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 145 8 NOVEMBER 2013

PAGES 15982 TO 16082



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64 10th Avenue, Highlands North, Johannesburg P O Box 721, Highlands North, 2037 Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335 E-mail: <u>realtime@pixie.co.za</u> Web Address: http://mysite.mweb.co.za/residents/pak06278



1	Page 15982 [PROCEEDINGS ON 8 NOVEMBER 2013]	1	Page 15984 I think is now clear.
2	[09:15] CHAIRPERSON: Before I swear General	2	Major-General, welcome back. We couldn't finish
3	Mpembe in again, Adv Hemraj wishes to say something	3	your evidence last time because certain people were, for
4	COMMISSIONER HEMRAJ: I just want to	4	reasons we don't have to go into, not before us, but
5	place something on record. The Chairman put certain of his	5	they've now returned and it's only right that we should
6	prima facie views to the witness yesterday, which might be	6	give them the opportunity to ask the questions that they
7	perceived as having a bearing on his credibility, and to	7	would have asked if they hadn't absented themselves. Would
8	clear any misperceptions I would like to place on record	8	you please stand? Would you swear that the further
9	that these are not my views, nor have I come to any	9	evidence you will give before this Commission will be the
10	preliminary or prima facie views with regard to the	10	truth, the whole truth, and nothing but the truth? Please
11	evidence of this witness. Counsel for the police, I would	11	raise your right hand and say, "So help me God. I swear,
12	be most obliged if you would convey that to the witness.	12	so help me God."
13	This is also not the first time that the issue of	13	WILLIAM MPEMBE: I swear, so help me God.
14	preliminary or provisional views has been raised in the	14	CHAIRPERSON: Thank you very much,
15	Commission and for my part I would like to place on record	15	General, you may be seated. Apparently, I'm told your
16	that each witness that testifies before this Commission is	16	microphone was off when you swore. It doesn't matter; it
17	assured of the courtesy of having their evidence properly	17	will be recorded as what I'm now saying that you were duly
18	analysed only when all the evidence is before the	18	sworn. You can sit down, thank you. Mr Ntsebeza, are you
19	Commission. Thank you, Mr Chairman.	19	going to be the first cross-examiner this morning?
20	MS SELLO: Thank you, Commissioner, we'll	20	MR NTSEBEZA SC: Probably the only one,
21	convey that.	21	Mr Chairman, but –
22	CHAIRPERSON: Okay, do you want to say	22	CHAIRPERSON: I understood you were going
23	anything?	23	to only cross-examine for a short time and one of your
24	COMMISSIONER TOKOTA: Also speaking for	24	colleagues was then going to take over, but you may have
25	myself, I agree with Adv Hemraj, but I can also say that I	25	revised your plans on the matter.
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1	Page 15986		Page 15988
1	MAJOR-GENERAL MPEMBE: Chairperson, I	1	MR NTSEBEZA SC: Yes, but –
2	will ask the question to be repeated.	2	CHAIRPERSON: It wasn't appropriate for a
3	MR NTSEBEZA SC: The question is –	3	member of the SAPS legal team to make an audible comment,
4	CHAIRPERSON: It might help, I wasn't	4	and I trust that won't happen again, and I think the
5	following precisely myself, but if you can take it slowly	5	witness is giving his own spontaneous answer.
6	and so that the witness and I can both understand it?	6	MR NTSEBEZA SC: Ja. No, I'm just
7	MR NTSEBEZA SC: Yes. For instance let	7	querying with you, General, because I want to be sure that
8	me just tell you where I'm coming from. I've looked at	8	under oath you have said the mere fact that you are
9	your career and I see that, and do you see this is GGG27.3,	9	ambitious and you are looking to be promoted will not cause
10	that you have been in the SAPS service for quite some time,	10	you to say things that you know are untrue simply because
11	from 1986 to date. Is that right?	11	you are looking to be promoted, and I understand that you
12	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	12	said it will not.
