of scene 1 but at the end of scene
 25 2. Now such an impression would be incorrect. There were

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1 on the information presently before the Commission no media
 2 clips of the killings at scene 2. There was no storming by
 3 a militant group, and there was no systematic retreat by
 4 the police at scene 2. Did you not notice this change?
 5 MS SELLO: Chair, may we request that the
 6 two statements be placed before the witness? It's been a
 7 long question and I'm not –
 8 CHAIRPERSON: I must confess I assumed
 9 she had them before her. It's a perfectly reasonable
 10 request. It's FFF4 and FFF5. Alright, do you have them in
 11 front of you?
 12 GENERAL PHIYEGA: Ja, I had them, but I
 13 was asking myself which one is 4, which one is 5.
 14 CHAIRPERSON: Alright, okay. Now let's
 15 take it slowly because it's an important question and
 16 obviously it's important that you have the full picture
 17 before you answer the question. FFF4, page 2, the fourth
 18 paragraph, perhaps I can read it, "When the police started
 19 deploying," this is the one for the eyes of the President.
 20 "When the police started deploying the barbed wire fencing,
 21 a militant group from the protesters armed with weapons,
 22 pangas, spears, axes, and firearms, hastily flanked the
 23 vehicles deploying the wire. They were met by members from
 24 the police who tried to repost the advance with stun
 25 grenades. The attempt was unsuccessful and the police

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1 members had to employ force to protect themselves from the
 2 charging group. This resulted in the death of 16
 3 protesters, with 13 wounded at that scene." That's scene
 4 1. "The dispersion action had commenced at this time and
 5 the protesters were driven from their stronghold to a high
 6 busy ground in the close vicinity. The police members
 7 encircled the area and attempted to force the protesters
 8 out by means of water cannons, rubber bullets and stun
 9 grenades. The police advanced to arrest the armed
 10 protesters, resulting," I take it that should be "resulted
 11 in police officers having to again employ force to defend
 12 themselves at close quarters. This resulted in 13 more
 13 protesters' death with 15 more wounded at the second
 14 incident." Separate casualty figures, second incident, no
 15 mention of the charging group. That's what that statement
 16 says.
 17 Now if we look at the next statement, the media
 18 statement FFF5, that you say was drafted by the same
 19 people. It obviously was drafted later because the death
 20 toll in FFF4 is 16 dead at scene 1, 13 dead at scene 2,
 21 adds up to 29. If one reads FFF5, the foot of page 2,
 22 there are 34 people dead. So clearly that statement was
 23 written subsequently. A lot of the language is the same,
 24 so one can understand that was the same people, because a
 25 lot of the language is the same. But the difference comes

