

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 112 16 JULY 2013 PAGES 11949 TO 12075



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1 [PROCEEDINGS ON 16 JULY 2013]
 2 [09:05] CHAIRPERSON: The Commission resumes.
 3 Major-General, you're still under oath.
 4 WILLIAM MPEMBE: s.u.o.
 5 CHAIRPERSON: Mr Madlanga?
 6 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 7 Thank you, Mr Chairman. General, you are given to giving
 8 very long answers, and speaking for myself, maybe it's just
 9 me, I sometimes get lost as to what the substance of the
 10 response is. I want to just take you back, there was a
 11 debate between you, Commissioner Hemraj and then the
 12 Chairperson, but all of it commencing from a debate with
 13 you by me on the bullet points under paragraph 23 of your
 14 supplementary statement. Now, if you may, can you try to
 15 give a very brief answer to this question? And the
 16 Chairman did put the question to you, but I'm not sure what
 17 the answer was eventually. When you decided to motivate to
 18 the Provincial Commissioner that SAPS should proceed to
 19 stage 3, had you since decided that escalation was no
 20 longer a factor and that you wanted stage 3 to be proceeded
 21 to regardless of whether or not there was escalation. Can
 22 you please try to answer that directly?
 23 MAJOR-GENERAL MPEMBE: Chairperson,
 24 according to my supplementary statement, paragraph 23, if
 25 we check all the bullet points and also if we check

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1 paragraph 25, a combination of factors.
 2 MR MADLANGA SC: So does that mean to you
 3 the decision that the police would proceed to stage 3 was
 4 no longer relevant? You motivated that SAPS proceed to
 5 stage 3, even if there had not been escalation, is that
 6 what you mean? I want to get clarity on this, General.
 7 MAJOR-GENERAL MPEMBE: Chairperson, I
 8 have said a combination of factors. Both the escalation
 9 and failure to the negotiations and the handing over, and
 10 it's explained thoroughly in paragraph 25 of my statement –
 11 of the supplementary statement.
 12 COMMISSIONER HEMRAJ: May I just ask
 13 something, please? So you are saying that there was
 14 escalation – there was an escalation at the time, is that
 15 what you're saying?
 16 CHAIRPERSON: It's got to be escalation
 17 after the 6 o'clock meeting, I take it. At the 6 o'clock
 18 meeting it was decided that if there was escalation, stage
 19 3 would be implemented. Now that surely doesn't mean past
 20 escalation, it must mean escalation after the 6 o'clock
 21 meeting, is that right?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson. Chairperson, to continue with the answer, the
 24 threats that were made to the police officers in the
 25 morning, to me that showed that the escalation can take

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1 place, and the change of the mood – the change of the mood
 2 of the people, stopping of the negotiations, were the clear
 3 indications that escalation of violence can take place, and
 4 that is surely after 6 o'clock meeting, as the Chairperson
 5 has indicated. So taking into account the address by Mr
 6 Mathunjwa, going back maybe of the negotiation to bullet
 7 number 2 of my –
 8 CHAIRPERSON: We talked about that
 9 yesterday. Mathunjwa had negotiated with them the previous
 10 night and agreed he'd come back the next morning at 9
 11 o'clock. He didn't come back at 9 o'clock, he only went
 12 back after 12. So the time you made your report to
 13 Provincial Commissioner Mbombo, he hadn't even started
 14 negotiating with them again on the 16th, so I don't see how
 15 you can use that factor. Did you in fact – is that what
 16 you in fact said to Provincial Commissioner Mbombo, one of
 17 the reasons why you think stage 3 should be implemented now
 18 was the fact that the negotiations had failed? Did you say
 19 that to her? Perhaps you got in your words - the question
 20 I asked you – sorry, I was discussing a point with one of
 21 my colleagues – the question I asked you - so I didn't hear
 22 your answer – the question I asked you was is one of the
 23 things you said to Provincial Commissioner Mbombo that the
 24 negotiations with the strikers, through the presence of
 25 AMCU, had failed? Did you say that to the Commissioner,

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1 the Provincial Commissioner, when you told her that you
 2 thought and you had in fact decided – I think you said –
 3 that stage 3 should be implemented?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson. As is stated in my supplementary statement.
 6 CHAIRPERSON: What time did you have this
 7 discussion with the Provincial Commissioner?
 8 MAJOR-GENERAL MPEMBE: Between 13:00 and
 9 .
 10 CHAIRPERSON: Did Mr Mathunjwa come back
 11 from speaking to the strikers at that stage?
 12 MAJOR-GENERAL MPEMBE: No, Chairperson.
 13 CHAIRPERSON: When did he come back?
 14 MAJOR-GENERAL MPEMBE: Chairperson, he
 15 did come back, if we check the SMS that – he did come back
 16 later at that, not precisely on the time, but it was after
 17 .
 18 CHAIRPERSON: Ja. So you hadn't received
 19 a report from him as to the results of his first meeting on
 20 the 16th with the strikers when you spoke to the Provincial
 21 Commissioner, is that right?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 CHAIRPERSON: So therefore, you couldn't
 25 – I'm sorry, Mr Madlanga, please proceed.

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1 MAJOR-GENERAL MPEMBE: Chairperson, by
2 the time when I briefed the Provincial Commissioner, Mr
3 Mathunjwa, with what we spoke about yesterday, it was 9
4 o'clock.

5 CHAIRPERSON: He was going to see them at
6 9 o'clock, he didn't. There were reasons we won't have to
7 go into. Later on, according to his unchallenged evidence,
8 the Provincial Commissioner in fact berated him for not
9 going and said he had an obligation to go to endeavour to
10 persuade the strikers to lay down their arms, and he
11 eventually went, and that was at some stage – that was at
12 about 12:35, according to exhibit L, slide 161, he
13 addressed the protestors, as they're called, the strikers
14 in other words, at 12:35, and he only returned, as you
15 yourself have said, before the – he only returned, as you
16 yourself had said, after the 13:30 meeting had commenced,
17 isn't that correct? Correct, isn't it?

18 MAJOR-GENERAL MPEMBE: Correct,
19 Chairperson

20 CHAIRPERSON: So therefore he hadn't yet
21 reported back to you what the results of his address to the
22 strikers was. He hadn't reported that to you by the time
23 you spoke to the Provincial Commissioner between 13:00 and
24 . That's correct too, isn't it.

25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.

2 CHAIRPERSON: Ja, and did you know what
3 had happened when he was addressing the people at that
4 stage?

5 MAJOR-GENERAL MPEMBE: No, Chairperson.

6 CHAIRPERSON: So therefore you could not
7 have correctly told the Provincial Commissioner between
8 and 13:30 that negotiations with the strikers through
9 Mr Mathunjwa had failed, because you did not yet know what
10 the outcome was of his meeting with them. That's correct,
11 isn't it?

12 MAJOR-GENERAL MPEMBE: Chairperson, this
13 one of Mr Mathunjwa is true that I did not know at that
14 time, between the time when I briefed the Provincial
15 Commissioner, but, Chairperson, what I wanted to say is
16 that any other changes, even thereafter, they could have
17 been taken into account –

18 CHAIRPERSON: Yes, no, I understand, I
19 understand, you made that point yesterday. I'm sorry, I
20 didn't mean to interrupt you, but you did make the point
21 yesterday that if Mathunjwa had come back and said, hooray,
22 they've agreed to put down their arms, stage 3 hadn't been
23 implemented yet and that decision could have been
24 cancelled.

25 MAJOR-GENERAL MPEMBE: Yes.

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1 CHAIRPERSON: No, I understand that
2 point. You made that point clear yesterday. I'm busy with
3 a different point, and that is I'm interested to know what
4 exactly you told the Provincial Commissioner. You say you
5 told her what is in paragraph 23 of your supplementary
6 statement. Now, I've got a difficulty with that and it's
7 my duty to put it to you. The difficulty is either you
8 gave her incorrect information about the negotiations
9 through Mathunjwa, or you didn't say that to Provincial
10 Commissioner. One or the other. Now, do you say, you said
11 you did say that to her, so therefore it follows that what
12 you said at that stage was not correct. That appears to be
13 correct, unless there's something that I've overlooked. Am
14 I correct in what I put to you?

15 MAJOR-GENERAL MPEMBE: Chairperson, the
16 original agreement that we spoke about, it was 9 o'clock.
17 To the Provincial Commissioner in terms of my bullet point,
18 it was with regard to 9 o'clock.

19 CHAIRPERSON: I've got a difficulty with
20 that, Major-General, and that is that, as I put it to you,
21 according to the unchallenged evidence of Mr Mathunjwa, the
22 Provincial Commissioner knew he hadn't gone to them at 9
23 o'clock. She berated him for not going; she said he was
24 under an obligation to go and speak to the strikers. She
25 told him that he must convince them or persuade them to lay

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1 down their arms. He said he had a problem, he couldn't get
2 something from Lonmin. She says she didn't care, he still
3 had a duty to go. So she was in fact urging him to
4 continue with the negotiations in the hope that somehow he
5 would be able to persuade the strikers to lay down their
6 arms. So she would have known that the negotiations were
7 still ongoing and hadn't failed, hadn't come to a
8 conclusion. So how could you have said that to her, what
9 you say you said? It doesn't make sense. I'm sorry to
10 point to you so strongly, but you understand my job is to
11 endeavour to understand your evidence and I have this
12 problem and I mustn't keep this problem to myself, I must
13 give you a chance to deal with it. So you understand my
14 problem at least, I hope?

15 MAJOR-GENERAL MPEMBE: Chairperson, the
16 Provincial Commissioner knew that Mr Mathunjwa had to go,
17 and I did testify that when Mr Mathunjwa came back to me,
18 he didn't find the Provincial Commissioner, but he met me
19 personally and, as I am indicating to the Chairperson, if
20 there was any other change that Mr Mathunjwa, after he went
21 to address the protestors, has changed, surely it could
22 also have been conveyed to the Provincial Commissioner, and
23 what I briefed her about for 9 o'clock could have changed.

24 CHAIRPERSON: Mr Madlanga, would you care
25 to proceed?

<p style="text-align: right;">Page 11957</p> <p>1 MR MADLANGA SC: Thank you, Mr Chairman. 2 General, in itemising what you conceded to be, or to 3 constitute an escalation, you referred to the stopping of 4 negotiations, can you just clarify what you meant by that? 5 MAJOR-GENERAL MPEMBE: Chairperson, I 6 said it's a combination of factors. 7 MR MADLANGA SC: No, no, General, what 8 did you mean when, just before the debate with the 9 chairperson, when you referred, amongst others, itemising 10 what constituted escalation, when you referred to stopping 11 of negotiations, what did you mean by stopping of 12 negotiations? 13 MAJOR-GENERAL MPEMBE: When I talk about 14 stopping of negotiations, which, as I said, is one of the 15 reasons to stage 3, I'm speaking about when the members 16 report on duty on the 16th, the change of the protestors in 17 terms of what was happening, even the days before, it was 18 no longer be there, and I'm talking about – with the – what 19 is it – our negotiators, Chairperson. I'm talking about 20 what Colonel McIntosh reported what had happened in that 21 morning on the 16th. 22 [09:25] MR MADLANGA SC: Did he say that SAPS had 23 reached the stage where they were now calling off 24 negotiations? That is they, they Colonel McIntosh and them 25 as negotiators.</p>	<p style="text-align: right;">Page 11959</p> <p>1 that gave a hope of an amicable solution, but if that could 2 not continue anymore and the trust relationship was no more 3 there, that could escalate violence. 4 MR MADLANGA SC: Had negotiations not 5 already commenced when Mr Twala was killed? 6 MAJOR-GENERAL MPEMBE: It has commenced, 7 Chairperson. But we don't know exactly when he was killed. 8 MR MADLANGA SC: Now look at the bullet 9 points, your bullet points under paragraph 23 and just 10 itemise those that you consider to be indicative of an 11 escalation in violence between 6AM and the meeting of 13:30 12 on the 16th. The meeting of 6AM in the 16th of August and 13 the JOCCOM meeting at 13:30. Of your one, two, three, 14 four, five bullet points, which ones demonstrate that there 15 had since been an escalation in the time period that I've 16 referred to? And, General, please don't explain each one 17 of them. Just say first bullet, second bullet and so on. 18 Just itemise the bullet - 19 MAJOR-GENERAL MPEMBE: I just want to 20 know – I should start with the first bullet? 21 MR MADLANGA SC: No, General, no. I am 22 saying – because I understood your answer – maybe I 23 misunderstood you. I understood your answer when I asked 24 you when you motivated to the Provincial Commissioner that 25 stage 3 be proceeded to, or with, did you consider that</p>
<p style="text-align: right;">Page 11958</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, if we 2 may go to Colonel McIntosh's statements to indicate that 3 there was no willing on the other side for negotiations. 4 That's what I'm referring. 5 COMMISSIONER HEMRAJ: Perhaps you can 6 tell us what it is that Colonel McIntosh reported to you, 7 General. 8 MAJOR-GENERAL MPEMBE: Not precisely 9 quoting what he says, there was no willingness on the part 10 of the protestors themselves to talk with the police at 11 that stage. 12 MR MADLANGA SC: General, yesterday you 13 in so many words said that the escalation was a reference 14 to an escalation of or in violence. Do you remember saying 15 that? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 MR MADLANGA SC: Now make me understand 19 this; how is a refusal to negotiate, how does that in and 20 of itself constitute an escalation in violence? 21 MAJOR-GENERAL MPEMBE: Chairperson, when 22 the negotiation resumes, those are the days that are being 23 known that violence did go down and those are the days that 24 when we started negotiating with them, there was now an 25 understanding between the police and the protestors and</p>	<p style="text-align: right;">Page 11960</p> <p>1 there had since been an escalation, or were you not at all 2 relying on an escalation? I understood you to give an 3 answer that sort of suggested that there was partly 4 escalation and partly some other factors as well. That's 5 how I understood you. Maybe I misunderstood you, but let's 6 focus on the fact that you did, in your answer, say that 7 escalation was also a factor. Now what I'm saying is this, 8 of the bullet points that we see under paragraph 23, just 9 tell us which ones are indicative of an escalation? Is it 10 bullet point 1, bullet point 3, 4 and 5 – just tell us 11 which ones indicate that between 6AM on the 16th and 13:30 12 on the same day, there had since been an escalation. Just 13 itemise them. Do you understand me now? Not historically, 14 between 6AM and 13:30. 15 MAJOR-GENERAL MPEMBE: Papa1 reported 16 that the mood of the crowd and had changed for the worse 17 and I feared that they might take their frustrations out on 18 innocent bystanders. There were already threats that had 19 been made against the police that morning. Yes, 20 Chairperson, then that is the indicative of the ticking of 21 the history, which of course is in the middle bullet of 22 people were being attacked, maimed and killed by these 23 protestors for going to work, and there was always the 24 danger and risk of further killings because the employer 25 and employees continued to refuse talking to each other.</p>

<p style="text-align: right;">Page 11961</p> <p>1 MR MADLANGA SC: Now let us – so only two 2 of the five were indicative of an escalation. Now let us 3 deal with the third one, which is the first one that you 4 say was so indicative. I want to take you to slide 114 of 5 exhibit L. In fact, General, let me rather say I'm dealing 6 with both because even the last one, there were already 7 threats that had been made against the police that morning. 8 In a sense the two are related. So I'm dealing with both. 9 Can I take you to slide 114, exhibit L? 10 MAJOR-GENERAL MPEMBE: I found it, 11 Chairperson. 12 MR MADLANGA SC: Thank you. Do you see 13 the little calendar page in that slide? Do you see that 15 14 is highlighted, and that to me means that was on the 15th of 15 August, do you see that? Or rather the slide is dealing 16 with the 15th of August. 17 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 18 I see it is dealing with the 15 of August. 19 MR MADLANGA SC: Look at the second 20 bullet in hyphenated form which reads, "The protestors' 21 behaviour was becoming more aggressive and the senior 22 command of the SAPS put emphasis on negotiations." Do you 23 see that? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson, I see it.</p>	<p style="text-align: right;">Page 11963</p> <p>1 and may I refer you to the third bullet. The following 2 appears. "AMCU spoke to the crowd. The crowd was still 3 aggressive but reacted positively to the leadership." Now 4 what I want to find out or understand, General, is this; if 5 you say on the 16th the mood had changed and there were 6 threats of violence, there already were threats of violence 7 on the 15th, and I've referred you to quite a number of 8 entries in SAPS' own exhibit as to what had happened on the 9 15th. What was new? Especially if you look at what appears 10 under 118, the threat going so far as to say, "At this 11 point one of the representatives became very aggressive and 12 stated that the police should not be there and that the 13 people in the Hippos would die there and not one Nyala 14 would leave that ground." What made the threats or 15 aggression of the 16th any different? 16 MAJOR-GENERAL MPEMBE: Chairperson, 17 earlier than that there was a negotiation between the 18 police and they did talk to the police even before that, 19 but also to answer to the question, it will be the 20 presidents of both, they were, still have to give us 21 feedback, which they did gives us feedback on the evening 22 of the 15th. And also now the president of AMCU, we still 23 have to give him the chance for the 16th. 24 MR MADLANGA SC: General, I think it was 25 the first day or maybe even the second day when you gave</p>
<p style="text-align: right;">Page 11962</p> <p>1 MR MADLANGA SC: Let me next take you to 2 slide 118, same date and under the first bullet the 3 following appears. "The representatives stated that they 4 wanted the telephone number of the commander of the 5 operation and, if present, he/she had to come forward as 6 they wanted to provide him/her with a telephone number of 7 their Advocate Shapiro. The representatives were informed 8 that their request would be forwarded to the JOC for a 9 decision to be made. At this point one of the 10 representatives," I emphasise this, "became very aggressive 11 and stated that the police should not be there and that the 12 people in the Hippos, referring to the armoured vehicles, 13 would die there and not one Nyala would leave that ground." 14 See that as well? 15 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 16 I can see it. 17 MR MADLANGA SC: Can I next take you to 18 slide 122, still the same date? And there are times 19 reflected there. I'm specifically referring you to 17:15, 20 the following appears. "The delegation of three, including 21 the president of NUM, were taken to the koppie to allow 22 them to address the crowd, but they were chased away before 23 they could say anything. The crowd was very aggressive. 24 The Nyala was withdrawn and the NUM delegation left the 25 koppie." And lastly, slide 123, still under the same date,</p>	<p style="text-align: right;">Page 11964</p> <p>1 your evidence-in-chief. At some point being led by my 2 learned friend, Mr Ngalwana, you seemed to suggest that the 3 decision was yours, but yesterday my impression is that you 4 eventually accepted that the decision to proceed to stage 3 5 was in fact the Provincial Commissioner's and that all you 6 did was to take a decision to go to her and motivate for 7 stage 3 to be proceeded with. I hope I understood you 8 correctly. Did I? 9 MAJOR-GENERAL MPEMBE: Chairperson, 10 before I answer the question, may I be taken to my evidence 11 when I was talking about the matter, so that we read it 12 there, if that the Commission can allow, because I 13 understand that – 14 [09:45] CHAIRPERSON: It sounds a reasonable 15 request, if it can be done, I ask that it be done. I don't 16 think you are unfair or unreasonable in asking for it. 17 MAJOR-GENERAL MPEMBE: Okay. Because, 18 Chairperson, I realise that the more I explain, the more as 19 if I am making more confusion, so maybe it would be better 20 that what I've testified it put before the Commission, then 21 I explain it while it is being read there. Thanks, 22 Chairperson. 23 CHAIRPERSON: What passages in your 24 evidence are you particularly referring to? The reason I 25 ask you that question, is Mr Madlanga has referred to two</p>

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1 passages in your evidence. Firstly, your evidence on, I
 2 think, he said he thinks it's the second day, maybe on the
 3 first, of your evidence-in-chief, where Mr Ngalwana was
 4 leading your evidence, and then he referred also to a
 5 passage yesterday, when I put to you my impressions of the
 6 earlier evidence, and you then said something which he's
 7 now summarised to you. Now which do you want? Or do you
 8 want both? Do you want the passage from your evidence-in-
 9 chief, and the passage from yesterday's evidence when I was
 10 questioning you about it? I am not sure whether that
 11 transcript's available yet, but I am sure Mr Madlanga with
 12 the assistance of Ms Pillay will be able to find the
 13 relevant passages in the transcript and read them to you.
 14 He may not be able to do it immediately, but I am sure he
 15 will do it at some stage. So it's only fair that you
 16 should answer the supplementary questions he asks based on
 17 that evidence after it's been read to you. Okay? Is that
 18 acceptable?