13	MR NTSEBEZA SC: And in that period of	13	CHAIRPERSON: He's already given that
14	time you have been promoted through the ranks to the rank	14	answer. You don't have to repeat it. Well, he said it;
15	which you now occupy. Is that right?	15	you don't have to repeat it, so you can carry on to your
16	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	16	next question.
17	MR NTSEBEZA SC: You are now – what	17	MR NTSEBEZA SC: Thank you, Mr Chairman.
18	position do you hold in the SAPS other than the title, the	18	I want to be sure that that is what I understood because
19	rank of Major-General? What position? Are you a deputy	19	I'm going to make submissions at the end of this Commission
20	provincial commissioner?	20	and I don't want to make them on the basis that the witness
21	MAJOR-GENERAL MPEMBE: Deputy Provincial	21	had not, don't agree to -
22	Commissioner, Operational Services.	22	CHAIRPERSON: I take it your submissions
23	MR NTSEBEZA SC: Deputy Provincial	23	will be based on the transcript, so you won't have a
24	Commissioner, and you'll correct me if I'm wrong, you are	24	problem there.
25	about 51 years of age?	25	MR NTSEBEZA SC: Yes, it will be based on
		20	
	Page 15987		Page 15989
1	MAJOR-GENERAL MPEMBE: Correct,	1	the transcript, but it will have also, Mr Chairman, with
2	Chairperson.	2	respect, eliminated all ambiguities. I simply want to make
3	MR NTSEBEZA SC: When do police officers		
A .		3	sure that we are clear. Now General, you are aware that I
4	retire? Do they retire at 60 or 65?	4	represent 33, or the families whose relatives got killed,
4 5	MAJOR-GENERAL MPEMBE: 65 – 60,		represent 33, or the families whose relatives got killed, particularly between the 13th and the 16th? You are aware
	MAJOR-GENERAL MPEMBE: 65 – 60, Chairperson.	4	represent 33, or the families whose relatives got killed,
5	MAJOR-GENERAL MPEMBE: 65 – 60, Chairperson. MR NTSEBEZA SC: At 60. So you have got	4 5	represent 33, or the families whose relatives got killed, particularly between the 13th and the 16th? You are aware
5 6	MAJOR-GENERAL MPEMBE: 65 – 60, Chairperson.	4 5 6	represent 33, or the families whose relatives got killed, particularly between the 13th and the 16th? You are aware of that?
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	Page 15990		Page 15992
1	that is my personal knowledge and only towards all the	1	CHAIRPERSON: You see, the point is
2	actions that I have taken, I don't know them personally but	2	apparently in mining vernacular a miner, the phrase "miner"
3	to my knowledge yes, I know that they are in the Commission	3	refers to a certified miner, and if you talk about
4	and they would like to know what was my role and my	4	mineworkers I don't think there will be a misunderstanding.
5	contribution, and I was also in the command position.	5	MR NTSEBEZA SC: Yes. The plan, which is
6	MR NTSEBEZA SC: Yes, and I'll come to	6	usually called a tactical phase, as it was being unfolded
7	this in more detail, but we have come to understand that	7	on the 16th, that was a plan with which you agreed?
8	when you were put in command by Lieutenant-General Mbombo		MAJOR-GENERAL MPEMBE: Correct,
9	of the operations, it was to be in command to execute a	9	Chairperson.
10	plan that has now come to be known as the so-called Scott's	10	MR NTSEBEZA SC: And again I don't want
11	plan. Do you agree?	11	to be misunderstood; stated in its broadest terms, that
12	MAJOR-GENERAL MPEMBE: No, Chairperson,	12	plan was to go to the koppie, encircle the miners, disarm
13	with regard to Scott's plan.	13	them –
14	MR NTSEBEZA SC: I don't want us to	14	CHAIRPERSON: No, no, that's not correct.
15	examine this, re-examine this, but can I ask whether you	15	That was plan A.