<p style="text-align: right;">Page 11356</p> <p>1 when one reads towards the foot of the second page, it's 2 the third paragraph from the foot. "When the police 3 started deploying the barbed wire fencing the group of 4 protesters, armed with dangerous weapons and firearms, 5 hastily flanked the vehicles deploying the wire." The 6 language is very similar to FFF4. "They were met by 7 members from the police who tried to repost the advance 8 with water cannon, teargas, as well as stun grenades. The 9 attempt was unsuccessful and the police had to employ force 10 to protect themselves from the charging group. The 11 dispersion action had commenced at this time and the armed 12 protesters were driven from their stronghold to a high 13 bushy ground in the close vicinity. The police members 14 encircled the area and attempted to force the protesters 15 out by means of water cannons, rubber bullets, and stun 16 grenades. The militant group stormed towards the police, 17 firing shots and wielding dangerous weapons. The police 18 retreated systematically and were forced to utilise maximum 19 force to defend themselves. Total death toll of the 20 protesters currently stands at 34 with more than 78 21 injured. Total number arrested is 259." Now there's a 22 significant change in language. The language is more or 23 less the same as we go along, but right at the end where 24 the previous statement had talked about two scenes, and I 25 read those passages, now there's been an alteration. Now</p>	<p style="text-align: right;">Page 11358</p> <p>1 unseen, as it were, at the media conference? 2 GENERAL PHIYEGA: Judge, they were not 3 similar statements. This one, I knew that I was facing the 4 world and I actually needed to be even more cautious in 5 terms of how I put my language and my words. 6 CHAIRPERSON: So you did read it 7 beforehand? 8 GENERAL PHIYEGA: Yes, I did. 9 CHAIRPERSON: And you'd received the same 10 briefing the night before that's in FFF4, that's what you 11 said, and you'd read FFF4 before it went off to the 12 President, but the question I asked you is did you notice 13 the change to which I had referred? If you didn't notice 14 the change, you didn't, but the question is did you notice 15 the change? 16 GENERAL PHIYEGA: It wasn't my point of 17 focus because these statements are doing two different 18 things. The President is in Mozambique and I need to – 19 they're phoning to say the President must be able to make a 20 decision whether he's staying there, whether he's coming 21 over. So that's a different focus altogether – 22 CHAIRPERSON: No, no, I understand. 23 GENERAL PHIYEGA: - to say what do we 24 have at hand, what can we say, but this one I am now having 25 to – and remember we were even being asked to do the press</p>
<p style="text-align: right;">Page 11357</p> <p>1 the question I ask you is did you notice the change in 2 language before you read FFF5 at the media conference? 3 GENERAL PHIYEGA: My response to that, 4 Judge, would be that the internal statement and the 5 external statement, given the fact that this was going to 6 go public to everybody at the time when really some of the 7 facts were still outstanding in terms of numbers, those 8 people that have been flown with helicopters to hospital 9 and whatever, for the external public really we were trying 10 to avoid being maybe too specific and all that. You craft 11 your statement and your language in a manner that it 12 doesn't do this, but the internal one we knew that it is 13 for internal consumption. That's what I would posit as a 14 possible answer to the differences. 15 CHAIRPERSON: The casualty figures are 16 different and they prove that FFF5 must have been written 17 after FFF4 because more people had died in the meanwhile, 18 or they came to know of more people who died. So FFF5 is 19 clearly written after FFF4. So whoever had drafted FFF4 20 sat down with FFF5, followed most of the language of FFF4, 21 but made the changes to which I have referred you. Now the 22 question is, did you notice the changes when you read out 23 FFF5? Perhaps I should ask you a different question first. 24 Did you peruse and check FFF5 before you read it at the 25 media conference, or did you just read it sort of sight</p>	<p style="text-align: right;">Page 11359</p> <p>1 statement that evening and I said to the team we're not 2 ready to do a press statement at 10PM, let's use the night 3 to actually see what has happened, get the facts and 4 prepare our statement, and we almost didn't sleep, looking 5 at this statement. So my answer to you, Judge, is that 6 that language comparison really didn't come to my mind. 7 CHAIRPERSON: Okay, so you didn't notice 8 the change. I understand. So you can't then tell me why 9 the change was made, nor can you tell me who was 10 responsible for it. I must ask Captain Adriaio for that 11 question, I presume. 12 GENERAL PHIYEGA: In terms of? 13 CHAIRPERSON: I say in view what you've 14 told me that you didn't notice the change, you can't tell 15 me why it was made, nor can you tell me who was responsible 16 for it. I take it I must ask Captain Adriaio that when he 17 comes. 18 GENERAL PHIYEGA: No, Judge, I am saying 19 the statement that is internal, really, this one I was 20 focussing on what do I tell the world about what has 21 happened. The other one I'm trying to say this is what we 22 think has happened at this point in time, if you have to 23 take decisions, this is the account that we are having at 24 this point, and I would see that a lot of that is carried 25 in this statement, Judge, and –</p>