19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.

21 MR MADLANGA SC: Thank you, Mr Chairman.
 22 May I attempt to obviate the need for that and the likely
 23 delay by perhaps approaching it in this fashion, General,
 24 and I assume, this is on the assumption that you know what
 25 in fact happened. General, can you - I know it's asking

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1 you a question that you were asked previously, but it's
 2 just to avoid going back to the transcript now. Can you
 3 tell us, was it your decision or was it the Provincial
 4 Commissioner's decision that SAPS should now proceed to
 5 stage 3? And General, can you, just to avoid what you
 6 yourself just referred to as the, you know, you're trying
 7 to explain more, that more explanation seems to give rise
 8 to confusion. Just to avoid that, can you please just try
 9 to avoid explanation on this one, "it was my decision, it
 10 was the Provincial Commissioner's decision," can you please
 11 just give an answer along those lines?

12 MAJOR-GENERAL MPEMBE: It was my
 13 decision.

14 CHAIRPERSON: Whose decision was it?

15 MAJOR-GENERAL MPEMBE: It was my
 16 decision.

17 CHAIRPERSON: It was your decision.

18 MR MADLANGA SC: Can I take you paragraph
 19 18, 1-8, at GGG5, and that's the statement of the
 20 Provincial Commissioner, General Mbombo.

21 MAJOR-GENERAL MPEMBE: I got it,
 22 Chairperson.

23 CHAIRPERSON: Paragraph number?

24 MR MADLANGA SC: 19 - no, 18, 1-8, Mr
 25 Chairman. The following appears there, General, "On

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1 Wednesday, the 15th of August 2012, while I was attending
 2 the National SAPS management forum meeting in Midrand,
 3 Johannesburg, I received telephonic feedback from Major-
 4 General Mpeembe to the extent that there has been an
 5 agreement between AMCU and SAPS that the following day at 9
 6 the protesters shall lay down weapons and disperse
 7 peacefully. I took the opportunity to apprise the National
 8 Commissioner of the situation in Marikana and that if
 9 negotiation efforts fail, I shall instruct members to
 10 disperse, disarm and possibly arrest the protesters."
 11 General, that plainly means that as at the evening of 15
 12 August 2012, the Provincial Commissioner had already taken
 13 a decision that if the promised disarmament did not take
 14 place on the 16th, she would order that stage 3 be proceeded
 15 with. Do you accept that that's the plain meaning of this
 16 paragraph?

17 MAJOR-GENERAL MPEMBE: Chairperson, as I
 18 said, it was my decision and I also went to the Provincial
 19 Commissioner. It was on the 16th. In this statement, I
 20 don't deny what the Provincial Commissioner, she is saying,
 21 but I was not there with her when she actually took that
 22 decision, and I was not appraised that she has already
 23 taken a decision. Me, as an overall commander, I did what
 24 I was supposed to do on the 16th, as I did inform her on the
 25 previous day.

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1 MR MADLANGA SC: That's not answering my
 2 question. My question is, do you agree with the meaning
 3 that I ascribed to this passage? Do you agree that it
 4 means what I said, or suggested it means? Do you agree
 5 with that, General?

6 MAJOR-GENERAL MPEMBE: No, I agree,
 7 Chairperson, but I was just explaining my actions, and what
 8 I said to the Commission.

9 COMMISSIONER HEMRAJ: So you are saying
 10 you are not, you were not privy to this decision taken by
 11 the Provincial Commissioner on the 15th?

12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson, because she was at the management meeting and
 14 I was not there. I was keeping informing her on the
 15 telephone and I was keeping her abreast in terms of what
 16 was happening on the ground.

17 MR MADLANGA SC: General, you taking the
 18 decision to proceed to stage 3, that's something quite
 19 crucial, is it not?

20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.

22 MR MADLANGA SC: Why is it that you do
 23 not mention that you took this very crucial decision in
 24 your initial statement GGG12, why do not mention that?

25 MAJOR-GENERAL MPEMBE: Chairperson, with

<p style="text-align: right;">Page 11969</p> <p>1 regard to the briefing to the Provincial Commissioner that 2 was before the 13:30, I did also mention it in many issues, 3 but somehow it couldn't appear in my GGG12, but also I did 4 indicate some of the things that I did do, which they do 5 not also appear in my statements.</p> <p>6 MR MADLANGA SC: General, even in 7 paragraph 23 for that matter, you were just saying you 8 briefed the Provincial Commissioner about the need to move, 9 to implement stage 3. You do not say, "I briefed the 10 Provincial Commissioner on the decision that I had taken 11 that SAPS should proceed to stage 3." Why is it that you 12 do not – you again do not mention this very crucial 13 decision? And remember, remember in your supplementary 14 statement you are actually adding to, supplementing your 15 previous statement. Why is it that not once do you mention 16 this very crucial decision, in two detailed statements, the 17 two typed statements, why is it?</p> <p>18 MAJOR-GENERAL MPEMBE: Chairperson, as a 19 matter of fact, I did brief the Provincial Commissioner and 20 I said to her on the 16th we have arrived to a stage where 21 that we have to go to stage 3, and I don't want to blame 22 anyone, but I can put that there are some also of the other 23 issues that I was keeping on communicating about them, but 24 they do not appear in my statement.</p> <p>25 CHAIRPERSON: So you are referring to a</p>	<p style="text-align: right;">Page 11971</p> <p>1 Present at that meeting were," and you refer to the people 2 that were present. "The Provincial Commissioner 3 Lieutenant-General Mbombo, briefed the JOCCOM on her 4 engagement with the president of AMCU, Mr Joseph Mathunjwa, 5 to resolve the situation." You say possible implementation 6 of stage 3. You do not say for the discussion of the 7 decision that I had taken that stage 3 be proceeded with. 8 Can you explain that?</p> <p>9 MAJOR-GENERAL MPEMBE: Chairperson, 10 possible implementation, and I did indicate in my earlier 11 evidence, which I requested that I need to be provided with 12 my evidence, when one has made a decision as an overall 13 commander, it has to be ratified and confirmed in the 14 special meeting, and that is what I am indicating and I did 15 indicate that if when this is presented to the 13:30 16 meeting, and there are other factors which can change that 17 could have happened, and that's why I am saying possible, 18 possible implementation, not that it is going to be 19 implemented because I know that I did brief the Provincial 20 Commissioner and this is what generally at this stage I am 21 thinking. This is how I started to say, we can implement 22 stage 3.</p> <p>23 MR MADLANGA SC: You do not only fail to 24 mention that you yourself had taken a decision, but you 25 also failed to mention that what was happening at 13:30 was</p>
<p style="text-align: right;">Page 11970</p> <p>1 conversation you had with her at about 1PM., 13:00 as you'd 2 say, is that right?</p> <p>3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson, that is the one that is between 13 and 13:30.</p> <p>5 CHAIRPERSON: Tell me, did you go to the 6 press conference that she addressed at 09:30?</p> <p>7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson.</p> <p>9 CHAIRPERSON: What did she say there?</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, what 11 she indicated, she also indicated that with the various 12 factors - not quoting her personally, maybe we can look at 13 the press statement - is that on that day, considering what 14 has to take place in terms either voluntariness or any 15 other thing, the situation will be resolved.</p> <p>16 MR MADLANGA SC: Can I take you to 17 paragraph 40 of GGG12, your statement, 4-0, 40. And here, 18 General, this is just to demonstrate that this is a subject 19 that was being dealt with, you are actually dealing with 20 the subject of the decision, and what is taking place, and 21 this is what you say in this paragraph. "At about 13:30 22 the Chairperson of special JOCCOM Major-General Annandale, 23 acting on the instruction of the Provincial Commissioner, 24 called a special JOCCOM meeting to evaluate the current 25 strategy and the possible implementation of stage 3.</p>	<p style="text-align: right;">Page 11972</p> <p>1 the ratification of your decision. Can you explain that?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, when 3 one goes to the meeting, everybody has got his own opinion. 4 You put matters, you say this, it's what I am at a stage, 5 and if that is confirmed it's the same where when you 6 debate the plan, and if all of us then we agree, and again, 7 Chairperson, this is what I am saying, when one is 8 explaining actually the process, it's where maybe the 9 confusion comes, but what I am saying is, I did really take 10 a decision, go to the Provincial Commissioner, briefed her, 11 and then we went to the meeting.</p> <p>12 MR MADLANGA SC: Now let me take you to 13 paragraph 41 of the same statement, and this is what you 14 say. "After evaluating the situation and based on reports 15 on the ground, the Provincial Commissioner instructed the 16 special JOCCOM to proceed with the implementation of stage 17 3 of the operational plan, dispersion into smaller groups, 18 encirclement, and disarming. The operation was scheduled 19 to start at 15:30." General, I suggest to you that based 20 on the total, or the lack of, rather on your failure in 21 both typed statements to mention that you actually took a 22 decision on proceeding to stage 3, and what you say in 23 paragraph 41, I suggest to you that it is quite plain that, 24 (1) you never took any such decision; and (2) that in fact 25 it was the Provincial Commissioner's decision to proceed to</p>

<p style="text-align: right;">Page 11973</p> <p>1 stage 3. What do you say to that?</p> <p>2 [10:04] MAJOR-GENERAL MPEMBE: I do not agree,</p> <p>3 Chairperson, but with regards to the issue of the</p> <p>4 instruction, I think Major-General Annandale also testified</p> <p>5 I was present and I do agree with what he's saying.</p> <p>6 MR MADLANGA SC: I next refer you to</p> <p>7 paragraph 19.4 of General Mbombo's statement which I</p> <p>8 referred you to earlier, GGG5, and I want to suggest to you</p> <p>9 that what she says there in fact ties in with what she says</p> <p>10 in the paragraph I referred you to earlier. What she said,</p> <p>11 yes, in fact, yes – my apologies. My apologies,</p> <p>12 Commissioners. What she says in paragraph 19.4 ties in</p> <p>13 with the last paragraph that I read from your own</p> <p>14 statement, which was paragraph 41, 41 of your statement.</p> <p>15 And let me read what she says. "During the JOC meeting at</p> <p>16 13:30 I received a briefing that the protestors at the</p> <p>17 koppie have not laid down their dangerous weapons. In the</p> <p>18 light thereof I then gave the instruction that the</p> <p>19 protestors must be dispersed and disarmed and arrest be</p> <p>20 effected on those who might offer resistance thereto. This</p> <p>21 is commonly referred to as stage 3 in the plan. I left the</p> <p>22 JOC meeting to visit the injured SAPS member at Rustenburg</p> <p>23 Hospital." Do you agree that this actually ties in with</p> <p>24 what you say in paragraph 41 of your statement?</p> <p>25 MAJOR-GENERAL MPEMBE: I agree,</p>	<p style="text-align: right;">Page 11975</p> <p>1 COMMISSIONER HEMRAJ: And the first time</p> <p>2 you convey this decision of yours to anyone, is around</p> <p>3 13:00 when you spoke to the Provincial Commissioner?</p> <p>4 MAJOR-GENERAL MPEMBE: Correct,</p> <p>5 Chairperson.</p> <p>6 CHAIRPERSON: But you were present at the</p> <p>7 press conference, the media conference at 9:30, where she</p> <p>8 said that if the arms aren't laid down today, we're going</p> <p>9 to proceed to deal with the situation, which could in the</p> <p>10 circumstances only have meant we're going to implement</p> <p>11 stage 3, isn't that so?</p> <p>12 MAJOR-GENERAL MPEMBE: Correct,</p> <p>13 Chairperson.</p> <p>14 CHAIRPERSON: She already made the</p> <p>15 decision that if they don't lay down their arms today,</p> <p>16 we're going to implement stage 3. She's made the decision</p> <p>17 and she told the media that she's done so, in your presence</p> <p>18 at 9:30, is that right?</p> <p>19 MAJOR-GENERAL MPEMBE: Correct,</p> <p>20 Chairperson, that is what I heard.</p> <p>21 CHAIRPERSON: It wasn't really necessary</p> <p>22 for you to make a decision yourself, because the Provincial</p> <p>23 Commissioner had already made the decision and had</p> <p>24 communicated it to the world via the press who were at the</p> <p>25 media conference, isn't that right?</p>
<p style="text-align: right;">Page 11974</p> <p>1 Chairperson.</p> <p>2 MR MADLANGA SC: And do you agree also</p> <p>3 that it is actually consonant with what she said in</p> <p>4 paragraph 18, which is that she said to the National</p> <p>5 Commissioner if - on the 15th in the evening – if on the</p> <p>6 following day the protestors did not disarm, she would</p> <p>7 order that stage 3 be proceeded to. The two tie in, the</p> <p>8 two are consonant, do you agree with that?</p> <p>9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>10 The only way – the only thing that I wanted the Commission</p> <p>11 should know is that what did I do as an overall commander,</p> <p>12 and I also said that when the National Commissioner on the</p> <p>13 15th said she took already a decision, I was not with her,</p> <p>14 and I did not know at that stage.</p> <p>15 COMMISSIONER HEMRAJ: Do I understand</p> <p>16 your evidence that as the overall commander, that even</p> <p>17 though you took this decision, it was not the last word.</p> <p>18 You had to put this decision to the JOCCOM, special JOCCOM</p> <p>19 meeting?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct,</p> <p>21 Chairperson. As I indicated earlier on, firstly to the</p> <p>22 Provincial Commissioner, because I report to her and also</p> <p>23 at the JOCCOM meeting, which of course as a senior person,</p> <p>24 since I've briefed her, I understand that that will also be</p> <p>25 filtering to the special JOCCOM meeting.</p>	<p style="text-align: right;">Page 11976</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, as</p> <p>2 I've said even earlier in my evidence which I have</p> <p>3 requested that it should - I'm the overall Commander and I</p> <p>4 report to her, and then that's what I communicated to her</p> <p>5 and that's what I wanted the Commission should know.</p> <p>6 CHAIRPERSON: I can only – she's already</p> <p>7 made the decision, apparently, told the world at 9:30 she's</p> <p>8 made the decision. I could understand you saying to her</p> <p>9 later, by the way, I must tell you, I've independently come</p> <p>10 to the same conclusion; I know you've made the decision, I</p> <p>11 just want to tell you I agree with you for the following</p> <p>12 reasons. I can understand you're doing that. I can't</p> <p>13 understand, unless it's something that I can't see, how you</p> <p>14 can say, but you made the decision in your capacity as</p> <p>15 overall commander when the Provincial Commissioner had</p> <p>16 already made that decision without apparently even</p> <p>17 communicating it to you, until you heard it revealed by her</p> <p>18 at the 9:30 press conference. The two things don't seem to</p> <p>19 stand together. You made the decision at some time before</p> <p>20 1 o'clock and she'd already made the decision as Provincial</p> <p>21 Commissioner before half past nine. Sorry, I don't know,</p> <p>22 perhaps you can explain it better. What I want to do now</p> <p>23 is, I want to take a short comfort break, because we've</p> <p>24 been sitting for nearly an hour and a quarter. I'll give</p> <p>25 you a chance to think about what I put to you and then you</p>

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1 can give me your answer after we resume. We take a five
 2 minute comfort break.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [10:22] CHAIRPERSON: The Commission resumes.
 5 Before we carry on, I was going to say something about the
 6 families, but they are not here for a moment. Well, some
 7 of them are here but not everyone. I'll wait until they
 8 come in to say something. I welcome the families back. I
 9 understand that the evidence that the Major-General wanted
 10 to see has been found but – and I don't know at what stage
 11 it can be shown to him but it has now been found, I
 12 understand.
 13 MR MADLANGA SC: Not yesterday's, Mr
 14 Chairman.
 15 CHAIRPERSON: Not yesterday's? Have we
 16 got yesterday's transcript yet?
 17 MR MADLANGA SC: Not yet, no.
 18 CHAIRPERSON: I see, so that's the
 19 problem. So they found the passage in your evidence-in-
 20 chief, but we haven't yet got yesterday's transcript, so
 21 that passage of the evidence isn't available yet. Anyway,
 22 you are still under oath, Major-General.
 23 WILLIAM MPEMBE: s.u.o.
 24 CHAIRPERSON: Mr Madlanga, you can
 25 proceed with your cross-examination. I asked you a

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1 question, I think, and I said you could think about it
 2 during the comfort break. Are you in a position to give me
 3 an answer?
 4 MAJOR-GENERAL MPEMBE: Chairperson, as I
 5 said earlier on, I did what I am supposed to do as an
 6 overall commander to the Provincial Commissioner, and
 7 that's what I told the Commission. Understanding also the
 8 hierarchy of the police, the Provincial Commissioner has no
 9 obligation to report back to me, but I have an obligation
 10 to report to her and to brief her about every task that she
 11 has delegated them to me.
 12 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 13 General, there would be two items that I asked you to
 14 consider overnight. I understand that you were furnished
 15 with a copy of the transcript of the inspection in loco,
 16 that is the second inspection in loco. I trust that you
 17 have gone through that.
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson, I did have a look at it.
 20 MR MADLANGA SC: And your evidence
 21 yesterday was that at the inspection in loco, you did
 22 indicate that the police also had to protect a shaft which
 23 was somewhere to the left of the field through which the
 24 strikers were walking. Can you just draw the attention of
 25 the Commission to where that appears in the transcript?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I
 2 have checked the transcript, it does not appear, so it
 3 means then I did not say it where it could be put in the
 4 transcript, but I did indicate to those that I was working
 5 with and I thought that it is in the transcript, but it
 6 does not appear in the transcript.
 7 MR MADLANGA SC: So it is not in your
 8 statement of the 13th of August 2012, it is not in your
 9 statement GGG12, it is not in your statement HHH3, and it
 10 is not in this transcript, and lastly, it is not even in
 11 your evidence-in-chief. Do you want this Commission to
 12 believe that on the day SAPS were also concerned about the
 13 protection of this shaft?
 14 MAJOR-GENERAL MPEMBE: Chairperson, I did
 15 indicate that there were key areas which I was briefed
 16 about on the 13th, that we should take into account and
 17 those key areas, it's informal settlement and the shaft of
 18 Lonmin, different types of shafts of Lonmin, which would be
 19 targeted because of association with the Lonmin Mine. Yes,
 20 Chairperson, I do agree that they do not appear in my
 21 statements, but those key areas I was briefed about, and
 22 that's what I was also taking into account throughout the
 23 operation.
 24 MR MADLANGA SC: General –
 25 CHAIRPERSON: Mr Madlanga, before you