16	agree that part of the plan - and you were very central to	16	MR NTSEBEZA SC: Yes.
17	this – was that, stated in broad terms, the idea was to	17	CHAIRPERSON: The witness yesterday
18	encircle, disarm, and disperse the mineworkers at the	18	explained to us that that wasn't possible because it was no
19	koppie.	19	longer early morning and there were more than the small
20	MAJOR-GENERAL MPEMBE: Correct,	20	number that that plan was designed to deal with. The plan
21	Chairperson, with specific references to the order. I	21	was to put a protective fence between the police neutral
22	think it's only the order that is not correct, but I do	22	area and the mineworkers who were on or in front of the
23	agree.	23	koppie, and thereafter to go through a gap into that area
24	MR NTSEBEZA SC: What do you mean –	24	and to take steps which would disperse them, encircle them,
25	CHAIRPERSON: It's disperse, encircle,	25	and disarm them. That was the plan as the witness
	Dogo 15001		Dogo 15002
1	Page 15991 and disarm, not the other way around. That's the –	1	Page 15993 explained it.
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1 2 3	and disarm, not the other way around. That's the –		explained it. MR NTSEBEZA SC: So the plan was in the
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	Page 15994		Page 15996
1	MR NTSEBEZA SC: Now what the Chair has	1	MR NTSEBEZA SC: As it has happened
2	indicated is of course from your colleague, Colonel Scott.	2	where?
3	That was his evidence, I understand. Now I just want to	3	MAJOR-GENERAL MPEMBE: I'm sorry,
4	-	4	
	know your understanding, what was your understanding of		Chairperson, I was still answering.
5	what the police would go and do at the mountain on the 16th?	5	CHAIRPERSON: He's still busy with his
6	[09:35] MAJOR-GENERAL MPEMBE: Chairperson, I did	6	answer, when he's finished you can ask him the next
7	testify on this and I stick to what I testified. It was to	7	question.
8	say firstly we started with the phase of showing of force	8	MAJOR-GENERAL MPEMBE: And it is my
9	and thereafter showing of force, then the operational	9	testimony before this Commission that now the strikers were
10	commander will warn the protesters. Showing of force it	10	also armed and the police were also armed. Then it was my
11	was the placing of the barbed wire, the Nyala and also the	11	testimony that we had mitigating plan or plan in terms of
12	placing of the POP members, the placing of POP members who	12	how would mitigate that. And I even testified to this
13	will be given the rubber bullet, will also be given the	13	Commission that it was my belief that it will be - there
14	stun grenades, will also be using the teargas. Then at 100	14	was a risk of the plan which that risk was mitigated, not
15	metres it will be the POP and the STF and the TRT who will,	15	what has happened on that day.
16	in case when the members of POP were in danger, then they	16	MR NTSEBEZA SC: In your view that plan
17	will come to the fore. Then the dispersal will take place	17	taking place at the mountain was it the best way you could
18	whereby the commander will give the command to disperse,	18	have achieved your objectives, namely; to make sure that in
19	show of force will again take place and we expected that to	19	the end the miners were disarmed, they have been dispersed
20	the members. The strikers they will start to disperse when	20	and the risk of fatalities has been minimised? Is that
21	all the actions were taking place and we'll also expect	21	your evidence?
22	that a certain group will remain, that will not disperse	22	MAJOR-GENERAL MPEMBE: Chairperson, it is
23	all the strikers that were not there. And then during the	23	my testimony before this Commission as an overall commander
24	process of dispersing then the strikers will be – while	24	I tried many alternatives starting from the 13th of Monday.
25	they were being persuaded, - pursued, not persuaded,	25	MR NTSEBEZA SC: Starting from?
	· · · · · · · · · · · · · · · · · · ·		
	Page 15995		Page 15997
1	Page 15995 pursued in the dispersal process they will be encircled,	1	Page 15997 CHAIRPERSON: Starting from the 13th.
1 2	6	1 2	
	pursued in the dispersal process they will be encircled,		CHAIRPERSON: Starting from the 13th.