<p style="text-align: right;">Page 11360</p> <p>1 CHAIRPERSON: That's the point –</p> <p>2 GENERAL PHIYEGA: And it was important</p> <p>3 for us, you know in a statement such as this one it was</p> <p>4 important for us not to be putting in detail that may not</p> <p>5 have been fully confirmed and all those things, so even the</p> <p>6 language was more what you give a media type of –</p> <p>7 CHAIRPERSON: Yes, I understand. In</p> <p>8 other words you concede there were changes. The question</p> <p>9 I'm asking you is who was responsible for the changes.</p> <p>10 Were you responsible, or were Captain Adriaio and the other</p> <p>11 gentleman who's helping him responsible for the changes?</p> <p>12 GENERAL PHIYEGA: I had the communication</p> <p>13 team to put together the facts for us in a manner that we</p> <p>14 would be able to give a media report.</p> <p>15 CHAIRPERSON: Yes, yes, I understand.</p> <p>16 But you must forgive me, you haven't answered the question.</p> <p>17 The question I asked you is simply this, there were</p> <p>18 changes; whether they're consequential will presumably be a</p> <p>19 matter of debate, but who was responsible for the changes?</p> <p>20 Were you responsible, or were the two persons of the team</p> <p>21 to whom you referred, in which case I will ask Captain</p> <p>22 Adriaio why the changes were made.</p> <p>23 [15:48] GENERAL PHIYEGA: At the end of the day,</p> <p>24 Judge, I read the statement. It is not Adriaio and Mashego</p> <p>25 who read the statement. I actually had to say I am</p>	<p style="text-align: right;">Page 11362</p> <p>1 GENERAL PHIYEGA: Judge, I do not think</p> <p>2 that there was ever intention of misleading anybody.</p> <p>3 CHAIRPERSON: Thank you. Those are the</p> <p>4 questions I wanted to ask you. I take it that's the end of</p> <p>5 – there's no point in getting General Mpembe back now at 10</p> <p>6 to 4. So we will adjourn until tomorrow morning –</p> <p>7 MS SELLO: Chair -</p> <p>8 CHAIRPERSON: Sorry, I beg your pardon,</p> <p>9 Thursday morning. Sorry, Thursday morning at half past 9</p> <p>10 for General Mpembe.</p> <p>11 MS SELLO: Chair, before we adjourn may I</p> <p>12 pose, arising from your questions, may I pose one question</p> <p>13 to the witness?</p> <p>14 CHAIRPERSON: Yes, of course.</p> <p>15 MS SELLO: I'm indebted to the Chair.</p> <p>16 National Commissioner, you were referred to annexure FFF13.</p> <p>17 That's the NDP report. Do you know what is the status of</p> <p>18 that report - and for lack of a better phrase - within</p> <p>19 government structures, within government? Do you know the</p> <p>20 status of the report?</p> <p>21 GENERAL PHIYEGA: It is an aspirational</p> <p>22 document; it's a working document that all of us must</p> <p>23 engage and actually out of that deliberate and prepare</p> <p>24 plans that can try and deal with some of the aspirations</p> <p>25 that are articulated there.</p>
<p style="text-align: right;">Page 11361</p> <p>1 comfortable to read the statement as it is written.</p> <p>2 CHAIRPERSON: I understand you're</p> <p>3 responsible for the statement and you're not trying to run</p> <p>4 away from that responsibility, and I understand that. What</p> <p>5 I'm interested in, who made these changes? A person or</p> <p>6 persons had a document in front of them. They followed it</p> <p>7 very largely. They made some little changes near the end,</p> <p>8 and I want to know why, who did it. Well, I think it's</p> <p>9 clear, is it, that it was those two gentlemen, Captain</p> <p>10 Adriaio and his colleague. So why they did it you can't</p> <p>11 really tell me, I take it. So I must ask them. Is that</p> <p>12 fair?</p> <p>13 GENERAL PHIYEGA: It's fair, Judge, but</p> <p>14 I'm the owner and the reader of the statement -</p> <p>15 CHAIRPERSON: No, no, I understand.</p> <p>16 GENERAL PHIYEGA: - at the end of the</p> <p>17 day.</p> <p>18 CHAIRPERSON: In other words if the</p> <p>19 statements were misleading and the public were misled into</p> <p>20 thinking that what they saw on television at the end of</p> <p>21 scene 1 was in fact the end of the whole, of all the</p> <p>22 killings, and they were all covered by the apparent private</p> <p>23 defence argument, then the responsibility for that</p> <p>24 misleading is yours. That's a good question [inaudible]</p> <p>25 good question, but that is the question I have to ask you.</p>	<p style="text-align: right;">Page 11363</p> <p>1 MS SELLO: In your understanding is it a</p> <p>2 report that requires –</p> <p>3 CHAIRPERSON: This is re-examination, not</p> <p>4 cross-examination. I'll allow you to ask another question,</p> <p>5 you only asked permission to ask one but I'll allow you to</p> <p>6 ask another, provided it's not a leading question or one</p> <p>7 amounting to cross-examination.</p> <p>8 MS SELLO: I do apologise for saying it's</p> <p>9 one question, Chair. I think I fell into the trap of most</p> <p>10 of my colleagues who say one, then end up with five. I</p> <p>11 meant to -</p> <p>12 CHAIRPERSON: It's a trap for which there</p> <p>13 is precedent. I won't say good precedent, but there's</p> <p>14 precedent.</p> <p>15 MS SELLO: I shall be mindful of that,</p> <p>16 Chair. I would like to ask a second-last question, and</p> <p>17 there's an understanding whether as SAPS, do you understand</p> <p>18 it to be a report that requires cabinet approval or not and</p> <p>19 – no, that is the question, Chair.</p> <p>20 GENERAL PHIYEGA: Advocate, just repeat</p> <p>21 that question again.</p> <p>22 MS SELLO: I wanted to understand, to</p> <p>23 know SAPS' understanding of the status of the report.</p> <p>24 According to SAPS is it their understanding that it's a</p> <p>25 report that requires cabinet approval?</p>