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1 proceed, Commissioner Hemraj wants to put something on
 2 record. She was walking I think with the Major-General at
 3 the inspection that we had, and he did say something in her
 4 presence which is not – has not been recorded, but in
 5 fairness, she has a clear recollection of it, I think it's
 6 only right that she should comment.
 7 MR MADLANGA SC: And I will have the
 8 right to cross-examine the Commissioner on that.
 9 COMMISSIONER HEMRAJ: I have a
 10 recollection of the General saying that there was a Nyala
 11 that was stationed to the extreme left for the protection
 12 of a mine or shaft, and that that Nyala came from the
 13 extreme left of the field towards where the protesters
 14 were. It is in that context that I remember that. I do
 15 know that at some stage, we all were walking in different
 16 directions, and the persons who were recording it were at
 17 all times with the Chairperson, so I don't know if it
 18 occurred at that time but I do have recollection of that,
 19 and I think it's only fair I say so.
 20 CHAIRPERSON: In the nature of a prior
 21 consistent statement by the witness, in the light of an
 22 allegation of recent fabrication, is admissible.
 23 MR MADLANGA SC: Thank you, Commissioner
 24 Hemraj. But General, I will still make this submission, I
 25 want to suggest to you that what appears to be a belated

<p style="text-align: right;">Page 11981</p> <p>1 mention of the protection of the shaft, that is only at the 2 second inspection in loco, it's not mentioned in your 3 statement of the 13th, it's not mentioned in GGG12, it's not 4 even mentioned in exhibit L, so I want to suggest to you 5 that that belated mention, the plausible explanation for 6 that is this; if as your evidence suggests, what the police 7 – and which you mention, which you do mention in GGG12 - 8 was to flank the protesters so that they do not get onto, 9 or into the informal settlement, flank them on the right, 10 you now suddenly see yourself having to explain why it is, 11 if that was the case, why it is that you have a Nyala to 12 the left of the protesters, and I suggest to you that you 13 then suddenly came up with this explanation. What do you 14 say to that?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, I 16 will not agree with that statement, in the sense that when 17 I arrived on the 13th, I was briefed specifically by 18 Brigadier Calitz who could tell me what were the history 19 and the modus operandi of the protesters, and he even said, 20 "General, there are certain key areas which we have to 21 protect because those are being targeted by the protesters 22 as a result of disagreement," and he specifically mentioned 23 the shafts, specifically mentions those that are reporting 24 on duty, and whom at that stage on the 13th, I did not know 25 where they are staying, hence I even explained to the</p>	<p style="text-align: right;">Page 11983</p> <p>1 any statement prior Potchefstroom that talks about the 2 shaft, but now that I understand you, and I did that work, 3 which points out the informal settlement, in my process of 4 checking that one, I did come across a statement of Colonel 5 Merafe that talks about, maybe it will also be checked 6 here. "I drove with my vehicle," that is paragraph 19, 7 Colonel Merafe –</p> <p>8 MR MADLANGA SC: Dated what? 9 CHAIRPERSON: This exhibit is GGG15. It 10 is a statement by Lieutenant-Colonel Merafe which is 11 exhibit GGG15, is that the statement from which you are 12 reading?</p> <p>13 MAJOR-GENERAL MPEMBE: Yes. 14 CHAIRPERSON: Which paragraph are you 15 reading? Are you reading paragraph 18, which reads, "When 16 the miners saw that we are not going to act against them, 17 and allow them to proceed, they stood up and continued with 18 the march in the direction of the informal settlement." 19 MAJOR-GENERAL MPEMBE: Yes. 20 CHAIRPERSON: "Major-General Mpeembe 21 instructed us to follow the miners on foot. He was also 22 walking with them. He further instructed POP members with 23 two Nyalas to go to the front of the march and to stop them 24 from entering the informal settlement." Is that the 25 paragraph you are referring to?</p>
<p style="text-align: right;">Page 11982</p> <p>1 Commission to say any settlement, whether it's informal or 2 what, because we don't know who is sitting where and who is 3 staying where, we have to protect it to ensure that those 4 people are not injured or killed.</p> <p>5 Chairperson, I pause to point out that it's 6 human, and I did indicate that I was coming from leave. I 7 was so overwhelmed with what was happening, and I 8 understand that some of the issues do not appear in my 9 statement, but that I also indicated to the Commission, to 10 say that I was from leave, and I was overwhelmed in terms 11 of many issues that I had to deal with.</p> <p>12 MR MADLANGA SC: The second issue that I 13 asked you to consider overnight was pre-Potchefstroom 14 meeting statements that state that whilst walking in the 15 field the protesters suddenly changed direction and 16 proceeded towards the informal settlement, were you able to 17 find any? I am quite mindful, General, I am quite mindful 18 of the fact that there are many SAPS dockets on this 19 subject and there's also the huge IPID docket that even to 20 this day one cannot really claim to have gone through 21 fully, fully, fully, so I am quite mindful of that, but 22 based on what you could do or manage, were you able to find 23 any such statements?</p> <p>24 MAJOR-GENERAL MPEMBE: Chairperson, I 25 need to explain. My understanding was that I should check</p>	<p style="text-align: right;">Page 11984</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 2 CHAIRPERSON: That's a statement dated 3 the 20th of December. 4 MAJOR-GENERAL MPEMBE: Yes, but I 5 understand that is the one that is before, is after 6 Potchefstroom, okay. Before Potchefstroom, there is no 7 statement before Potchefstroom. 8 CHAIRPERSON: Well, in fairness to you, 9 it's not quite right, because I found one. Exhibit GGG17, 10 which is a statement of Lieutenant-Colonel Vermaak dated 11 the 30th of August, and in the fourth paragraph near the 12 end, six lines from the foot of the paragraph, he of course 13 is in the helicopter, and he says, "Met ons aankoms het ons 14 opgemerk dat die groep deur die veld alreeds begin loop het 15 in die rigting van die informele nedersetting." With our 16 arrival we noticed that the group had already begun walking 17 through the veld in the direction of an informal 18 settlement. "Ons het om die groep gesirkel met die 19 helikopter en die groep het rustig aangeloo en die 20 polisiemanne versprei agter die groep myners." We circled 21 around the group with the helicopter and the group was 22 peacefully walking on, and the police were spread out 23 behind the group of miners. "Ons het nie direk oor die 24 groep gevlieg nie, omrede dit veilig is om eerder wyer 25 sirkels te maak." We didn't fly directly over the group</p>

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1 because it's safe rather to make wide circles. "Ons het
 2 opgemerk dat iemand onbekend aan ons aan die regterflank" -
 3 we noticed that someone unknown to us on the right flank -
 4 "n traangranaat afgevuur het," fired off a teargas
 5 grenade, is it? - "in die rigting van die groep," in the
 6 direction of the group, "wat die pad wou oorstek," who
 7 wished to cross the road, "om sodoende te verhoed," in that
 8 way to prevent, "dat hulle in die informele plakkerskamp
 9 inbeweeg," to prevent, in that way to prevent them from
 10 moving into the informal squatter camp. That's what he
 11 said in that statement. He had, however, made a statement
 12 earlier on the 16th of August, which is - it's - I am not
 13 sure if it's an exhibit actually, but it's in the bundle of
 14 documents that we were given by the evidence leaders, it's
 15 the one we referred to earlier, I think it's A16, isn't it?
 16 In the - no, no, we didn't refer to it, anyway it's A16 in
 17 the relevant docket, and in that statement he doesn't
 18 mention this at all, as far as I can see. That's the
 19 statement dated the 16th of August. So I am not sure what
 20 its probative value is, but to be fair to you, there is a
 21 statement pre-Potchefstroom which makes that allegation,
 22 but of course it's a fortnight, more than a fortnight after
 23 the event and it's not recorded in the contemporaneous
 24 statement that the witness made only three days later.
 25 [10:42] MR MADLANGA SC: Mr Chairman, may I beg

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1 to something new altogether. Can I take you to paragraph
 2 18, 1-8, of your supplementary statement, HHH3. You say,
 3 "I am advised that there is criticism for lack of detail
 4 with regard to stages 4 to 6 of the plan. The simple
 5 reason for this is that stage 4 self-evidently involved the
 6 processing of people who had been arrested and the
 7 management of the crime scene." And what follows is what I
 8 want to emphasize, General. "The detail in relation to the
 9 implementation of stages 5 and 6 depended on the
 10 intelligence we would have received from the arrested
 11 persons during stage 4. As it happens, we received very
 12 useful intelligence from some of the people who were
 13 arrested and that intelligence has been followed up to make
 14 further arrests, thus preventing further loss of life and
 15 damage to property."
 16 General, do you agree that the part that I
 17 emphasized must mean that for as long as stages 3 and 4 of
 18 the operational plan had not been implemented, there could
 19 be no application for a stage 6 cordon and search with
 20 specific dates, an application for a cordon and search with
 21 specific dates and times? Do you agree with that?
 22 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 23 requesting that the question should be repeated.
 24 MR MADLANGA SC: Okay. Maybe let me take
 25 a step back. Yesterday, General, you testified that in the

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1 to differ. I actually saw that statement prior to my
 2 cross-examination of the witness yesterday, the first one
 3 you referred to, like I also saw the one of the 16th and
 4 once I saw that the first one you referred to was an August
 5 statement, I immediately thought it might well be pre-
 6 Potchefstroom. But I then went to the transcript and -
 7 because it was difficult for me to get the notices of the
 8 meetings. I wasn't quite sure where to find them. I went
 9 to the evidence of General Annandale and this - at page
 10 8362, lines 4 to 6 he testifies that Potchefstroom was on
 11 27 August 2012 to 6 September 2012.
 12 CHAIRPERSON: I must confess an error and
 13 withdraw my statement that that statement was pre-
 14 Potchefstroom.
 15 MR MADLANGA SC: Thank you. And Ms
 16 Pillay has just referred me to a call-up notice at GGG3,
 17 and indeed the first date indicated there is the 27th of
 18 August. So General, your answer that there is no pre - or
 19 at least you have not found any pre-Potchefstroom statement
 20 stands.
 21 CHAIRPERSON: My attempt to help the
 22 witness I'm afraid has to be withdrawn in the
 23 circumstances.
 24 MR MADLANGA SC: At last, General, I'm
 25 stepping off the events of the 13th of August and I'm moving

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1 evening of the 15th August 2012 at the debriefing session
 2 with the union leaders, you did not know that the police
 3 would proceed to stage 3 the following day. Do you
 4 remember saying that yesterday?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR MADLANGA SC: Now what I'm trying to
 8 establish from what you are saying here - and in a sense it
 9 ties in with the evidence that you've just confirmed - is
 10 this. If you do not know - or perhaps let me ask this
 11 first. Stage 6 is to follow upon arrests, arrests which
 12 are going to feed you with certain information which you
 13 require for the purposes of stage 6. Do you accept that?
 14 MAJOR-GENERAL MPEMBE: Not accepted.
 15 MR MADLANGA SC: Explain yourself.
 16 MAJOR-GENERAL MPEMBE: The arrests -
 17 MR MADLANGA SC: Do you - yes?
 18 MAJOR-GENERAL MPEMBE: The arrests
 19 started since Monday and as long as there is any arrest
 20 that has been made, people should be interviewed by
 21 detectives. That information that is obtained by
 22 detectives is followed up. So it's not necessarily only on
 23 the dispersal. If any arrest that could be made which
 24 could assist us in terms of getting more information where
 25 people are staying, maybe it's an understanding of the

<p style="text-align: right;">Page 11989</p> <p>1 chronology of the stages.</p> <p>2 MR MADLANGA SC: General –</p> <p>3 MAJOR-GENERAL MPEMBE: But in my</p> <p>4 understanding, Chairperson, if I may be given chance to</p> <p>5 explain myself?</p> <p>6 MR MADLANGA SC: Oh, okay. Yes, please.</p> <p>7 MAJOR-GENERAL MPEMBE: - is that since</p> <p>8 Monday there were arrests that were made and that</p> <p>9 information, which is the one that I'm speaking about,</p> <p>10 which was crucial and assisted us in terms of even</p> <p>11 implementing the cordon and search.</p> <p>12 MR MADLANGA SC: General, in general</p> <p>13 terms that explanation might make sense, but not in the</p> <p>14 light of what you say. This is what you say, "The detail</p> <p>15 in relation" – I'm again reading from paragraph 18, "The</p> <p>16 detail in relation to the implementation of stages 5 and 6</p> <p>17 depended on the intelligence we would have received from</p> <p>18 the arrested persons during stage 4." You are not talking</p> <p>19 about information received from people arrested even</p> <p>20 earlier than stage 4. Stage 4 which would follow the</p> <p>21 dispersal action in terms of stage 3. You were</p> <p>22 specifically referring to information received pursuant to</p> <p>23 arrests in terms of stage, or under stage 4. That is what</p> <p>24 you say, General. So logically, General, logically stage 6</p> <p>25 could only have been implemented in terms of the overall</p>	<p style="text-align: right;">Page 11991</p> <p>1 not supposed to take place sequentially, 1 up to 6? Is</p> <p>2 that what you're telling us?</p> <p>3 MAJOR-GENERAL MPEMBE: Chairperson, in my</p> <p>4 earlier testimony I said that the spontaneous operation</p> <p>5 that I attended and the plan that followed, it was guided</p> <p>6 in the same way that I'm speaking about, starting from the</p> <p>7 13th after I have updated the plan, and I said that I</p> <p>8 chaired the meeting of the 14th, which the plan was adopted,</p> <p>9 and that included what has already taken place from the 13th</p> <p>10 onward.</p> <p>11 COMMISSIONER HEMRAJ: I seem to recall</p> <p>12 that at the meeting of the 14th a suggestion was made by</p> <p>13 someone that there should be a cordon and search operation,</p> <p>14 but it was not included – was not carried out because of</p> <p>15 insufficient police personnel?</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>17 say that it was discounted to be one of the first options,</p> <p>18 but I will also request my transcript, so that it should</p> <p>19 also be – so that I can explain it better. Because I said</p> <p>20 it was discounted and then it was put as a stage 6. But</p> <p>21 I'm requesting that my transcription should also be – and</p> <p>22 so that I can, whenever I answer now, I can also refer to</p> <p>23 that.</p> <p>24 CHAIRPERSON: - in fact going to happen</p> <p>25 before stage 3? The cordon and search, was that going to</p>
<p style="text-align: right;">Page 11990</p> <p>1 operational plan after stage 4 had been implemented. Do</p> <p>2 you agree with that simple proposition?</p> <p>3 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>4 MR MADLANGA SC: Explain yourself.</p> <p>5 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>6 still maintained, there was a scene on the 13th which was</p> <p>7 attended by LCRC and detectives and from that scene of the</p> <p>8 13th which the – I was asked in this Commission, it was</p> <p>9 attended. It was handled; people were interviewed. I even</p> <p>10 mentioned that one of the complainants saw the assailant</p> <p>11 and they were detained and they were submitted to the</p> <p>12 hospital in the same hospital bed, and that information</p> <p>13 that I'm speaking about, unless if the Advocate says</p> <p>14 dependent on the dispersal of the 16th, but according to me</p> <p>15 it started – stage 4 started even from the 13th, from</p> <p>16 Monday. Chairperson, I need also to add to say, I also</p> <p>17 took the photos of those that I was communicating with them</p> <p>18 in order to try to trace them, and also indicated that the</p> <p>19 detectives and Crime Intelligence and even Gauteng assisted</p> <p>20 us in order to get more information with regard to who are</p> <p>21 the convenors and so on, with the photos that were taken</p> <p>22 from the scene of the 13th where I was addressing the</p> <p>23 protestors, and to me that was stage 4.</p> <p>24 MR MADLANGA SC: Are you telling us that</p> <p>25 the stages as the police planned them, those stages were</p>	<p style="text-align: right;">Page 11992</p> <p>1 happen before stage 3?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, when</p> <p>3 I was talking about the discounting, we were saying now</p> <p>4 that it was immediately after the Monday and when we were</p> <p>5 debating what actions which formed the stages, it was said,</p> <p>6 let's go now and do a cordon and search on the following</p> <p>7 day. Then the question came, and when we were discussing</p> <p>8 to say but if we go now, who are the convenors so that we</p> <p>9 can apply Regulation of Gatherings Act. Whom are we going</p> <p>10 to arrest? Secondly, what evidence do we have now to link</p> <p>11 those on the scene with the murder, or is there anyone who</p> <p>12 has been linked already with the actions that have taken</p> <p>13 place on Sunday or on the other day. That made the</p> <p>14 discounting on the immediate cordon and search.</p> <p>15 CHAIRPERSON: I understand that. But</p> <p>16 then later you say, there was – you got information from</p> <p>17 people arrested and you decided to proceed with the cordon</p> <p>18 and search, is that right? I'm trying to understand the</p> <p>19 sequence of the events in this regard.</p> <p>20 MAJOR-GENERAL MPEMBE: Chairperson, as</p> <p>21 I'm saying, Adv Madlanga, not today, earlier on asked me</p> <p>22 which attempts did you do to implement stage 6, and I've</p> <p>23 said the attempts already started from Monday, but not</p> <p>24 necessarily that we could implement it in the near future.</p> <p>25 And as I have said that it was implemented ultimately in</p>

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1 September, but the information towards implementing stage 6
2 started from the 13th.

3 CHAIRPERSON: Yes, I understand. You
4 see, what puzzles me, when were the first attempts made to
5 implement it – implement that stage?

6 MAJOR-GENERAL MPEMBE: Chairperson, on
7 the 15th.

8 CHAIRPERSON: 15th of August or September?
9 MAJOR-GENERAL MPEMBE: Yes, when the
10 Provincial Commissioner was said to be called to go to the
11 management forum, we made an application in case we need
12 the authority, because this was made as a contingency, in
13 case we need the authority, and those are the dates that we
14 are still working towards implementing -

15 CHAIRPERSON: You see, the difficulty
16 with that is that the authorisation granted by the
17 Provincial Commissioner is only valid for 24 hours. So it
18 doesn't help to get an authority in advance to use later,
19 because it would have expired later. So what concerns me
20 is, I want to know when was it intended to implement the
21 cordon and search, after stage 3 had been implemented or
22 before?

23 MAJOR-GENERAL MPEMBE: Chairperson, as
24 I'm saying is that it's not, it was not only intended, not
25 dependent, if I may say so, only on the dispersal. Any

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1 other arrests that could have been made linked up with what
2 was happening as a violence, and all that information
3 should be accumulated to be used for stage 6. But then
4 it's correct to say stage 6, not necessarily that it will
5 have to be 3, 4, but it could, in terms of the actions that
6 were taking place, I understand the chronology that the
7 Chairperson wants me to explain.

8 CHAIRPERSON: I can't understand why you
9 call it stage 6 if it was going to happen before stage 3 is
10 implemented. That's the first problem I've got. But the
11 second, perhaps – I'll put my other problem as well, which
12 I've already put to you, but I'll repeat it. The other
13 problem I've got, is this. It doesn't help to get an
14 authorisation in advance from a Provincial Commissioner to
15 use when you get information, if you get information down
16 the line, because – except if you get the information very
17 quickly, because in terms of the act - and it's not the
18 Regulation Gatherings Act, it's another act - in terms of
19 the act any authorisation granted is only valid for 24
20 hours, so it becomes stale, do you follow? So those are my
21 two difficulties. Perhaps you can help me.

22 [11:02] MAJOR-GENERAL MPEMBE: Chairperson, I
23 agree with you, and hence it was ultimately implemented in
24 September. The one that we make here, it was in case when
25 we need to implement it, because at that stage we were

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1 still checking and getting information because of the
2 Provincial Commissioner being at, going at a meeting, and
3 the Chairperson is correct, section 13(7) of the Police Act
4 is very clear, as the Chairperson is saying.