2	pursued in the dispersal process they will be encircled, disarmed and arrested. But those that will voluntarily put	2	CHAIRPERSON:Starting from the 13th.MR NTSEBEZA SC:Oh, thank you, thank
2 3	pursued in the dispersal process they will be encircled, disarmed and arrested. But those that will voluntarily put their weapons nothing will take place in terms of being	2 3	CHAIRPERSON: Starting from the 13th. MR NTSEBEZA SC: Oh, thank you, thank you, Mr Chairman.
2 3 4	pursued in the dispersal process they will be encircled, disarmed and arrested. But those that will voluntarily put their weapons nothing will take place in terms of being arrested.	2 3 4	CHAIRPERSON: Starting from the 13th. MR NTSEBEZA SC: Oh, thank you, thank you, Mr Chairman. MAJOR-GENERAL MPEMBE: Starting from the
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1	Page 15998	1	Page 16000
1	MAJOR-GENERAL MPEMBE: Chairperson, my testimony is that all the alternatives according to me were	1 2	you, step by step, about your plan to disarm the miners. Did you understand that to be my trend? I'm talking about
2 3	exhausted.	2	disarming, just disabuse your mind about encircle and
4	MR NTSEBEZA SC: I see, so it could only	4	dispersing, I'm talking about disarming the mineworkers.
5	be done at the mountain according to you. Did you	5	Now that you understand that that is my emphasis let me put
6	understand the question?	6	the question to you. Is it your evidence that your plan,
7	MAJOR-GENERAL MPEMBE: No, Chairperson.	7	all other alternatives having been exhausted, to disarm the
8	MR NTSEBEZA SC: According to you all	8	mineworkers was to do it at the mountain?
9	alternatives having been explored by you and those who are	9	MAJOR-GENERAL MPEMBE: Chairperson, the
10	in the planning the only way in which the miners could be	10	plan was to disperse, encircle disarm and arrest.
11	disarmed would be when it happened at the mountain, is that	11	Disarming is part of the plan, not only the only objective,
12	your evidence?	12	there were so many objectives and many activities could
13	MAJOR-GENERAL MPEMBE: Chairperson, the	13	have happened during those processes.
14	mountain was not chosen by the police, it's where the	14	MR NTSEBEZA SC: General, in the interest
15	strikers were.	15	of time I will make the submission that you are
16	MR NTSEBEZA SC: Did you understand the	16	deliberately evading the question. The question is very
17	question?	17	clear, it's specific to one aspect of the operation, that
18	MAJOR-GENERAL MPEMBE: Chairperson, I	18	is to disarm the miners and you understand the question but
19	asked that the question should be repeated.	19	you are deliberately evading it. Do you want to make any
20	MR NTSEBEZA SC: I will repeat –	20	comment before I move on?
21	CHAIRPERSON: If you say to the witness	21	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
22	do you understand the question it doesn't always elicit a	22	I am not avoiding the question, but it is my testimony that
23	satisfactory answer because the witness may think he	23	the plan that I approved it has many actions inside, not
24	understands the question whereas in fact he doesn't. I can	24	only of disarming.
25	understand the witness who genuinely doesn't understand	25	MR NTSEBEZA SC: I understood that
	Page 15999		Page 16001
1	then say I'm sorry I don't understand please repeat. But	1	perfectly, but let me go and I'll make the submission.