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1 GENERAL PHIYEGA: Cabinet approval in
2 which sense?

3 MS SELLO: In a sense that is it before
4 the report is implemented or is binding, it must first be
5 considered and approved by cabinet or not? Is that not
6 necessary?

7 GENERAL PHIYEGA: My –

8 CHAIRPERSON: If you don't know the
9 answer, you can say you don't know, but if you do know the
10 answer we'd like to hear it.

11 GENERAL PHIYEGA: My understanding is
12 that it is a report that has been adopted by government,
13 but what we have to do is to engage it and because it's
14 aspirational, it's a working document, it doesn't read a
15 marshal order for you to say 1, 2, 3, 4, 5. It says engage
16 the ideas that are here because it's a dream of this
17 country, how do we make it realised. Some of the dreams
18 would realise, some won't.

19 MS SELLO: Thank you, Chair, I got my
20 clarification. I was thanking the Chair for the
21 opportunity.

22 CHAIRPERSON: No, I want to ask, before
23 you thank me, hear my last question. Do you know whether
24 this report was approved by congress for the government
25 party of Mangaung and endorsed by the President in his

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1 State of the Nation speech earlier this year in parliament?

2 GENERAL PHIYEGA: Very true, Judge, but
3 also there are still areas that are highly debated.

4 CHAIRPERSON: Thank you. We'll now take
5 the adjournment until Thursday morning at half past 9 when
6 Major-General Mpembe will come back. Thank you for your
7 evidence, National Commissioner. I'm sorry it took so long
8 and I'm sorry there were the interruptions, but thank you
9 for the trouble you took to come back and we wish you bon
10 voyage to Zimbabwe tomorrow.

11 GENERAL PHIYEGA: Thank you. I thank
12 you, Judge, for having given me the opportunity to give
13 evidence to this Commission, and I wish the Commission
14 well.

15 CHAIRPERSON: Thank you very much.

16 [COMMISSION ADJOURNED]

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