5 CHAIRPERSON: I think we can resume this
6 debate after we've taken the tea adjournment, which we'll
7 now take for 15 minutes.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]
9 [11:39] CHAIRPERSON: The Commission will resume.
10 Major-General, you're still under oath.

11 WILLIAM MPEMBE: s.u.o.
12 CHAIRPERSON: Mr Madlanga.

13 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
14 Thank you, Mr Chairman. General, may I take you to page
15 11187, 1-1-1-8-7, of the transcript, your testimony in
16 chief. It's day 104, and I will read from line 22 at that
17 page, all the way down to line 10, page 11189. This is
18 what you say. "There was also a proposal, Chairperson,
19 that was said that can we consider starting with a cordon
20 and search to disarm those members, to disarm the
21 protesters, not members. With regard to the cordon and
22 search, I will take the Commission back to Friday when I
23 was briefed by Brigadier Calitz. There was an illegal
24 gathering which took place of the RDOs and the police
25 station was informed of Marikana, and those that held that

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1 meeting there, they were not identified as leaders or
2 anyone who is a convenor. The Commissioner will remember
3 that it is well-known that there was a march which took
4 place that the members went to the Lonmin Mine during that
5 Friday, and the leadership element, or the convenors or
6 anyone could not also be identified. I personally spoke
7 with those that I intercepted at the railway mine. I could
8 not know whom I'm talking to, whether he's a convenor or
9 who he is. Chairperson, in the light of this we could not
10 continue to have a cordon and search in the sense that if
11 we want to go and do a cordon and search, whom are we going
12 to arrest, which law are we going to apply, because it is
13 precise that in terms of section 3 of the Regulation of
14 Gatherings Act there must be, you must know who is a
15 convenor. Secondly, it is that it was a well-known fact
16 that they were now well armed and we don't know where they
17 are staying. They were in possession of police radios.
18 They can hear when the police are talking. That might also
19 give high risk in terms of the police being attacked if
20 cordon and search has to be done. Chairperson,
21 strategically an operation of such kind, when you hold it
22 during the day surely you'll be seen. There will be no
23 success in terms of arrests and in terms of confiscation of
24 weapons, and if done during the night, it would pose a
25 serious threat to the police and even to the protesters

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1 themselves. In the light of these reasons, Chairperson, it
 2 was rejected and the cordon and search would not be the
 3 first stage, and it was put as a last stage in terms of a
 4 plan." Now before I ask you any question on what you say
 5 here, earlier in the same transcript you mention that this
 6 was a discussion that took place at a briefing session in
 7 the morning of 14 August 2012. Do you accept that?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MADLANGA SC: And now, General, if you
 11 say in so many words that a cordon and search was to be a
 12 last stage in terms of the plan, surely that must mean that
 13 it would be a stage coming after all the other stages,
 14 including an arrest in terms of stage 4 of the operational
 15 plan.
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR MADLANGA SC: And because in the
 19 evening of 15 August 2012 you did not know that stage 4 of
 20 the operational plan would take place on the 16th, you could
 21 not sensibly have applied for a cordon and search in terms
 22 of stage 6 of the operational plan. That flows naturally
 23 from what you've just said, correct?
 24 MAJOR-GENERAL MPEMBE: No, Chairperson,
 25 it depends on the interpretation of stage 4.

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1 MR MADLANGA SC: General, stage 4 comes
 2 before stage 6, and your evidence says that in terms of the
 3 operational plan number 6 is going to be last. What other
 4 interpretation could there be? Last can only be after 4,
 5 and 4 comes before 6. What other interpretation are you
 6 talking about?
 7 MAJOR-GENERAL MPEMBE: Chairperson, stage
 8 4 according to me started from the 13th and I did testify to
 9 say a spontaneous gathering should also be treated as if it
 10 was legal, and I think we also dealt with that in terms of
 11 paragraph 5.4, which was yesterday, and that's why I'm
 12 saying stage 4 according to me, processing and handling of
 13 all, any other matters and started also from, started from
 14 the 13th.
 15 MR MADLANGA SC: General, surely that
 16 cannot make sense. You say that in the morning of the 14th
 17 of August 2012 a JOCCOM briefing comes to a conclusion that
 18 let us defer a cordon and search for a later stage, for it
 19 to be last, and when it does that, when it says so, it is
 20 already aware of what had taken place on the 13th. That
 21 decision is taken regardless of what you say had already
 22 happened on the 13th. What's your comment to that?
 23 MAJOR-GENERAL MPEMBE: Chairperson, stage
 24 4 says precisely process arrested protesters and handle
 25 crime scene. I did have protesters on the 13th. I did

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1 mention that. Brigadier Van Zyl attended a scene of the
 2 13th and that's what I'm referring to. There were exhibits
 3 that were found that they had to be processed by LCRC. Now
 4 any other matter that we could have got there, and as I'm
 5 saying from the 13th, that was the first attempt to work
 6 towards, first attempt to work towards stage 6, and that
 7 information we could not disregard it, and that's what I'm
 8 saying, not per se that stage 6 will be implemented on the
 9 13th.
 10 MR MADLANGA SC: So General, despite the
 11 fact that something approximating stage 4 had already
 12 commenced on the 14th, stage 6 would still be last. Do you
 13 stand by that? Stage 6 would still be last.
 14 MAJOR-GENERAL MPEMBE: Chairperson, as is
 15 indicated in the plan, correct.
 16 MR MADLANGA SC: So there is no way
 17 therefore – and this flows naturally from your last
 18 response – it could have taken place prior to stage 3,
 19 because if it were to take place before stage 3, then it
 20 would not be last.
 21 MAJOR-GENERAL MPEMBE: Chairperson, the
 22 plan also indicate that while after that has happened of
 23 the 13th, there was still a group that has to be dealt with
 24 at the mountain, but we could not disregard what has
 25 happened on Monday in terms of gathering the information of

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1 those that have been arrested.
 2 MR MADLANGA SC: General, I'll repeat my
 3 question. What you've just said does not answer it. Do
 4 you accept that from your second-last answer it flows that
 5 because stage 6 was to be last, it could not have preceded
 6 stage 3? Yes or no?
 7 MAJOR-GENERAL MPEMBE: Preceded means
 8 could not have followed stage 3?
 9 MR MADLANGA SC: No, taken place before.
 10 CHAIRPERSON: Preceding means go before.
 11 Are you saying that stage 3 is going to take place before
 12 stage – sorry, are you saying that stage 6 was going to
 13 take place before stage 3, or was going to take place after
 14 stage 3? That's the point I think that counsel wants
 15 clarity on.
 16 MAJOR-GENERAL MPEMBE: That stage 3 could
 17 not have taken place – stage –
 18 CHAIRPERSON: I made the mistake. The
 19 question is was stage 6 going to take place before stage 3,
 20 or after stage 3?
 21 MAJOR-GENERAL MPEMBE: After stage 6 –
 22 after stage 3.
 23 CHAIRPERSON: Someone has got a cell
 24 phone that's going off and if it's Mr Madlanga, there's
 25 nothing we can do about it because he's got to stay and

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1 cross-examine, but anybody else, will they please turn it
 2 off, otherwise I should have to do something about them.
 3 Someone perhaps should have answered the phone; maybe it's
 4 an urgent security message for us. Alright, but carry on
 5 now and hope that it wasn't an urgent security message.
 6 MR MADLANGA SC: Thank you, Mr Chairman.
 7 Now General, if 6 was not, or was to take place after 3, it
 8 must also follow that it would not make sense for an
 9 application for a cordon and search in terms of stage 6 to
 10 be made at a time when the police were not yet aware when
 11 stage 3 would be implemented. That's just logical. Do you
 12 agree?
 13 MAJOR-GENERAL MPEMBE: I don't agree,
 14 Chairperson. It depends on the situations, but in this
 15 case my question will be based on section 13(7) of the
 16 Police Act.
 17 MR MADLANGA SC: General, the Chairperson
 18 - quite correctly, with respect - debated with you the
 19 question of the 24-hour period within which a cordon and
 20 search must be implemented in terms of the statutory
 21 prescripts. Are you suggesting that SAPS could well apply
 22 for a cordon and search in terms of stage 6, not even
 23 specifying dates and times, not even aware when stage 3,
 24 which must take place first, would have been implemented?
 25 Is that what you are suggesting? And maybe let me add to

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1 that again a point made by the Chairperson. You apply, you
 2 specify dates and times, you do not know when stage 3 is
 3 going to be implemented and stage 6 must take place
 4 afterwards. What if the dates and times that you specify
 5 expire even prior to the implementation of stage 3? The
 6 whole thing is nonsensical. So are you suggesting that
 7 SAPS could well have applied for a stage 6 cordon and
 8 search even if not yet aware when stage 3 would be
 9 implemented? Is that what you're suggesting?
 10 [11:59] MAJOR-GENERAL MPEMBE: Chairperson, we
 11 were dealing with a situation that was fluent and that
 12 anything can happen at any time. Maybe fluent might be a
 13 wrong word, but as situation that was –
 14 CHAIRPERSON: The word you're looking for
 15 is fluid.
 16 MAJOR-GENERAL MPEMBE: Yes, and the
 17 Provincial Commissioner was supposed to go to a national
 18 management forum. Now the Police Act which I've quoted,
 19 it's, she is the only person to approve that. Chairperson,
 20 the approval was, as I stated before, a contingency plan.
 21 If we arrive at that time whereby we have to implement
 22 stage 6, then we should implement it. Chairperson, at that
 23 time that was the situation and that's how I have applied
 24 my mind.
 25 MR MADLANGA SC: When was the Provincial

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1 Commissioner to leave for the gathering that you referred
 2 to? When was she to leave for that?
 3 MAJOR-GENERAL MPEMBE: She was supposed
 4 to leave, or the meeting was supposed to start on the 16th.
 5 I don't know exactly when she was supposed to leave, but
 6 the plan –
 7 MR MADLANGA SC: Not on the 15th?
 8 MAJOR-GENERAL MPEMBE: I'm not quite
 9 sure, but –
 10 MR MADLANGA SC: Because I'll tell you
 11 why I say so – please continue, General.
 12 MAJOR-GENERAL MPEMBE: Thanks,
 13 Chairperson. What I'm saying is that we tasked the legal
 14 officer to prepare for the application and the legal
 15 officer, it's Adv Moolman; she will precisely know what was
 16 the circumstances, but that is the reason why the
 17 application had to be made, and –
 18 MR MADLANGA SC: She could not have been
 19 there on the 16th, General, because on the 16th at past 9 in
 20 the morning she's addressing the media back here in
 21 Marikana. So it was – and in fact according to what she
 22 says in paragraph, I think it's 18 of her statement, she
 23 was, on the 15th she was at that gathering and in the
 24 evening after she had received a phone call from you she
 25 briefed the National Commissioner there. So at least we

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1 know on the 15th she's there. On the 16th she's back here.
 2 At least not back here; we are in Centurion now and no
 3 longer in Rustenburg, but so she was back at Rustenburg on
 4 the 16th.
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson. What I was alluded to, it was that when the
 7 invitation comes that she has to attend the management
 8 meeting, we did not know when she will be back, but what I
 9 was saying is that that approval was a contingency plan,
 10 and also indicates the time as have been alluded to.
 11 COMMISSIONER HEMRAJ: Mr Madlanga, slide
 12 L82, does that perhaps throw some light on the debate you
 13 were having with the witness about the continuing of
 14 carrying over information for searches later, the manner in
 15 which the stages are described?
 16 MR MADLANGA SC: Thank you. Thank you
 17 very much, Commissioner Hemraj. Actually one of my
 18 juniors, Adv Wesley, opened it for me. It was right in
 19 front of me, but thank you very much. General, can I take
 20 you to slide 82? But it actually, this helps to confirm
 21 what after a rather lengthy debate you eventually accepted,
 22 that is 6 would be last and therefore would follow the
 23 preceding stages. Look at what this says. It says, "Stage
 24 4, process arrested protesters and handle crime scene.
 25 Once the protesters are disarmed and arrested and the area

<p style="text-align: right;">Page 12005</p> <p>1 is declared safe, the LCRC and detectives are to handle the 2 processing of evidence and suspects. Weapons which appear 3 to have blood on them are to be swabbed for forensic 4 testing. Stage 5, intelligence-driven follow-up operations 5 to arrest at places of residence. The detectives and/or 6 crime intelligence will follow up on information gained 7 from interviewing suspects or intelligence received with 8 regard to suspects linked to murders or to the whereabouts 9 of the stolen firearms taken from the murdered mine 10 security and police officials. Stage 6, cordon and search 11 of hostels. In order to complete the disarming process," 12 and that can only be the disarming process dealt with in 13 the stages, "in the Marikana area, the Karee and Wonderkop 14 Hostels will have cordon and search operations executed to 15 remove any further dangerous weapons in order to stabilise 16 the area," and I was, or my attention was also drawn to a 17 paragraph in Colonel Scott's statement, which is dated 19 18 November 2012, and it's – so long I can say GGG, I'll give 19 you the number just now.</p> <p>20 CHAIRPERSON: Paragraph number, Mr 21 Madlanga?</p> <p>22 MR MADLANGA SC: 4.1 to 3, Mr Chairman.</p> <p>23 CHAIRPERSON: Thank you.</p> <p>24 MR MADLANGA SC: 4.1, 4.2, 4.3, and it's 25 GGG39, Commissioners. I will not read that, but also it</p>	<p style="text-align: right;">Page 12007</p> <p>1 the application, I think, from –</p> <p>2 MR MADLANGA SC: Yes, Mr Chairman.</p> <p>3 CHAIRPERSON: There's a covering letter 4 and there's an affidavit –</p> <p>5 MR MADLANGA SC: By Brigadier Calitz –</p> <p>6 CHAIRPERSON: - signed by Brigadier 7 Calitz and countersigned by the witness, and there's also 8 an annexure indicating the areas covered by the 9 authorisation.</p> <p>10 MR MADLANGA SC: Yes, yes, Mr Chairman.</p> <p>11 CHAIRPERSON: Yes, sorry, I said the 12 affidavit by Brigadier Calitz was countersigned by the 13 witness. I'm wrong. It's the actual letter to the 14 Provincial Commissioner that includes the, which annexes 15 the application; that's signed by the witness on page 2 of 16 the bundle.</p> <p>17 MR MADLANGA SC: Thank you, Mr Chairman.</p> <p>18 Just a second, please. General, you say that –</p> <p>19 CHAIRPERSON: The General is still 20 looking for the document. I think let's give him a chance 21 to find it and then when he's – have you got it now?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, I did 23 find it.</p> <p>24 CHAIRPERSON: So counsel can now ask you 25 the question.</p>
<p style="text-align: right;">Page 12006</p> <p>1 sets out the same sequencing. As I indicated, you did 2 accept eventually that stage 6 was to be last, so it was to 3 follow the arrests in terms of stage 4, and also even 4 follow stage 3, the dispersal action. Now can I take you 5 to your application for a cordon and search. Copies have 6 been handed up to the Commissioners –</p> <p>7 CHAIRPERSON: Is this a document that has 8 not yet been given an exhibit number?</p> <p>9 MR MADLANGA SC: Yes, Mr Chairman.</p> <p>10 CHAIRPERSON: So I think it will be 11 HHH18, but I also say this with fear and trembling and look 12 towards Ms Pillay. Is that right, Ms Pillay?</p> <p>13 MS PILLAY: That's correct, Chair.</p> <p>14 CHAIRPERSON: Thank you. So the cordon 15 and search application?</p> <p>16 MR MADLANGA SC: Yes, Mr Chairman.</p> <p>17 CHAIRPERSON: Which is, in fact it's a 18 bundle of documents which – but I take it they can be 19 paginated, but we'll call the whole thing exhibit HHH18.</p> <p>20 MR MADLANGA SC: Yes, Mr Chairman.</p> <p>21 CHAIRPERSON: It's the cordon and search 22 application and other documents, which include the actual 23 authorisation issued by the Provincial Commissioner in 24 terms of section 13(7) of the South African Police Services 25 Act, and always a covering memorandum from Adv Moolman and</p>	<p style="text-align: right;">Page 12008</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson.</p> <p>3 CHAIRPERSON: Alright.</p> <p>4 MR MADLANGA SC: General, is there 5 anywhere where you can demonstrate to this Commission that 6 despite the fact that at a JOCCOM meeting, morning of the 7 14th of August 2012, it had been decided that stage 6 would 8 come last, and despite the fact that the stages that 9 preceded, excluding those of course of negotiation, showing 10 of force, and so on, the stages that precede, it had not 11 yet taken place, an application should nonetheless – an 12 application for a cordon and search should nonetheless 13 still be made as a contingency matter – measure, I'm sorry. 14 Is there any record somewhere that shows us that such a 15 decision was taken?</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, I did 17 testify about the problem of the minutes of the 14th and 18 this, and then again it's the question of now today I say 19 for stage 6 we did not know when, and hence we made the 20 application, because we were dealing with a situation that 21 we could, we could be implementing stage 6 at any time, and 22 depending on the [inaudible], as you have already said it.</p> <p>23 MR MADLANGA SC: Was this decision to 24 bring this, or make this contingency application, was it 25 taken at JOCCOM briefing or meeting?</p>

<p style="text-align: right;">Page 12009</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, it 2 was discussed at that JOCCOM meeting, based on the reasons, 3 or on the circumstance that the Provincial Commissioner 4 might also go to the meeting, but the reason why, it was 5 the time when we were debating, because we were still 6 concerned about the carrying of weapons by the protesters 7 at that stage, and then I said that why it was debated, it 8 was because of what has happened on Monday and the carrying 9 of weapons by the protesters.</p> <p>10 CHAIRPERSON: We haven't seen – we 11 haven't had handed in as exhibits, or as an exhibit, the 12 minutes of the meeting of the 14th, as far as I understand, 13 the JOCCOM meeting. Am I correct in saying that? Perhaps 14 Mr Mathibedi could tell us what's happened to those minutes 15 and why we haven't got them? Mr Mathibedi, it's clear from 16 exhibit L that when exhibit L was drafted, the minutes must 17 have been available because there are detailed slides, or 18 detailed slides here dealing with what was decided on the 19 14th. So I would have thought, unless I'm misreading the 20 situation, the minutes must have been available. Now where 21 are they? It's not on the police hard drive, as I 22 understand it. The witness doesn't know where they are. 23 It may well be an important document for us. So -</p> <p>24 MR MATHIBEDI SC: Mr Chairman, can I get 25 back on that aspect after lunch?</p>	<p style="text-align: right;">Page 12011</p> <p>1 taken in the morning of the 14th of August? 2 MAJOR-GENERAL MPEMBE: Chairperson, 3 whether it's recorded on, in the minutes as a decision, I 4 don't know at this stage, but it was debated in that 5 meeting and it was also raised in that meeting, because I 6 don't have the minutes now which I can say yes, it is 7 recorded as a decision, but what I know, it was debated on 8 that meeting because actually we were debating as to 9 whether can we go now and disarm the protesters; can we put 10 it as stage 1, and I think that's what is indicated in my 11 earlier evidence.</p> <p>12 [12:19] MR MADLANGA SC: You keep emphasising it 13 having been debated and then you say you do not know if it 14 was recorded as a decision. What I want to establish as a 15 matter of fact - because we don't want to be confused at 16 the end – what I want to establish as a matter of fact is 17 whether you are saying it was decided, it was actually 18 decided let us lodge an application as a contingency 19 measure for a cordon and search, just in case when we get 20 there the Provincial Commissioner is not around. Was that 21 decided at the meeting of the 14th in the morning?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson, since it was debated on that day.</p> <p>24 COMMISSIONER HEMRAJ: Was it decided at 25 this meeting when the application would be brought and for</p>
<p style="text-align: right;">Page 12010</p> <p>1 CHAIRPERSON: Yes, please do. I would 2 appreciate it if that was done as a matter of urgency, 3 thank you.</p> <p>4 MR MADLANGA SC: You said at that 5 meeting, so you must be – and you said this, the 6 application, contingency application for a cordon and 7 search was discussed at that meeting. You are referring to 8 the meeting of the 14th?</p> <p>9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. When the options were debated in terms of the 11 plan, how to start, based on the circumstances and when 12 looking at section 13 of the Police Act that the only 13 person who can approve the application is the Provincial 14 Commissioner, the reason that were mentioned in the act, 15 that's the one that I'm referring to, and then on, when we 16 were debating that and that's where then the issue of a 17 contingency application be put in place in the case when we 18 have to go to stage 6 and if the Provincial Commissioner 19 she's not available, we can proceed.</p> <p>20 MR MADLANGA SC: And was the decision on 21 the 14th in the morning, was the decision that let us lodge 22 an application with the Provincial Commissioner as a 23 contingency measure for a cordon and search, just in case 24 she might not be there when we want to bring the 25 application? Are you saying that's the decision that was</p>	<p style="text-align: right;">Page 12012</p> <p>1 what period it would be brought? 2 MAJOR-GENERAL MPEMBE: Chairperson, I 3 cannot precisely say that but it was, Adv Moolman was 4 tasked to prepare the application and I think she could be 5 probably in a better position to say when precisely and –</p> <p>6 COMMISSIONER HEMRAJ: I understand that. 7 The thrust of the police strategy, when would it be carried 8 out? When was it intended? Was it discussed at the 9 meeting of the 14th when it was intended that this might be 10 carried out, given the very small window period you have, 11 24 hours?</p> <p>12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson.</p> <p>14 COMMISSIONER HEMRAJ: And what was the 15 decision that was taken? When were you going to apply for 16 it, and for what period?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, 18 precisely with the times I'm not going to be precise on the 19 times, but there was a time where we also considered to 20 have stage 3 on Wednesday, and if we were to implement it 21 on Wednesday, we also had a huge number of members and 22 that, because we were considering to implement it on 23 Wednesday, the dispersal process, and there was also a time 24 where we were saying - and the situation did change when I 25 met with the union leaders on Wednesday.</p>