2	sometimes the witness thinks he understands and doesn't.	2	COMMISSIONER HEMRAJ: General, did you
3	I'm not sure what the position is here, but try to avoid	3	consider at any stage whether there might be any plan or
4	that problem in future. Repeat the question clearly for	4	any method by which only a disarming could take place as
5	him so he can understand it. If he doesn't understand it	5	opposed to going through this whole process of dispersing,
6	I'm sure he will say so and then we can move on.	6	encircling and disarming? Did you ever apply your mind as
7	MR NTSEBEZA SC: Thank you, Mr Chairman.	7	Mr Ntsebeza suggested to just disarming the persons of the
8	General, let's make this easy. I understand you to be	8	Weapons?
9 10	saying all other alternatives of disarming the mineworkers had been exhausted. Was that your evidence?	9 10	MAJOR-GENERAL MPEMBE: Disarming that we expected before the dispersal, it was basically when the
10	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	10	strikers themselves volunteered. But the disarming by the
12	MR NTSEBEZA SC: And the only way in	12	police the process has to follow through dispersal process
	which they could be disarmed was in pursuance of your plan	12	because you cannot go to the disarming before dispersal,
12		15	sources for connect go to the disarming before dispersal,
13 14		14	before pursuing dividing them in smaller groups and
14	by disarming them at the mountain, is that right?	14 15	before pursuing, dividing them in smaller groups and thereafter encircling them. And then the disarming could
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1	CHAIRPERSON: The suggestion is rather	1	MR NTSEBEZA SC: Yes. Now what time of
2	vague, if there are other alternatives as you're suggesting	2	the day was this when you had this meeting here on the 15th?
3	perhaps you should put them to him –	3	MAJOR-GENERAL MPEMBE: It was in the
4	MR NTSEBEZA SC: Thank you, Chairman.	4	evening.
5	CHAIRPERSON: I know what the objection	5	MR NTSEBEZA SC: Yes, and by that time a
6	is going to be.	6	decision had been taken to go into tactical phase, is it?
7	MR NTSEBEZA SC: Well let me withdraw the	7	CHAIRPERSON: Had the decision been taken
8	question, I suppose I can put it some other way. Was it	8	at that stage to your knowledge to go into the tactical
9	your, now when I say your I'm asking about you, the overall	9	phase the next day, when you had this conversation firstly
10	commander and you as part of the leadership of the SAPS on	10	with Mr Zokwana and secondly with Mr Mathunjwa? What time
11	that day, was it your considered view that if you dispersed	11	was this discussion?
12	the miners at the mountain there was a good likelihood that	12	MAJOR-GENERAL MPEMBE: It was during the
13	there would be no fatalities or there would be minimal	13	evening.
14	fatalities?	14	CHAIRPERSON: Yes, but what time? You
15	MAJOR-GENERAL MPEMBE: Chairperson, I	15	know, was it 8 o'clock, 9 o'clock, 10 o'clock, 11 o'clock?
16	already answered it, that there were risks involved and	16	MAJOR-GENERAL MPEMBE: It was from 6
17	there would have been minimal, not fatalities but also	17	o'clock, it ended after –
18	injuries. Now that the strikers were also armed and the	18	CHAIRPERSON: So early evening really.
19	police were armed but that there were mitigating factors	19	MAJOR-GENERAL MPEMBE: Ja, early evening,
20	that we did put in place.	20	yes.
21	MR NTSEBEZA SC: Now be patient with me,	21	CHAIRPERSON: And at that stage to your
22	General, sometimes you know, I forget. So do you say you	22	knowledge had any decision been taken by anyone at any
23	anticipated that there might be fatalities?	23	level to go into the tactical phase, as it's being called,
24	CHAIRPERSON: I think it's clear from the	24	the next day? I say to your knowledge; in other words,
25	answer, yes he says, but there were mitigating factors if I	25	something may have happened elsewhere, but, or may not have
	Page 16003		Page 16005
1	Page 16003 can use his expression, things that they had done and were	1	Page 16005 happened elsewhere, but I'm interested in what – I think
1 2		1 2	
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2	can use his expression, things that they had done and were doing in the hope of reducing that risk as much as	2	happened elsewhere, but I'm interested in what – I think what's relevant is what you were aware of at that time,
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MR NTSEELA SC: And then of course you 1 as the 15h in the evening you know that to go abady with a sky if go to that house. I'm not going to tell you what a should i key but what a should i key but what a should i key but you may you members there inside. You go to the house because that is the only way. Beating this default is to be blocked. In the series all the mountain was going a soft jack that the house interming to in the series and the only way. Beating this default is a should have period with the should have period with a should have period with the should have a should have with what they have and the should have period with the should have a should have a should have period with the should have may be period with the should have may be period with the should have a should have the should have period have a should have period have have have a should have period have have a should have period have have have a should have period have have have a should have have have a sho		Page 16006		Page 16008
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1	Page 16010	1	Page 16012
1	Zokwana, where I indicated to them that there were members	1	said that that was the last resort, to disperse was the
2	of NUM, so at that time I did expect that he could be saying to me, because there are members of, the shop	2 3	last resort to me, and I said the alternatives were exhausted.