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1 COMMISSIONER HEMRAJ: The possibility
 2 that you might implement stage 3 on Wednesday, the 15th, was
 3 that discussed at the morning, the 14th morning JOCCOM
 4 meeting as well?
 5 MAJOR-GENERAL MPEMBE: Chairperson, I
 6 know it was discussed, but I just wanted maybe to check
 7 whether was it precisely on the 14th or maybe on the other
 8 day, on the other day, if that, I could confirm. But as a
 9 matter of fact there was a stage where, Chairperson, that
 10 we were considering to disperse on Wednesday.
 11 CHAIRPERSON: When did you decide not to
 12 proceed on Wednesday? When did you abandon or defer the
 13 idea of implementing stage 3 on the Wednesday?
 14 MAJOR-GENERAL MPEMBE: Chairperson, it is
 15 when I met the union and the management on Wednesday and
 16 what I wanted to check precisely, it's, I, it's whether it
 17 was on Wednesday or Tuesday where we actually deferred the,
 18 the what –
 19 CHAIRPERSON: You attended the meeting
 20 according to your original statement, para 33, with the
 21 unions at about 2PM, 14:00 as you would say, on the 15th,
 22 but you'd already on the previous day at 8:30PM, 20:30, on
 23 the Tuesday evening arranged a meeting with the unions. So
 24 that's paragraph 31 of your original statement. So what's
 25 the position? When did you, you say on the - will the

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1 minutes, if we can ever find them, of the meeting of the
 2 14th indicate that it was planned to implement stage 3 on
 3 Wednesday the 15th? I understand you haven't seen the
 4 minutes, but I mean I take it if the decision was made on
 5 the Tuesday the 14th, that stage 3 would be implemented on
 6 Wednesday the 15th, I would have expected that to be in the
 7 minutes, surely. Would you agree with me on that?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson, that's why I'm saying also if I can get any
 10 other documentations that can also show that we would
 11 implement stage 3 on Wednesday. That's what also earlier
 12 on I indicated that there was a time at one stage where we
 13 were also saying we can implement the dispersal process on
 14 Wednesday. I wanted also to get, other than those minutes
 15 I wanted to get any other evidence that I can present to
 16 the Commission about that.
 17 COMMISSIONER HEMRAJ: Are you saying
 18 you'd like to have access to documents that are not before
 19 us at present to enable to check these facts? Is that what
 20 you're saying?
 21 MAJOR-GENERAL MPEMBE: Others might be
 22 here. I just wanted to check the meeting of Wednesday
 23 after I met the union leaders, Wednesday, if it is also
 24 here, we can check on that whether was it the decision not
 25 made there in terms of –

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1 CHAIRPERSON: Yes, but you see, what you
 2 told us in your original statement was the following, that
 3 on the Tuesday evening at 8:30PM you arranged through the
 4 mine management that you'd have a meeting the following day
 5 with the management and the two trade union presidents.
 6 What you then tell us in paragraph 32 of your original
 7 statement was the next morning at 6 o'clock, that's the
 8 morning of the 15th, Wednesday the 15th at 6 o'clock, there
 9 was a JOCCOM briefing. A decision was taken to continue
 10 with the negotiations, and then you go on to say that
 11 Brigadier Pretorius informed you during the course of the
 12 morning that the representatives of the protesters advised
 13 their lawyer wanted to meet with you and requested your
 14 telephone number. We don't have to go on about that. Then
 15 you had the meeting with the unions and the management at
 16 2PM on Wednesday afternoon, the 15th. Clearly by that time
 17 already there was no question of implementing stage 3 on
 18 Wednesday. So in fact it would have been inconsistent, I
 19 would have thought, with the decision made at 8:30 on
 20 Tuesday evening, to have a meeting with the union
 21 presidents on the Wednesday and the management of Lonmin.
 22 It would have been inconsistent with that decision to have
 23 had an implementation of stage 3 on the Wednesday, but as
 24 far as we can see from your statements the only JOCCOM
 25 meeting that you speak about on the Wednesday is the one on

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1 the 15th – sorry, the one at 6AM to which you refer in para
 2 32, and as far as JOCCOM meetings the previous day, or as
 3 far as a JOCCOM meeting on the previous day is concerned,
 4 the only mention we have of that is in your affidavit, or
 5 your original statement, which starts in paragraph 23,
 6 talks about a meeting on the morning of Tuesday the 14th,
 7 and this statement is rather full, paragraph 23 and
 8 following, quotes a mission statement that was adopted by
 9 the JOCCOM, set out Lieutenant-Colonel Scott's proposals
 10 for the strategy, which was approved by everybody, sets out
 11 the six-stage plan that was adopted. I find it astonishing
 12 that a statement with all this detail could have been
 13 prepared in the absence of the minutes, but perhaps there's
 14 an explanation for that. But what I want to ask you is
 15 this; would Adv Moolman – I think she's a captain – would
 16 Adv Moolman be able to give evidence on this? Was she
 17 present at the meeting on the Tuesday? You see, what's
 18 been put to me by Adv Hemraj that I'll put to you in a
 19 moment, but the further question I want to ask you is was
 20 Brigadier Pretorius at the meeting on the 14th, the Tuesday
 21 JOCCOM meeting?
 22 MAJOR-GENERAL MPEMBE: Chairperson, with
 23 my earlier testimony it was that Brigadier Seboloke
 24 informed me, because Brigadier Pretorius could not have
 25 taken over by then, so Brigadier Seboloke was supposed to

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1 hand that, and I think it's what the Chairperson asked Adv
 2 Mathibedi to get that explanation.
 3 CHAIRPERSON: And Adv Moolman, Captain
 4 Moolman, was she at the meeting on the 14th?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson, because she was always there.
 7 CHAIRPERSON: Now the next point I want
 8 to put to you is put to me by Adv Hemraj – it's her point,
 9 not mine, but I gratefully adopt it. If one looks at
 10 paragraph 23 and 24 and 25 and 26, 27, of your original
 11 affidavit, there's a full discussion of what happened, was
 12 discussed at the meeting of the 14th. Nothing is said about
 13 any decision to apply for a cordon and search authorisation
 14 from the Provincial Commissioner. Nothing is said about a
 15 possible implementation of stage 3 on the Wednesday. Can
 16 you explain that?
 17 MAJOR-GENERAL MPEMBE: Chairperson, there
 18 could not be any other explanation, but what I put here, it
 19 is precisely how we were also planning in terms of putting
 20 the plan to disperse the crowd. To say precisely why it's
 21 not mentioned here, I would not have that explanation.
 22 CHAIRPERSON: You see, there's another
 23 point that flows from the point I've just put to you, and
 24 that's at the top of page 9, part of paragraph 23. You say
 25 that "What was an operational strategy which was considered

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1 included this; the protesters would be prevented from
 2 gathering at the koppie armed. All those approaching the
 3 koppie were to be searched and disarmed, and those already
 4 on the koppie encircled and disarmed. The strategy was
 5 considered not feasible." That was discussed and
 6 considered and rejected at that stage because it was not
 7 feasible because there weren't sufficient resources to
 8 implement it, but the other decision which you say was
 9 taken to apply for a cordon and search authorisation from
 10 the Provincial Commissioner under section 13(7) of the SA
 11 Police Services Act isn't even mentioned.
 12 COMMISSIONER HEMRAJ: General, but the
 13 point being that what is in this paragraph is what was
 14 discussed, was disarming of the strikers as they came
 15 towards the koppie. There's no discussion mentioned here
 16 about searching, cordoning, searching, disarming those
 17 strikers already in their homes. That's the distinction
 18 that we wanted to draw with this paragraph.
 19 MAJOR-GENERAL MPEMBE: Probably why it
 20 couldn't appear here is that we already decided that it
 21 should be stage, it should be number 6, the last stage,
 22 because what I indicated here is that we were debating in
 23 terms of where to start to approach the situation. I need
 24 also to state that on the 14th there was a time where I also
 25 met General Annandale when he arrived from Pretoria, and we

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1 also discussed in terms of when I gave him feedback about
 2 the meeting that took place, because in the morning he was
 3 not there, but that also could be filtered in terms of,
 4 could have made an influence in terms of what we were
 5 intending to do, and I did give him a feedback of saying
 6 that we were intending to do a cordon and search and then
 7 we also have to intend to then, to say if the Provincial
 8 Commissioner is not there, what can we do, and I remember
 9 when we spoke about it and we even spoke about the
 10 resources, and there was also, there was also an attempt to
 11 get the resources for Wednesday, and this is what I wanted
 12 to bring to the Commissioner to say that there was a time
 13 where we also wanted to disperse on Wednesday, and there
 14 were also attempts that were made to do that on Wednesday.
 15 CHAIRPERSON: The proposal which was
 16 rejected, as I read you at the top of page 9 of your first
 17 statement, all those approaching the koppie were to be
 18 searched and disarmed, and those already on the koppie
 19 encircled and disarmed.
 20 [12:38] That wouldn't have been covered by the cordon and
 21 search that was applied for because the cordon and search
 22 applied for didn't include the area that was the subject of
 23 the application and was the subject of the authorisation
 24 ultimately granted, didn't include the koppie. It in fact
 25 simply included the hostels and the adjacent informal

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1 settlement, as appears from the maps which are annexed to
 2 the application. Is that right?
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson. Maybe we are talking about two different
 5 things here. I understand now, because I did speak about
 6 the options that we considered, and that option is not the
 7 cordon and search. The Chairperson is correct, as you
 8 pointed out. It was an option which we were discussing in
 9 the ward. Cordon and search, when it was discussed, it was
 10 discussed as to whether should it be implemented
 11 immediately or not, and that is also, was one of the other
 12 options. But the Chairperson is correct to say to make a
 13 filtering line to the koppie, that was not cordon and
 14 search, I agree.
 15 CHAIRPERSON: I'm sorry we've taken over
 16 your cross-examination for a bit, but I trust you'll
 17 forgive us and proceed.
 18 MR MADLANGA SC: I'm actually very happy
 19 with the takeover, Mr Chairman. General, along the same
 20 lines as what the Chairman touched on, one of the people
 21 who were closely involved in what was happening there is
 22 General Annandale. He has already testified. Nowhere,
 23 nowhere whatsoever does he mention a contingency plan, or
 24 application rather for a cordon and search. Does that
 25 surprise you?

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1 MAJOR-GENERAL MPEMBE: Chairperson, for a
2 fact General Annandale knows about it, and we also spoke
3 about it, but what I will say is that General Annandale was
4 not in the meeting in the morning because he did go back on
5 the 13th, he arrived back on the 14th, but when he arrived I
6 remembered also talking to him about it.

7 MR MADLANGA SC: But if the application
8 was in progress, he would have been aware of the fact that
9 there is a contingency application for a cordon and search,
10 but he still does not mention it in his testimony. In
11 particular that is a contingency application, but an
12 application to pursue stage 6 of the plan. Nowhere does he
13 mention that.

14 MAJOR-GENERAL MPEMBE: Chairperson, I
15 don't know why General Annandale didn't mention it, but I
16 know for a fact that he knows that Captain Moolman, Adv
17 Moolman was tasked to prepare the application, and we
18 should also have an approval as a contingency; in the case
19 that we have to proceed to stage 3, we have an authority.

20 MR MADLANGA SC: Colonel Scott was at
21 that meeting, the meeting of the morning of 14 August 2012,
22 not so?

23 MAJOR-GENERAL MPEMBE: Correct,
24 Chairperson.

25 MR MADLANGA SC: We, the evidence

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1 leaders, have been furnished with a 149-page statement by
2 Colonel Scott, and I've just confirmed from my learned
3 friends behind me that it's a final statement, and I do not
4 at this stage have a hardcopy. It will be circulated and
5 handed up as an exhibit, Mr Chairman, but would it surprise
6 you if I tell you that even in that very detailed statement
7 Colonel Scott, who is narrating, or giving a narrative on
8 what happened, amongst others, at the meeting of the 14th
9 August, and despite the fact that that's a very lengthy
10 statement, he does not mention this contingency application
11 for a cordon and search in terms of stage 3. Does that
12 surprise you?

13 MAJOR-GENERAL MPEMBE: Chairperson, my
14 only answer is I don't know why he hasn't mentioned it, but
15 Brigadier Calitz knows about it. He was in that meeting.
16 He was also tasked, along with Adv Moolman, and they can
17 also testify to what I'm talking about.

18 MR MADLANGA SC: I have had sight of
19 Brigadier Calitz's statement, but I don't have it readily
20 at hand. I have Captain Moolman's one dated 30 August
21 2012, and this is all she says about the application, "On
22 Thursday 16," this is at paragraph 3. Copies will be made
23 –

24 CHAIRPERSON: Should we give it an
25 exhibit number in anticipation?

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1 MR MADLANGA SC: Yes, please.
2 CHAIRPERSON: And we'll get the copies
3 during the lunch adjournment.

4 MR MADLANGA SC: Yes, Mr Chairman.
5 CHAIRPERSON: So this will be exhibit
6 HHH19 –

7 MR MADLANGA SC: Yes.
8 CHAIRPERSON: Affidavit, Adv Moolman.
9 MR MADLANGA SC: Yes, Mr Chairman, thank
10 you.

11 CHAIRPERSON: Captain. I mustn't deprive
12 her of her military, of her paramilitary rank. Captain
13 Moolman, HHH19.

14 MR MADLANGA SC: This is what she says,
15 paragraphs 3 and 4, "On Thursday, 16 August 2012 at 5AM I
16 arrived at the JOC to prepare the required documentation in
17 regard to a cordon and search operation in terms of section
18 13(7) of the South African Police Act, 68 of 1995, on
19 instruction of the overall commander, Major-General Mpeembe,
20 and also to attend the daily morning JOC meeting." That's
21 3. 4, "Due to a lack of office equipment in the JOC I
22 prepared the cordon and search documentation and conducted
23 other administrative duties in a separate office some
24 distance away from the JOC." She says nothing about this
25 being something that flowed from a decision that had been

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1 taken at a meeting, at the morning meeting of 14 August
2 2012. Do you see that?

3 MAJOR-GENERAL MPEMBE: Chairperson, but
4 she is the one that also prepared the documentation, and as
5 I've said, when I spoke to her also she could have maybe
6 asked any other thing if she could not understand.

7 CHAIRPERSON: We know that the document
8 was signed by her on the 16th and the covering letter was
9 also signed by you on the 16th. Did she prepare
10 documentation on the previous day, the 15th, also for a
11 cordon and search, or was there only one cordon and search
12 application, the one made on the 16th?

13 MAJOR-GENERAL MPEMBE: Is the Chairperson
14 referring to prior – the one that was implemented, which
15 she also prepared, it is the one that was –

16 CHAIRPERSON: - implemented, I take it
17 was in September. We're not talking about that.

18 MAJOR-GENERAL MPEMBE: Yes, okay.
19 CHAIRPERSON: We've got a – the one
20 that's before us is exhibit HHH18. That's signed by the
21 Commissioner, Provincial Commissioner on the 16th. It
22 relates to, it's also - in the same bundle is a covering
23 letter you signed and she, which I think is also the 16th,
24 isn't it? The first document here is a letter which is
25 dated the 15th at the top, but is signed by you. I'm not

<p style="text-align: right;">Page 12025</p> <p>1 sure if it's actually signed on the 15th, because then 2 attached to it there's an affidavit by Brigadier Calitz, 3 which was signed on the 16th at 8 o'clock in the morning, 4 and then there is a letter dated, described as an 5 information note, dated the 16th August, signed on behalf of 6 Captain Moolman by somebody else, and then there's the 7 authorisation itself, signed by the Provincial Commissioner 8 on the 16th. Now what I'm asking you is, is this bundle of 9 documents that we have, is this the only cordon and search 10 application that you know of that was made in respect of 11 Marikana in August, or was there an earlier one that was 12 prepared and processed and signed and so forth, which fell 13 away on an earlier date?</p> <p>14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. I also wanted just at the authorisation 16 itself to do some corrections there, because you could see 17 that they said 16th day, they say Wednesday –</p> <p>18 CHAIRPERSON: - [inaudible] but it's 19 apparently signed on the 16th by the Commissioner, and this 20 is what Captain Moolman says in her affidavit. There was 21 only one application in August?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson.</p> <p>24 CHAIRPERSON: And now, and it was done on 25 the morning of the 16th. So what happened to the</p>	<p style="text-align: right;">Page 12027</p> <p>1 have before us, which is an exhibit HHH18, and you 2 explained to us that the idea was to apply for an 3 authorisation on a contingency basis in case the situation 4 was reached where stage 3 be implemented and you then 5 wanted to proceed with the following stages. That was it. 6 That's my understanding, and there's a possibility that the 7 Provincial Commissioner would not be available to sign the 8 necessary authorisation because she was going to a 9 management meeting of the police. I pointed out to you 10 that the covering letter which you signed was dated the 11 15th, but annexed to it was an affidavit by Brigadier 12 Calitz, deposed to on the morning of the 16th at 8AM, and 13 that the information note attached to it, prepared by 14 Captain Moolman and signed on her behalf, was also dated 15 the 16th, that's the Thursday, and the authorisation itself 16 was signed on the 16th by the Commissioner, who at that 17 stage was no longer away at the management forum because 18 that had been on the 15th and she'd returned by then. So I 19 asked you whether that didn't mean that the story about the 20 application being brought on a contingency basis to deal 21 with the contingency that she mightn't be there when the 22 authorisation was required fell away, and the further point 23 that was made – I'm not sure if I made it to you directly 24 just before we adjourned – was that in any event you could 25 only get an authorisation for 24 hours, and the one applied</p>
<p style="text-align: right;">Page 12026</p> <p>1 contingency? The Provincial Commissioner was back. She 2 was at the management forum meeting on the 15th. So this 3 whole contingency story falls to the ground. Go think 4 about that. We'll take the lunch adjournment now and you 5 can give us the answer at – we'll start again at half past 6 1 or as soon thereafter as we can assemble.</p> <p>7 [COMMISSION ADJOURNS COMMISSION RESUMES] 8 [13:35] CHAIRPERSON: The Commission resumes. 9 You're still under oath, Major-General.</p> <p>10 WILLIAM MPEMBE: s.u.o. 11 CHAIRPERSON: We have here a statement 12 that's been put on the table by Susanna Elizabeth Moolman, 13 who is the captain to whom reference has been made, and I 14 think we agreed this should be exhibit HHH19. Mr Madlanga, 15 would you wish to – oh, I gave you something to think 16 about. Major-General, I asked you to think about something 17 before we adjourned. Are you able to give an answer to the 18 question I put to you?</p> <p>19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. I would request the Chairperson to remind me 21 so that I should be exact on it.</p> <p>22 CHAIRPERSON: What I put to you was that 23 you said that only one application was made for an 24 authorisation in terms of section 13(7) of the South 25 African Police Service Act, and that was the one that we</p>	<p style="text-align: right;">Page 12028</p> <p>1 for in terms of covering letter, the heading of your 2 covering letter was from noon on the Wednesday till 3 midnight on the evening of Thursday. Anyway, those are the 4 various factors I put to you and I asked you whether that 5 didn't indicate that the contingency story had fallen away. 6 So what's your answer to that? I'm sorry you didn't have 7 the – yes, I'm not sure if I've put it to you, but I put it 8 to you now, she'd come back to Marikana by then; she'd left 9 the management meeting on the Wednesday evening already and 10 come back to Marikana. So anyway, that was the series of 11 facts I put to you. I'm sorry you didn't have the full 12 lunchtime to think about them, because you couldn't 13 remember the question, but I've now repeated them to you. 14 Are you able to answer?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, on 16 the authorisation, as you pointed out, there is a mistake 17 of the 16th, the day, then it brackets it's Wednesday, that 18 I wanted to, maybe we should also correct it, and then says 19 until the 17th day, that is Thursday. So maybe it's to say 20 Thursday –</p> <p>21 CHAIRPERSON: Yes, as you correctly point 22 out, Wednesday was actually the 15th –</p> <p>23 MAJOR-GENERAL MPEMBE: Yes. 24 CHAIRPERSON: - and Thursday was the 16th. 25 That's the day when 34 people were killed, and there's that</p>

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1 mistake, but fortunately the actually day is mentioned and
 2 not just the date, so I take it the day is right. Is that
 3 correct?
 4 MAJOR-GENERAL MPEMBE: The date.
 5 CHAIRPERSON: You say the date is right,
 6 not the day?
 7 MAJOR-GENERAL MPEMBE: No, the date,
 8 Chairperson, not the day, because it says on the 16th the
 9 day, then they say in brackets Wednesday, and it ties up
 10 with what I said, there was a time where we also
 11 contemplate to have a cordon and search on Wednesday, and
 12 that time there was a time where the Provincial
 13 Commissioner could have been still, because it was not
 14 clear whether she will also be with us on that, on what, on
 15 the, on Thursday, whether we thought that she will still be
 16 at the management forum, but as the Chairperson says, then
 17 she was back. But what I'm also saying is that Adv Moolman
 18 also, might also shed some more light on this, whether it,
 19 was it the first one that she had to do or was it also the
 20 second one contingency, following the Chairperson's
 21 question that I know of the applications.
 22 CHAIRPERSON: What I've put to you, I've
 23 got a problem about that too because if you look at
 24 Brigadier Calitz's affidavit, which is part of exhibit
 25 HHH18, in para 1 he says, "Application is hereby made for

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1 authority in terms of section 13(7) of the act to conduct a
 2 cordon and search operation at the Wonderkop and Karee Mine
 3 hostels and adjacent squatter camp on Wednesday, 15 August,
 4 from 12 noon, to 16 August at 12." So as far as the
 5 affidavit by Calitz is concerned, both the date and the day
 6 are correct.
 7 MAJOR-GENERAL MPEMBE: Chairperson, I
 8 agree there is some confusion on this documentation and the
 9 same statement that the Chairperson is referring was
 10 certified on the 16th, and which it gives a further
 11 confusion, but what I was answering the Chairperson, it was
 12 only relating to the authority that was a legal
 13 documentation at that stage.
 14 COMMISSIONER HEMRAJ: General, if you
 15 look at Captain Moolman's statement, if you look at
 16 paragraph 3 – have you got it in front of you? It's
 17 exhibit HHH19. Do you have a copy? If you look at the
 18 third line in paragraph 3 on the first page where she says
 19 that she prepared the application on the instructions of
 20 the overall commander, Major-General Mpeembe. You see that,
 21 General?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 COMMISSIONER HEMRAJ: So you instructed
 25 her – or let me ask you, when did you instruct her to

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1 prepare this application, bearing in mind that she arrived
 2 there 5 o'clock in the morning to do so?
 3 MAJOR-GENERAL MPEMBE: On the 16th.
 4 COMMISSIONER HEMRAJ: You instructed her
 5 to prepare the application on the 16th?
 6 MAJOR-GENERAL MPEMBE: Yes.
 7 COMMISSIONER HEMRAJ: At what time, Sir?
 8 MAJOR-GENERAL MPEMBE: I don't remember
 9 probably what time which I spoke to her, but it was on the
 10 16th.
 11 COMMISSIONER HEMRAJ: She says in
 12 paragraph 3 that she arrived at the JOC at 5 o'clock in the
 13 morning to prepare this, so you would have spoken to her
 14 some time before 5 o'clock in the morning on the 16th?
 15 MAJOR-GENERAL MPEMBE: Chairperson, there
 16 were times when we were arriving early in the morning and
 17 also leaving early. It could have been in the early
 18 morning of Thursday, or maybe on the late of the 15th, but
 19 what I'm saying is that the instruction was also given to
 20 me and we were always reporting very early with Adv
 21 Moolman, but I will never be precise about the time. And
 22 also the date, I think she could help me in terms of saying
 23 when precisely, but the instruction was given by me.
 24 COMMISSIONER HEMRAJ: Then the
 25 instruction for the actual search period could only have

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1 been from the 16th onwards.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 CHAIRPERSON: What I can't understand is
 5 if it was decided on the 14th to apply for cordon and search
 6 authorisation, and if there was this problem that the
 7 Provincial Commissioner was going to be away - we know she
 8 was away on the 15th – why the Captain wasn't, and you said
 9 there was only one application prepared and it was this
 10 one. What I can't understand is why, if you are correct
 11 and this decision was made on the 14th to apply for this
 12 authorisation, why the Captain wasn't told on the 14th
 13 please prepare the documents, let's get the Provincial
 14 Commissioner to sign them now, today, the 14th, because
 15 she's not going to be around tomorrow; we may be
 16 implementing stage 3 tomorrow, in fact we are proposing to
 17 implement stage 3 tomorrow, so we want as soon as the
 18 dispersal has been done and people have been arrested and
 19 information has been received, we want to immediately go
 20 and search the houses in this whole area covered by the
 21 authorisation. But that didn't happen. So I have great, I
 22 must tell you I have great difficulty in understanding the
 23 suggestion that this was a contingency application. –
 24 waiting to give us the answer. Sorry, I was discussing, my
 25 colleague was putting a point to me; we were discussing it,

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1 but we're being discourteous to you, you're waiting to give
 2 the answer. I'm sorry.

3 MAJOR-GENERAL MPEMBE: Chairperson, I
 4 might make a request that maybe Captain Moolman should come
 5 with her computer and she might also shed more light on
 6 this matter because as you were asking me earlier on, is it
 7 only, or it is the application that I know of which has
 8 passed you, which I said to the Chairperson it's correct –

9 CHAIRPERSON: I asked you that for a
 10 specific reason, then you gave me the answer that there was
 11 only one. Do you want to change that evidence?

12 MAJOR-GENERAL MPEMBE: No, I don't want
 13 to change it, but what I'm saying is if she comes she might
 14 shed more light and maybe the computer also that she has
 15 used, it might also shed more light to us to say whether
 16 was it the first one or not, because the only one that I
 17 know, it was this one and that also I did give her
 18 instruction. But as I'm saying, and as I've said, I'm not
 19 precisely sure of the date and the time because I was also,
 20 I was always with her with whatever I was doing.

21 CHAIRPERSON: I see she was in fact there
 22 from the 13th, she says in her affidavit –

23 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

24 CHAIRPERSON: - that she was requested to
 25 come to Marikana from the 13th, so she was in attendance

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1 then. Yes, well perhaps the way to do it is it might be
 2 possible to have a statement be prepared from her which
 3 deals with the matter and which may answer these questions,
 4 in which case it won't be necessary for her to give
 5 evidence. I'm rather anxious to keep the number of
 6 witnesses down to those we really need to give oral
 7 evidence and cross-examine. It may be that she can produce
 8 a statement which can just be handed in and which, you
 9 know, patently correct in the light of the other material
 10 we will get. But anyway, I suggest that I should really be
 11 speaking not to you, but to the counsel appearing for the
 12 police service, that they can take that proposal from you,
 13 as amended by me, onboard and do what's necessary, and then
 14 we can proceed that way. But obviously your request that
 15 further information be received from her is a sensible and
 16 reasonable on in the circumstances and I'm sure that could
 17 be dealt with.

18 MAJOR-GENERAL MPEMBE: Thanks,
 19 Chairperson.

20 COMMISSIONER HEMRAJ: May I just enquire
 21 what prompted you, General, to give her the instruction to
 22 prepare this application either in the late hours of the
 23 15th or the early hours of the 16th? What prompted you to
 24 give that instruction?

25 MAJOR-GENERAL MPEMBE: Chairperson, what

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1 prompted me, it was the question of - which I need also to
 2 explain in detail. If we look in terms of the stages, it
 3 was that the people are still there and we also wanted to
 4 process those weapons, not necessarily that it has to
 5 follow each other. So what I was saying, that I did
 6 testify that on the 15th there was also a contemplation of
 7 implementing stage 3. Then implementing stage 3 and with
 8 all other information that we have obtained from the
 9 arrested persons, which it could be either stage 4 and also
 10 under stage 5, could help us to do cordon and search. That
 11 is actually also what prompted me.

12 CHAIRPERSON: - to add something?

13 MAJOR-GENERAL MPEMBE: No, Chairperson,
 14 I'm sorry that –

15 CHAIRPERSON: That's alright, if you want
 16 to add something, you're obviously free to do so. I've got
 17 a follow-up question, if you haven't got something you want
 18 to add.

19 MAJOR-GENERAL MPEMBE: Chairperson, I
 20 feel at this stage, even before going to lunch, maybe that
 21 I should talk more about the stages. Maybe I think also
 22 that the stages are also causing the confusion to this
 23 matter, and as I indicated earlier to the question of Adv
 24 Madlanga, stage 4 is not only dependent on the dispersal of
 25 those that are at the koppie. I just wanted to emphasise

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1 that.

2 [13:55] Even when the scene happened, like the one of Mr
 3 Twala, to me that could be falling under stage 4 and stage
 4 5 at the same time, and also the incident which I quoted of
 5 Monday, to me it can also fall under stage 4 to stage 5,
 6 because stage 4 says process arrested protesters and handle
 7 crime scene. Chairperson, my understanding of the stages,
 8 it's a normal police work. For example, we can do cordon
 9 and search even if we didn't disperse people, as long as we
 10 have got an intelligence that says these people are there,
 11 and then we can do it, and also stage 4 is not only
 12 dependent on stage 3, because we can go, because it's a
 13 normal day-to-day policing activities that has to take
 14 place, because I felt that I need to explain this so that
 15 it must not necessarily mean that you could not go to
 16 another stage without maybe another stage, and as well it
 17 could mean that another stage, they can follow each other,
 18 because I wanted that should also be understood.

19 CHAIRPERSON: I've got a difficulty I
 20 want to put to you. I think I may have put it to you
 21 slightly at some stage already, but I want to put it to you
 22 clearly now. You tell us that on the Tuesday morning it
 23 was decided to implement stage 3 on Wednesday morning, and
 24 it was also decided that you'd have to have a cordon and
 25 search authorisation to follow up after the implementation

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1 of stage 3 on Wednesday, and there's a problem;
 2 Commissioner was going to be away on Wednesday and on a
 3 contingency basis you wanted to apply for authorisation.
 4 Now that wasn't done though. You told us as far as you
 5 know there was only one application and that was the one
 6 that was processed on the Thursday morning. So why wasn't
 7 there an application dealt with on Tuesday? I know you
 8 told us that the decision to implement stage 3 on Wednesday
 9 was deferred after it was arranged that you would confer
 10 with the trade union presidents on the Wednesday; obviously
 11 you wanted to do that before there was any question of
 12 implementing stage 3, and that apparently was arranged,
 13 according to your statement, round about 8 o'clock in the
 14 evening of Tuesday. So during the course of the day why
 15 was nothing done to, if it was true that this application
 16 was a contingency matter to deal with the absence of the
 17 Commissioner, why was nothing done on the Tuesday to bring
 18 this application? Because if you implemented it on,
 19 implemented stage 3 on Wednesday morning, then you would
 20 have had the follow-up thereafter from noon on, perhaps or
 21 shortly after noon on the Wednesday, going to the houses
 22 and the hostels and so forth, and taking possession of
 23 arms. That's my problem. I'd be grateful if you could
 24 explain it to me.

25 MAJOR-GENERAL MPEMBE: Chairperson, as

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1 I'm looking at the authority and also with my request, I
 2 could see that it says on the 16th day, which it was
 3 supposed to be on Thursday, and it says that until the 17th
 4 day, which was supposed to Friday of that day, so Adv
 5 Moolman – and I'm still saying that she would really
 6 definitely shed the light when precisely did I give her the
 7 instruction and the time, and then that will close maybe
 8 the problem that the Chairperson is having.

9 CHAIRPERSON: The thing is you can't tell
 10 me why, as far as you're aware, nothing was done to make
 11 this application on the Tuesday already and we'll have to
 12 wait to find out what she can say; that's the case. So the
 13 question is still there. It's not been resolved as far as
 14 I'm concerned, but it may be that Captain Moolman will be
 15 able to give us the information that we need. Yes, thank
 16 you. Mr Madlanga?

17 MR MATHIBEDI SC: Sorry, Mr Chairman, on
 18 the issue of the minutes of the 14th, my instruction is that
 19 minutes were not taken on that day. A statement will be
 20 obtained from Brigadier Seboloke, who was the chairman of
 21 the JOC on that day, to confirm that.

22 CHAIRPERSON: I look forward to seeing
 23 that affidavit. We have already had the evidence of this
 24 witness who says minutes were taken, but perhaps that
 25 conflict, fact will also have to be investigated, but

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1 anyway, we look forward to receiving the affidavit and we
 2 will then consider it in the light of the information we've
 3 already got on oath from this witness, but thank you.

4 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):

5 Thank you, Mr Chairman, Commissioners. General, I hope I
 6 did not misunderstand you because in debating the issue
 7 with the Chairman you now referred back to what had already
 8 happened, and I seem to understand you to say that that was
 9 now already stage 4. If I understood you correctly, I just
 10 want to show you what Colonel Scott says –

11 CHAIRPERSON: Sorry, but can I just – to
 12 be fair now to the witness, I understood him to say, and in
 13 fact there was another question that I should have asked
 14 him. Would you allow me to ask it before you carry on with
 15 your – I understood him to say that someone was, at least
 16 one person was arrested after the 13th, because remember,
 17 one was injured and taken to hospital for example, and I
 18 understood him to say, or at least suggest that information
 19 was obtained from him and possibly other people who had
 20 been involved in the events of the 13th, which enabled them
 21 to proceed with the subsequent stages. In other words,
 22 they weren't limited to people arrested after stage 3 had
 23 been implemented. They already had some persons arrested
 24 already and information relating to what happened from the
 25 people involved on the 13th, and they were able then to

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1 follow that up. I think that's his evidence. Am I
 2 understanding you correctly?

3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.

5 CHAIRPERSON: What I want to know from
 6 you is what was that information that you got? -
 7 information, did you get any addresses? Did you get any
 8 details of places to go to, to find arms, and if so, what
 9 was that information?

10 MAJOR-GENERAL MPEMBE: Chairperson, I
 11 know for a fact that Brigadier Van Zyl having attended the
 12 scene on the 13th, and there were follow-up of people who
 13 were arrested and they were interviewed. I can also obtain
 14 those arrests and the information that, and present it to
 15 the –

16 CHAIRPERSON: I think that will be
 17 helpful, because one would have – anyway, there are certain
 18 other things that follow, but that follow-up information
 19 would be really helpful. If you could make your best
 20 endeavours to give it to us, we'd be grateful.

21 MAJOR-GENERAL MPEMBE: Yes, and
 22 Chairperson, also to indicate that as a result of that
 23 information, who were arrested and who were followed up –

24 CHAIRPERSON: Ja, you don't need a 13(7)
 25 authorisation to arrest people. The way 13(7) works is

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1 this; you get an authorisation from the Provincial
 2 Commissioner which authorises you on a blanket basis to
 3 conduct, to cordon off an area and to conduct searches in
 4 that area for 24 hours, with necessary for a search
 5 warrant, so that if you believe that there are arms in a
 6 hostel for example, you cordon off the hostel, you go in
 7 and you can then search every room in the hostel without a
 8 search warrant. It's perfectly legal; it's covered by the
 9 authorisation. Equally you can do the same in an informal
 10 settlement. In the area demarcated in the authorisation,
 11 that's what you can do. It doesn't authorise you to arrest
 12 people, but obviously if you find someone in possession of
 13 a firearm or dangerous weapon or something, which you find
 14 pursuant to the cordon and search, you can arrest that
 15 person because you would then have reasonable grounds to
 16 believe the person is in possession of dangerous weapon,
 17 but the major point is that the cordon and search
 18 authorisation enables you to search without a search
 19 warrant, anywhere in the area covered by the authorisation,
 20 and that is something that could have been done if the
 21 original plan that was discussed but then not proceeded
 22 with because of lack of resources, if that plan had been
 23 implemented once the resources were available, that was
 24 something that could have been done before there was any
 25 question of implementing stage 3. Those people who were on

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1 the koppie who went home at night, and the vast majority of
 2 the people did, took their weapons with them, those weapons
 3 could presumably have been obtained in that way, and that
 4 might have been – or that's a matter for debate later, but
 5 it might have been a sensible way of going about it. But
 6 that's something I need not debate with you now; that's
 7 something presumably that will come up later. But you
 8 understand the point I'm making to you? It's not a
 9 question of arresting. You don't need a 13(7)
 10 authorisation to arrest people. You need it to do
 11 something else, to search without warrant, to go into
 12 premises anywhere in the area legally, without a search
 13 warrant, and search all over the place to see what you can
 14 find. It's a very powerful weapon given to the police in
 15 this section, but because it's so powerful, it's controlled
 16 by the fact that only the Provincial Commissioner can do it
 17 and it has to be in a defined area, it has to be for 24
 18 hours. But that weapon was, you considered using it and
 19 for some reason you didn't, and the question is when did
 20 you consider using it first, and why didn't you? Because
 21 those are matters that will be followed up later. I take
 22 it you want to respond to the points I've put to you and
 23 I'd be very interested to hear your answer, so please carry
 24 on.
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 just want to confirm, to use the opportunity of you have
 2 explained it perfectly, that was done, as I said, I'm sure
 3 it was some time back, yes, thanks Chairperson.
 4 CHAIRPERSON: It would seem, again this
 5 is a prima facie view which may be wrong and may be
 6 challenged by people, but it would seem as if it did the
 7 trick because a vast quantity of weapons were obtained in
 8 that cordon and search in September, and since then things
 9 have been very different from the way they were before.
 10 Isn't that correct?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson, I will also separate the successes with that
 13 one Chairperson asked me with regard to the information,
 14 and those that were arrested in the normal arrested by also
 15 detectives. Thanks, Chairperson.
 16 MR MADLANGA SC: Maybe, Commissioners
 17 just bear with me; I'm reading a paragraph in Colonel
 18 Scott's statement –
 19 CHAIRPERSON: Yes, of course. You were
 20 going to do that when I then, I wanted to deal with this
 21 point first.
 22 MR MADLANGA SC: Yes, thank you.
 23 CHAIRPERSON: And you very graciously
 24 stood back to enable me to do it.
 25 MR MADLANGA SC: Commissioners and

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1 General Mpeembe, may I just correct myself, or rather, make
 2 a – yes, can I refer to paragraph 9 of Colonel Scott's
 3 statement, the long one, 149-page long one. I read to you
 4 earlier, or I'm not sure that I read; I think I just
 5 referred to what he says –
 6 CHAIRPERSON: I don't remember you
 7 reading it –
 8 MR MADLANGA SC: Yes, I did not, yes,
 9 yes, yes -
 10 CHAIRPERSON: But are you ready to read
 11 it, or would you like a short adjournment to sort of
 12 collect your thoughts and get the material you want in
 13 front of you?
 14 MR MADLANGA SC: No, no, I just quickly,
 15 quickly read what appears here. What I suggested to him
 16 was that the statement does not say that on the 14th a
 17 decision was taken, yes, and I'm just worried that I might
 18 have gone so far as to say that it doesn't touch at all on
 19 the cordon and search. Now I want to refer the Commission
 20 –
 21 CHAIRPERSON: - correct yourself as far
 22 as necessary.
 23 MR MADLANGA SC: Yes.
 24 CHAIRPERSON: Refer us and the witness.
 25 MR MADLANGA SC: Yes.

<p style="text-align: right;">Page 12045</p> <p>1 CHAIRPERSON: You know, we have indicated 2 in the past, I'm not being critical because I know how this 3 thing happened, but we have referred in the past to the 4 desirability of witnesses who are going to have passages 5 from documents put to them be given an opportunity to see 6 the document first. 7 MR MADLANGA SC: Yes. 8 CHAIRPERSON: And if the witness wants 9 that, then presumably we can adjourn shortly and the 10 relevant page can be printed, but it's his call. 11 MR MADLANGA SC: Yes. 12 CHAIRPERSON: You hear what I say, Major- 13 General? We've up to now said it's desirable before a 14 passage is put to a witness from a document that the 15 witness should be given a copy of the document beforehand 16 and opportunity to look at it. Now that didn't happen on 17 this occasion. Now there is a passage in the affidavit of, 18 the statement of Lieutenant-Colonel Scott which Mr Madlanga 19 wants to put to you and he's only got it electronically at 20 the moment and he wants to read it to you from Adv Pillay's 21 computer, but if you would prefer – and I'm in your hands 22 because you're in the firing line at the moment and I have 23 to consider your position as best I can – if you would 24 prefer for us to take a short adjournment for them to print 25 that page, or relevant pages, I think he referred to a few</p>	<p style="text-align: right;">Page 12047</p> <p>1 thought of going there. 2 CHAIRPERSON: These things happen. The 3 rules that we, the rule we made that people should be given 4 documents beforehand is not one of those issued by the 5 Meads and the Persians; it's subject to amendment as the 6 situation arises, and this is such a situation. We'll take 7 a short adjournment. When you're ready, please let us 8 know. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [14:43] CHAIRPERSON: The Commission resumes. I 11 see on our tables is a rather large document headed 12 "Consolidated statement of Duncan Scott." So that I take 13 it will be exhibit HHH20? 14 MS PILLAY: That's correct, Chair. 15 CHAIRPERSON: Consolidated statement, 16 Colonel Scott. While we were waiting outside for this 17 document to be printed, we received a delegation, 18 representatives of the families in chambers, who explained 19 to us why the families who were here for a short while in 20 the morning, some of them, but thereafter have not been in 21 the auditorium, and Adv Lewis is going to make a statement 22 which explains the situation as it exists at the moment. 23 Ms Lewis. Adv Lewis. 24 MS LEWIS: Thank you, Mr Chairperson. Mr 25 Chairperson, as I explained to the Commissioners during the</p>
<p style="text-align: right;">Page 12046</p> <p>1 pages, and you can look at them first, I will allow you to 2 – I will allow that to happen. But I'm in your hands. You 3 must decide if you want me to do that or you're happy just 4 to listen to Mr Madlanga reading it and then to deal with 5 it. What do you want to do? 6 MAJOR-GENERAL MPEMBE: Chairperson, yes, 7 he can read and – 8 CHAIRPERSON: [Inaudible] 9 MAJOR-GENERAL MPEMBE: Yes. 10 CHAIRPERSON: - point raised by my 11 Commissioners is they would actually prefer to have it in 12 front of them, so I wonder whether the practical way 13 forward isn't for me to take a short – for us to take a 14 relatively short adjournment, have the relevant section 15 printed, copies for all those interested, those who want 16 it, please put up their hands, and then we can proceed. 17 Right. 18 MR MADLANGA SC: May I just take the 19 opportunity to apologise to the Commission; in preparing my 20 cross-examination I never thought I would get to that 21 statement, so that's why no copies were prepared. 22 [14:14] CHAIRPERSON: Ja. 23 MR MADLANGA SC: It's only because I was 24 taken by surprise at what seemed to be a suggestion that 25 the stages were not necessarily sequential that I then</p>	<p style="text-align: right;">Page 12048</p> <p>1 adjournment, a number of the family members have returned 2 today. The rest are expected during the course of today 3 and tomorrow. The family members who have returned have 4 explained to us and given instructions for us to place on 5 record that they feel very uncomfortable participating for 6 as long as the arrested and the injured mineworkers aren't 7 present, or at the very least until their position is 8 clear, at which time a final, or a further decision will be 9 taken, and so as things stand at the moment their very 10 strong feeling was that they do not wish to participate 11 further. 12 What we have now agreed to is that we will take 13 the course of tomorrow to take further instructions from 14 them and from the family members who are still to return, 15 and we will then communicate, or place on record a final 16 decision on Thursday morning, pending the handing down of 17 the judgment, but until that time the family members won't 18 be participating, and so I have to ask the Commission to 19 excuse me until then. 20 CHAIRPERSON: You've said that they don't 21 want to participate. Does that include not sitting or 22 having counsel sitting, counsel and attorneys sitting in, 23 in the counsel chamber, hearing the evidence that's being 24 given? Does it go as far as that, the decision that 25 they've taken?</p>

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1 MS LEWIS: Yes, Mr Chairperson, it does.
 2 I should have clarified that, but essentially they don't
 3 want to be present in the Commission and they also don't
 4 wish their legal representatives to be present.
 5 CHAIRPERSON: So you're asking to be
 6 excused insofar as that's necessary?
 7 MS LEWIS: Yes, Mr Chairperson.
 8 CHAIRPERSON: It's a pity, but you will
 9 of course have the transcript to study. I'm not sure
 10 whether your clients would prevent you from doing that, but
 11 that's a matter you can discuss with them. Thank you for
 12 putting –
 13 MS LEWIS: We'll have to take further
 14 instruction –
 15 CHAIRPERSON: Thank you for putting your
 16 instructions on record. Major-General, you're still under
 17 oath.
 18 WILLIAM MPEMBE: s.u.o.
 19 CHAIRPERSON: Mr Madlanga, do you want to
 20 say anything about what Ms Lewis has said?
 21 MR MADLANGA SC: No, nothing at all, Mr
 22 Chairman. Thank you.
 23 CHAIRPERSON: I see. You want to proceed
 24 now with your cross-examination?
 25 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):

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1 Yes, Mr Chairman. General, when you made the request that
 2 copies be made available, or rather even the Commissioners
 3 said they would like to have copies, hardcopies of HHH20, I
 4 wanted to refer you to paragraph –
 5 CHAIRPERSON: No, I think it's also fair
 6 to the witness –
 7 MR MADLANGA SC: Yes, yes, yes –
 8 CHAIRPERSON: - and indeed to the other
 9 parties who are here; they can also follow.
 10 MR MADLANGA SC: That is so, Mr Chairman,
 11 yes. Yes, thank you.
 12 CHAIRPERSON: Is it page or paragraph 20?
 13 MR MADLANGA SC: Para 9.5, Mr Chairman,
 14 page 77 at the bottom. "After the JOCCOM," and here JOCCOM
 15 is referring to one of the 16th, not the one of the 14th,
 16 "After the JOCCOM I assisted Brigadier Fritz, STF Section
 17 Head, and Brigadier Tsiloane, NIU Section Head, who had
 18 been tasked by Major-General Annandale on Wednesday to
 19 start a planning process with regard to phase 6, the cordon
 20 and search of the hostels and the Nkaneng settlement. This
 21 was in anticipation that we had to disarm the strikers even
 22 after the gathering at the koppie was resolved, be it
 23 through dialogue or police action. Brigadier Fritz and
 24 Tsiloane were given the task as they were permanent JOC
 25 members, not deploying outside. I compiled a presentation

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1 plan which was required by the Police Adv Moolman for the
 2 approval of the section 13(7) search warrant." General,
 3 I'm just drawing this to your attention in the light of
 4 what I said earlier. I'm not altogether sure what it means
 5 in the context of the debate that was going on, but I just
 6 thought in fairness to you and based on what I said Colonel
 7 Scott does say or does not say, I thought I should just
 8 draw this to your attention. Now can I take you to the
 9 pagination in – or perhaps let me just ask you –
 10 CHAIRPERSON: - his answer is he doesn't
 11 know why Lieutenant-Colonel Scott didn't say what he said.
 12 Is that right?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 MR MADLANGA SC: Thank you. Now the two
 16 volumes that Adv Ngalwana presented to the Commission, may
 17 I refer you to volume A, the one with documents other than
 18 witness statements, and may I refer you to the pagination
 19 in accordance with that volume, which at the foot of the
 20 page appears as 228, and to other colleagues it's 674 at
 21 the top, and this is the debriefing with the union leaders
 22 in the evening of the 15th, typed 6-7-4 at the top. GGG4,
 23 General. Are you there, General? You'll just indicate
 24 when you've found it.
 25 MAJOR-GENERAL MPEMBE: Advocate,

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1 Chairperson, page?
 2 MR MADLANGA SC: At the foot of the page
 3 is 228, at the top it's 674.
 4 MAJOR-GENERAL MPEMBE: I have it,
 5 Chairperson.
 6 MR MADLANGA SC: Thank you. Now three
 7 lines from the foot of the page, line 28, this is what you
 8 say; I will read to line 3 at page 229, the following page.
 9 "Now I need to do my job and you all also call me to remove
 10 firearms." Then it says, "[inaudible]. I cannot go there
 11 and disarm people; it would be bloodshed. So I need to,"
 12 again inaudible due to people speaking loudly outside, and
 13 it continues, "and go in a specific house, disarm them."
 14 And then I will skip a few lines and continue from line 7
 15 through to line 9, General, the sentence starting "I need
 16 to be told." "I need to be told, I need to go to the house
 17 because that is the only way, beating this elephant bit by
 18 bit, because me going there to the mountain, disarming
 19 people, it is going to be bloodshed." Can I ask you this
 20 first, General; in the context of everything at least that
 21 is audible, can you try to remember what you might possibly
 22 have said in that part that says "inaudible"? If you
 23 can't, we'll see – to the extent that it may still be
 24 necessary, we'll see if we can't source the tapes from
 25 Lonmin, or I will listen to the tapes. I'm advised the

<p style="text-align: right;">Page 12053</p> <p>1 tapes are available. Do you by any chance recall what you 2 might have said here?</p> <p>3 MAJOR-GENERAL MPEMBE: No, Chairperson, I 4 remember that even when I was still giving evidence-in- 5 chief we did request, maybe that's why they were fetched.</p> <p>6 MR MADLANGA SC: Would I be correct, 7 General, that the sense that I get is that you were in 8 essence requesting the NUM leaders to advise you – I'm 9 paraphrasing and therefore I may add even words that you 10 have not used. You were requesting the NUM leaders to 11 assist you with the identities and possibly even places of 12 residence of some of the protesters, so that you could be 13 able to go to their houses individually. Would that be a 14 fair summary of what is at least audible?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson.</p> <p>17 MR MADLANGA SC: Now General, I'm about 18 to step off the cordon and search application, but I just 19 want to suggest to you the theory that I have about this, 20 and it is this; General, you foresaw bloodshed if there 21 were to be an attempt to implement stage 3 of the 22 operational plan, and what you, with the assistance of some 23 like Brigadier Calitz and Captain Moolman, on the side, as 24 it were, decided to have a cordon and search, that was not 25 the cordon and search envisaged in stage 3 of the</p>	<p style="text-align: right;">Page 12055</p> <p>1 used that information.</p> <p>2 CHAIRPERSON: - ask you a question 3 flowing from the questions that you've been asked by Mr 4 Madlanga. It's a question of whether what was envisaged 5 was effectively stage 6 prior to stage 3. Would you look, 6 please, at page 48 and 49 of the exhibit HHH20, Lieutenant- 7 Colonel Scott's statement. Now in the statement he's gone 8 through the various phases, you see, and when he gets to 9 phase 6, he deals with it in paragraph 7.21.9, and I'll 10 just read the first part. 7.21.9.1, "In order to complete 11 the disarming operation the Wonderkop and Karee Hostels 12 would be cordoned and searched for dangerous weapons, which 13 would be removed. This would be a large-scale operation 14 which would require detailed planning. What was initially 15 envisaged to have the POP members providing the cordon 16 around the identified hostel buildings, with the TRT doing 17 the search and seizure, in case of attacks. The TRT are 18 trained to do building clearing. POP in essence are not at 19 the same level of expertise to defend themselves should a 20 violent confrontation take place in close quarters." 21 [15:03] 7.21.9.2, "If the STF and NIU had completed phase 22 5 and were available, they would form reaction teams to 23 deal with barricaded suspects by gaining entry and ensuring 24 that any threats were reduced." Then 7.21.9.3, "The 25 Nkaneng settlement was also considered for this action, but</p>
<p style="text-align: right;">Page 12054</p> <p>1 operational plan – of stage 6, I'm sorry, of stage 6 of the 2 operational plan, and this you did because you saw that 3 doing it otherwise, that is going the route of stage 3 4 would result in bloodshed. What do you say to that?</p> <p>5 MAJOR-GENERAL MPEMBE: Chairperson, the 6 answer will be no, that for cordon and search, but I did 7 indicate that there were so many different methods that the 8 police tried to adopt to get the matter resolved 9 peacefully, hence it was also the negotiations, and also 10 the other matter is that if we got the information from Mr 11 Zokwana, or even from the mine for that matter, or from – 12 we could have gone to the houses and searched, and also 13 arrested those people because that could have assisted us, 14 particularly as I have indicated on people who were not 15 identified, we did not know the places. So that could have 16 assisted us also to get the element structure which was 17 actually giving a problem, because we didn't know who is 18 behind – I just want to get the correct word – who is 19 behind of these people continuing to do violence and going 20 to the mountain. On that part, Chairperson, I will say 21 it's true, there were so many, there were methods that we 22 also wanted to make sure that we can approach in, we can do 23 in order to resolve the matter. And I need to confirm, 24 Chairperson, to say if we had that information, we had the 25 privilege of getting that information, surely we could have</p>	<p style="text-align: right;">Page 12056</p> <p>1 would require a separate operation at a much larger scale." 2 Now that's the way it's described by Lieutenant-Colonel 3 Scott. Now there was no way surely to fit in that as he's 4 described it as something that takes place before stage 3 5 is implemented, while you were still waiting to decide 6 whether and when stage 3 is to be implemented. I mean 7 surely the passage I've read you now indicates that 8 something far more elaborate and planned in a detailed 9 fashion was envisaged for the implementation of the cordon 10 and search which was to be authorised by the Commissioner.</p> <p>11 MAJOR-GENERAL MPEMBE: Chairperson, I 12 agree with Colonel Scott, and in agreeing that I'll also 13 refer, as I said earlier on, that the detailed operation, 14 it was done on September, as is described by him, but what 15 I am, I wanted we should, I should put to the Commission, 16 the practicality of a sequential – and I'm assisted by Adv 17 Madlanga, he gave me even a separate different pages where 18 Colonel Scott is emphasising the sequential approach, and 19 then with that, that's the one that I was putting to the 20 Commission, to say to me I could not say what had happened 21 on the 15th, the information that I got on the 13th – I'm 22 sorry, on the 13th, that I could not have used on the 19th 23 of September, and the information that has been obtained on 24 the scene of Mr Twala, because that could be stage 4 and 25 stage 5, I could not use it because it's not sequential,</p>

<p style="text-align: right;">Page 12057</p> <p>1 and this is what I'm trying to explain to the Commission to 2 say to me anything in Marikana could follow either of the 3 stages, and that information will form part of the cordon 4 and search operation that was envisaged and which, 5 Chairperson, I did say it did take place in September. So 6 to that, this is what actually I'm trying to put to the 7 Commission.</p> <p>8 COMMISSIONER HEMRAJ: Mr Madlanga, I 9 wonder if we could come back to this on Thursday when we've 10 all had chance to read Colonel Scott's statement, because 11 on a very cursory reading of it from page 44 onwards, there 12 are shades of what the witness was speaking about earlier, 13 about the non-consequential approach, and I think I'd like 14 an opportunity to read the statement, as I think he must as 15 well, so that we can deal with it in a conclusive manner.</p> <p>16 MR MADLANGA SC: I welcome that, 17 Commissioner, thank you. Thank you very much, yes. 18 General, when I earlier asked you about the nature of the 19 decision you took regarding stage 3, I suggested to you 20 that I had understood your evidence in response to a 21 question by the Chairman to be that the decision you took 22 was to go to the Provincial Commissioner, not so much that 23 it was you who actually took the decision to proceed to 24 stage 3. I said that's what I understood you to say, to 25 have said yesterday, even though of course I'd understood</p>	<p style="text-align: right;">Page 12059</p> <p>1 didn't. You made the decision. You then put it to her at 2 about 12 o'clock and she approved it, and it was then 3 decided to call the meeting at 1:30. Now I may have 4 recollected that incorrectly, but Mr Madlanga nods his 5 head, so he understands it the same way as I did. Now if 6 that's so, then what you told us when you gave evidence 7 last time was that you made the decision, and you made the 8 decision at 12 o'clock, and you gave your reasons. I'm 9 examining the reasons with you to see whether they could 10 have been your reasons because it seems to me that one of 11 them at least didn't exist yet, but those are my 12 difficulties, you see. You understand?"</p> <p>13 And your response, "I understand the difficulty 14 the Chairperson is having. Chairperson, to resolve it," 15 and your response, "If we could go to where I said I made a 16 decision; I said I made a decision to go the Provincial 17 Commissioner and that decision is the one that briefed her, 18 and I think the Judge Hemraj also asked me many questions, 19 and to say it's you who made the decision to go to stage 3. 20 Then I said I briefed the Provincial Commissioner. The 21 decision that the Chairperson should understand is that, 22 it's the one that I made to go to the Provincial 23 Commissioner to say the situation has come to this and my 24 fear is this one, taking into account that we are still 25 going to have a meeting, and if there could be any other</p>
<p style="text-align: right;">Page 12058</p> <p>1 your evidence to be different when you testified on the 2 subject previously, and that's when you then said you would 3 like to see your transcript, and we gave you the transcript 4 in respect of the evidence-in-chief, but it was not 5 available in respect of what you said yesterday. Now a 6 copy has been sent; it's available electronically. May I 7 just take you back to what you said yesterday in response 8 to a question by the Chairperson. It's a bit long, 9 General. "The difficulty with that answer is well, firstly 10 – the difficulty with the answer is as far as I can 11 remember – I haven't got the transcript of what you said 12 last time before me, but" –</p> <p>13 CHAIRPERSON: Sorry to interrupt you. 14 Does the transcript which you have electronically give a 15 page number?</p> <p>16 MR MADLANGA SC: Oh, sorry, yes –</p> <p>17 CHAIRPERSON: It will be helpful if you 18 gave it now when we follow this later on the record.</p> <p>19 MR MADLANGA SC: Yes, yes, yes, I'm 20 sorry, Mr Chairman. Day 111, and the page is 11946, and 21 you're starting from line, or right at the top. "The 22 difficulty with that answer is, as far as I can remember – 23 I haven't got the transcript of what you said last time 24 before me, but as far as I can remember your evidence was 25 that you made the decision; the Provincial Commissioner</p>	<p style="text-align: right;">Page 12060</p> <p>1 changes or any member in the meeting opposing what I have 2 already briefed the Provincial Commissioner about, the 3 situation could have changed."</p> <p>4 I understand that, General, that is what I've 5 just read to say that yesterday you did not say the 6 decision to proceed to stage 3 was yours. Your decision 7 was simply getting up on your feet and going to the 8 Provincial Commissioner and advising her what you thought 9 needed to be done, but you did not decide yourself. That 10 is how I understand what you said yesterday. Do you agree?</p> <p>11 MAJOR-GENERAL MPEMBE: Chairperson, I 12 don't know whether I did even refer to the follow-up 13 questions that were made by Judge Hemraj in terms of when I 14 was testifying lastly, because she even said that "Are you 15 in a position to take that decision?" So, and hence I'm 16 saying that evidence which I gave together with this one, 17 it will also be, make me to explain what I've said. But I 18 still want to maintain, Chairperson, to say the decision 19 was taken by me. When I was explaining yesterday, I was 20 saying I took a decision to go to PC to say General, I have 21 taken this decision, and that's the decision which I have 22 communicated to her. I might understand that I might have 23 made not to be understood when I was explaining before, but 24 I remember very well that it was followed even by Judge 25 Hemraj when she was following to say are you, it's you who</p>

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1 took that decision, and in matters of such, this, are you
 2 deferring that decision to the Provincial Commissioner. I
 3 said yes, and I even said that then she would say, then I
 4 said because I'm reporting to her, she could accept or
 5 reject my decision, and it could be rectified even in the
 6 special JOCCOM meeting. I would like that it should be
 7 understood in that order. I don't know whether I've made
 8 myself well clear.

9 CHAIRPERSON: When you've reached a
 10 suitable stage to take the tea adjournment, will you let me
 11 know?

12 MR MADLANGA SC: Mr Chairman, I'm done
 13 with this, just this one point that I interposed, and I'm
 14 also done with the cordon and search, so I was going to
 15 move on to something new altogether.

16 CHAIRPERSON: I suggest you do so after
 17 tea. We'll take the tea adjournment.

18 [COMMISSION ADJOURNS COMMISSION RESUMES]

19 [15:48] CHAIRPERSON: The Commission resumes.
 20 I'm sorry that we came back later than we intended to, but
 21 for various reasons, which I don't have to go into, but one
 22 of the reasons was Ms De Vos who's going to make a
 23 statement, as I understand it. Is that correct?

24 MS DE VOS: It is, Chair. Chairperson,
 25 Commissioners, I've been instructed to place on record that

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1 AMCU supports the families' approach. They're in support
 2 of what Ms Lewis had placed on record earlier. The
 3 position is not final and it is under review, but until
 4 further notice I have been instructed to not partake in
 5 these proceedings.

6 CHAIRPERSON: I take it you'll absent
 7 yourself from the counsel chamber, or you'll simply be
 8 holding only watching brief and not taking part in the
 9 sense of objecting or leading evidence or anything of that
 10 kind?

11 MS DE VOS: Chair, I wish it were the
 12 first, but it's the latter. I've been asked to leave.

13 CHAIRPERSON: Thank you for placing that
 14 on record. If you wish to be excused, you may be.

15 MS DE VOS: Thank you, Chair.

16 CHAIRPERSON: In view of the fact that we
 17 spent longer than we intended to, I think we'll sit until
 18 about quarter past 4 this afternoon, if that's convenient.
 19 Major-General, you're still under oath.

20 WILLIAM MPEMBE: s.u.o.

21 CHAIRPERSON: Mr Madlanga, I think you're
 22 still cross-examining.

23 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):
 24 Thank you, Mr Chairman. General, may I refer you to
 25 exhibit SS2, Standing Order General 262, to paragraph 8,

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1 subparagraph 2, 8(2), there it reads, "The CJOC is in
 2 overall command of the specific operation for which he or
 3 she is designated, and is responsible for all actions
 4 taken." I emphasise that last part, "and is responsible
 5 for all actions taken."

6 CHAIRPERSON: I didn't get the reference
 7 to which you were referring.

8 MR MADLANGA SC: 8(2).

9 CHAIRPERSON: Thank you.

10 MR MADLANGA SC: Thank you. Now if the
 11 CJOC is responsible for all actions taken at an operation,
 12 General, would you agree that it is incumbent upon him or
 13 her to keep him or herself informed as an operation is
 14 unfolding?

15 MAJOR-GENERAL MPEMBE: It is correct,
 16 Chairperson, and I also need to indicate that I did testify
 17 about the biggest operation that we had at Marikana and
 18 that there are other officers that were there to assist me.

19 MR MADLANGA SC: And this, that is
 20 informing him or herself, he or she can do by any number of
 21 means, including radio and telephone or even cell phone,
 22 cell phone contact, with those physically involved in the
 23 operation. Is that correct?

24 MAJOR-GENERAL MPEMBE: It is correct,
 25 Chairperson, and those that are supposed to report to me,

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1 they can do exactly as the question is being put to me.

2 MAJOR-GENERAL MPEMBE: And in this
 3 instance we do know that there were problems with radio
 4 communication. You agree with that, don't you?

5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.

7 MR MADLANGA SC: Can I take you to
 8 paragraph 48 of your statement, GGG12. There you say that
 9 you flew around the area to get a view of what was
 10 happening. Do you see that?

11 MAJOR-GENERAL MPEMBE: Chairperson, I
 12 just wanted maybe to get the paragraph.

13 MR MADLANGA SC: 4-8. 4-8, General.

14 MAJOR-GENERAL MPEMBE: I got it,
 15 Chairperson.

16 MR MADLANGA SC: And may I now refer you
 17 to paragraph 49. From the last two sentences of paragraph
 18 49 it becomes quite plain that you could not see the bodies
 19 that were reported to be down. Is that correct?

20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.

22 MR MADLANGA SC: And in paragraph 50 you
 23 refer to those "said to be lying on the ground." Do you
 24 see that as well?

25 MAJOR-GENERAL MPEMBE: Is it in paragraph

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1 50?

2 MR MADLANGA SC: Yes. Line 3. It starts

3 at, paragraph 50 starts at typed page 21 and what I'm

4 referring to is at the top of page 22.

5 MAJOR-GENERAL MPEMBE: The only thing, I

6 just wanted to check, I don't see the open quotes and close

7 quotes.

8 MR MADLANGA SC: No, I said open quote

9 because I was then quoting from what your affidavit says.

10 MAJOR-GENERAL MPEMBE: Oh, I'm sorry.

11 Yes –

12 MR MADLANGA SC: So you see it?

13 MAJOR-GENERAL MPEMBE: I was just

14 checking the open and close quotes, yes.

15 MR MADLANGA SC: Okay. So you're

16 alright, General. Then in the same paragraph you say, "In

17 order to ascertain what was actually happening on the

18 ground" you instructed the pilot to fly you back to the

19 JOC. You see that?

20 MAJOR-GENERAL MPEMBE: Correct,

21 Chairperson.

22 MR MADLANGA SC: And the distinct

23 impression that one gets from this, and indeed I think it

24 has been your evidence already, at least I remember the

25 Chairperson touching on this a couple of days ago, so is

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1 that your helicopter flew so high up that you could hardly

2 see what was taking place on the ground. Is that correct?

3 MAJOR-GENERAL MPEMBE: Chairperson, I did

4 say also that I could see the dispersal process when the

5 Nyala is pouring the water, from the chopper, but it's true

6 that I couldn't see the people on the ground.

7 COMMISSIONER HEMRAJ: People, that's the

8 general body of strikers, or people that were lying on the

9 ground?

10 MAJOR-GENERAL MPEMBE: Chairperson, by

11 that time I was not referring to the, but I was referring

12 to a person on the ground. There were, how high we were,

13 yes. I'm trying to say I could see a vehicle, I could see

14 a Nyala, but not a person.

15 CHAIRPERSON: The previous paragraph, in

16 the previous paragraph you say, in the penultimate

17 paragraph, "I then heard Lieutenant-Colonel Vermaak

18 reporting over the radio that there were bodies down. It

19 was not clear where," and so what you are referring to, I

20 take it, is you couldn't see them because you were too

21 high, flying too high, and that was why you told the pilot

22 to fly you back to the JOC so that you could find out what

23 was actually happening on the ground, and when you got

24 there you learned that there were bodies at both scene 1

25 and scene 2, as we now know; in other words the kraal and

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1 the koppie. Is that right?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MR MADLANGA SC: And you were up in the

5 air for about 20 minutes, as I understand it.

6 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

7 I said at about 20 minutes.

8 MR MADLANGA SC: I take it that it must

9 have taken you – what? - maybe just a few minutes to reach

10 the altitude at which the helicopter eventually flew. Is

11 that correct?

12 MAJOR-GENERAL MPEMBE: Chairperson, I'm

13 not able to state that. I think the pilot might be the

14 right person to state how long we can, I could have been

15 there.

16 MR MADLANGA SC: Yes.

17 CHAIRPERSON: Mr Madlanga, Mr

18 Chaskalson's chart that he prepared where he worked out the

19 timeline and so on against various events that are recorded

20 on videos and so on, I haven't got the – as far as I can

21 remember it's possible to ascertain from that chart what

22 time he got in the helicopter. Is that correct? Because

23 he said – thank you – he said that he heard a particular

24 message over the radio and is it possible, I don't know

25 whether, it may not be appropriate for you at this stage of

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1 your cross-examination, but is it possible by the use of

2 that document – I'm not sure that it's got an exhibit

3 number yet, but –

4 MS PILLAY: Chair, we've been trying to

5 enter the document as an agreed exhibit. There were just

6 certain changes which were recommended by SAPS and we're

7 just waiting for Mr Chaskalson to include the, and then it

8 will be –

9 CHAIRPERSON: I see, okay. So it's

10 premature to refer to the document, okay. But that would,

11 that document when it's finally in, will eliminate a lot of

12 these points and we'll be able to ascertain with a fair

13 degree of accuracy when, at what time particular things

14 happened.

15 MR MADLANGA SC: Yes, but perhaps I was

16 not clear enough though, Mr Chairman. I was dealing with a

17 point that I doubt will be covered by what the chart does.

18 All I was trying to establish was whether the General is

19 able to indicate how long it would have taken for the

20 helicopter to get off the ground, get airborne, and reach

21 the altitude at which it then flew, and the General has

22 already responded and said he cannot give that estimate. I

23 doubt that the chart deals with that.

24 General, from what you say, which the Chairperson

25 also read, if I'm not mistaken, not so long ago, is, in

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1 fact you said, "Yes, I could see a Nyala, I could see
2 that," and so on, but what seems quite clear is that you
3 could not see "what was actually happening on the ground."
4 So even though you could see a Nyala there, you could see
5 another vehicle there, but you could not follow what was
6 happening on the ground. Is that correct?
7 MAJOR-GENERAL MPEMBE: No, Chairperson, I
8 said seeing the instructions, because I had a radio and the
9 chopper that I, also had a radio, and I could follow what
10 was happening on the ground and I could hear the
11 instructions that were given and I could see the actions of
12 those instructions, and I did give an example when
13 Brigadier Calitz was giving instructions to the Nyalas and
14 I could see when they poured the water, from where I was.
15 MR MADLANGA SC: In response to a
16 question by one of the Commissioners I understood you to
17 say you couldn't see any people. So you could not see the
18 protesters and therefore you could not see what they were
19 doing. You could not see the police and therefore you
20 could not see what they were doing. Is that correct? That
21 is the people, the police, the individuals, not their motor
22 vehicles, not their vehicles. So you could not see the
23 protesters, not what they were doing; not the police, not
24 what they were doing. Is that so?
25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2 MR MADLANGA SC: Could you explain why
3 then you remained up in the air for no less than 20 minutes
4 when you could virtually see nothing that was happening on
5 the ground? You, in terms of 8(2) of Standing Order 262,
6 are the person responsible for all actions taking place at
7 an operation. Why did you remain up there, seeing
8 virtually nothing?
9 MAJOR-GENERAL MPEMBE: Chairperson, I did
10 state that for me when I was in the air, I could see the
11 actions of the dispersal and I also did explain that I was
12 in a better position when I actually flew than when I was
13 in the JOC, because there in the JOC maybe I could not have
14 followed exactly what the radio, I could not follow it
15 because in the air I could hear and I could see the actions
16 that was happening. But it's true that I could not see
17 people, I could not see protesters and even police, people
18 on the ground.
19 MR MADLANGA SC: General, I know you've
20 said you're not an expert in Public Order Policing, but you
21 have said you are experienced in it. Can you perhaps edify
22 me; I'm not an expert, I'm not even experienced. Can you
23 edify me as to whether there's anything stopping or
24 preventing a CJOC from actually going to the field of
25 operation, especially regard being had to the fact that he

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1 is responsible for all actions taken at an operation?
2 [16:08] MAJOR-GENERAL MPEMBE: Chairperson, it
3 has already happened. What comes to my mind is the
4 questions that I was asked when I was there on the 13th,
5 that I assumed the responsibility of an operational
6 commander, but I say it could happen, Chairperson, and it
7 has happened already on Monday, on the 13th.
8 CHAIRPERSON: There was a difference.
9 Brigadier Calitz was the operational commander, wasn't he,
10 on the 16th. You didn't have an operational commander in
11 the field on the 13th, which is why you effectively
12 functioned as the operational commander. Isn't that right?
13 You told us that on the 13th the operational commander you
14 didn't take along with you because he couldn't speak the
15 language, so you left him behind and you functioned as the
16 operational commander and the overall commander. Is that
17 right? But whereas on the 16th you were the overall
18 commander, but the operational commander was already there.
19 Am I understanding correctly?
20 MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson.
22 MR MADLANGA SC: General, you have agreed
23 that a CJOC may inform him or herself even by cell phone,
24 and I take it that cell phone communication between you and
25 Brigadier Calitz was possible on the day, was it not? That

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1 is the 16th of August 2012.
2 MAJOR-GENERAL MPEMBE: Chairperson, yes,
3 I did not contact him even on the phone, but I tried to
4 contact him on the radio, probably thinking that where I
5 was and where Brigadier Calitz could be, the cell phone
6 could not reach, but I need also to state that I did not do
7 it, based on the fact that I was in the air and Brigadier
8 was where he was, between the mountain.
9 MR MADLANGA SC: Did you even try cell
10 phone contact, or did you simply assume that because of
11 where you were he would not be reachable on the cell phone?
12 MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson, based on the fact that there was also a report
14 which he made, Brigadier Calitz, of the problems that he
15 has encountered with the radio. So then I thought that he
16 might also encounter the same problem with the cell phone,
17 even though I know that when the operation takes place and
18 whenever he moves out, so I thought also of the mountains.
19 MR MADLANGA SC: General, a police radio
20 and a cell phone are two different gadgets. I don't
21 understand how you could have made the assumption that
22 because there were problems with the police radio, then
23 there would likewise be problems with the cell phone. I do
24 not understand that. Do you wish to comment?
25 MAJOR-GENERAL MPEMBE: Correct,

<p style="text-align: right;">Page 12073</p> <p>1 Chairperson, with my understanding is that in the mountains 2 normally the sign for the cell phone is not good, and 3 that's what I thought of at the time. I might have been 4 wrong, but that is what I thought at the time.</p> <p>5 MR MADLANGA SC: By not even attempting 6 to call him on his cell phone, General, you deprived 7 yourself of the opportunity to possibly take whatever 8 decision you might have deemed necessary as events were 9 unfolding. What do you say to that?</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, on 11 that day the operational commander is an experienced POP 12 member who is a provincial head, POP in the province. I 13 know that the operation was, and he was also assisted by 14 other POP members, and I did have trust in them.</p> <p>15 MR MADLANGA SC: But General, you did not 16 know what might or might not happen as the operation was 17 going on. Trust or no trust, you did not know what might 18 or might not happen. Now regard being had to what you say 19 in one of your statements to the effect that had you become 20 aware that people had died at scene 1, you would have 21 applied your mind to that and seen what appropriate 22 decision to take in the circumstances. Now do you accept 23 that by not even trying to call him on his cell phone, you 24 deprived yourself of the possibility of considering what 25 appropriate step to take after the killings at scene 1? Do</p>	<p style="text-align: right;">Page 12075</p> <p>1 being heard on Thursday. Do you want to be excused for 2 Thursday?</p> <p>3 MR GUMBI: Yes, if I'm not around, 4 Chairperson must be aware that I'm not –</p> <p>5 CHAIRPERSON: You are excused, thank you. 6 Yes, I understand.</p> <p>7 MR GUMBI: Yes, Chairperson. 8 CHAIRPERSON: We will now adjourn until 9 9 o'clock on Thursday morning. 10 [COMMISSION ADJOURNED] 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 12074</p> <p>1 you accept that?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, I 3 said that I had a radio which I could be well informed and 4 hear from all the members and the communication, and I also 5 did indicate that on that day, and as the policy indicate, 6 the members that were actually deployed to the operation 7 were well-experienced Public Order Policing commanders with 8 well-experienced, not only experienced, and the majority 9 were well trained also in Public Order Policing. But I 10 also wanted to refer to my supplementary statement with 11 regard to the question that has been put to me now, in 12 explaining paragraph 56.</p> <p>13 CHAIRPERSON: Perhaps we can look at that 14 in the morning. It's after quarter past and there are a 15 number of people who have to go. Will that be in order, Mr 16 Madlanga?</p> <p>17 MR MADLANGA SC: Yes, Mr Chairman. 18 CHAIRPERSON: We'll adjourn until 9 19 o'clock tomorrow morning –</p> <p>20 MR GUMBI: Chairperson, Chairperson, I do 21 apologise, Chairperson. There's one issue that I wanted to 22 bring to your attention, Chairperson. You'll note that 23 last week we lodged an urgent application on behalf of 24 Baloyi. Unfortunately the judge – 25 CHAIRPERSON: I understand the matter is</p>	

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