3	steward there, because he also complained during the day	3 4	MR NTSEBEZA SC: General, I don't want to
4 5	that his members were taken there against their will. So I	4 5	be unfair to you. The words say what they say. "Only"
	believe that he could have given me the information at that		means "only." Any dictionary in the world will tell you
6	time, so that during the night of the process I could raid	6 7	
7			"only" means "only," without exception. Your expression in the presence of Major-General Annandale and everybody was
8 9	and also arrest those that are perpetrators. CHAIRPERSON: Yes, for the raid that	8 9	that the only way to disarm these mineworkers is not to go
10 11	you're talking about, didn't you really need a cordon and search authorisation under section 13(7) of the Police	10 11	to the mountain and confront them, that will lead to bloodshed. Is that not a correct summation of your
12	Services Act, which you in fact applied for the following	12	evidence, I mean of what you were saying to them there on
13	day? Isn't that right? According to the evidence there	13	that day? I see you don't answer. Now the Chairman suggests to you – he's not suggesting, he's simply saying
14	was an application, a document was drawn up on the	14	
15	Wednesday, but I don't think it was carried through, but on	15	it would appear that there was no time within which you
16	the Thursday morning Captain Moolman came through early in	16 17	could have got the information. Now as overall operational
17	the morning, according to evidence and her statement we got, and she prepared documentation for an application to	17	commander, of course you could have – CHAIRPERSON: He's the overall commander.
18			
19	the Provincial Commissioner, I think she said at your	19 20	The operational commander was Brigadier Calitz. Don't
20 21	request, for authorisation under section 13(7) of the act,		telescope the two into one. That happened on the 13th, but
22	which would then empower the police to in a demarcated area go in, form a cordon around it, go in, search, and seize	21 22	it wasn't happening on the 16th. MR NTSEBEZA SC: Thank you, Mr Chairman.
22	weapons. That's correct, isn't it?	22	Now you could have persuaded your colleagues to adjourn the
23	MAJOR-GENERAL MPEMBE: Correct,	23 24	implementation of the plan to disarm the people at the
24 25	Chairperson.	24 25	mountain, in favour of what you now call "the only way."
23		25	mountain, in favour of what you now can the only way.
	Page 16011		Page 16013
1	Page 16011 CHAIRPERSON: And of course there wasn't	1	Page 16013 You could have done that.
1 2		1 2	
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2 3	CHAIRPERSON: And of course there wasn't an opportunity to do that, I take it because of the decision that was taken to proceed with the tactical phase if they didn't voluntarily hand over their weapons on the morning of, the Thursday morning. That's also right,	2 3	You could have done that. MAJOR-GENERAL MPEMBE: Chairperson, my statement, my supplementary statement sums up the reason of
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1	Page 16014	1	Page 16016
1	your argument is on record; you've given the witness an	1	understand about that. He participated, and he says with
2	opportunity to answer. His answer, if it's satisfactory is	2	success, in crowd management situations. That's also
3	satisfactory; if it isn't, it isn't, but that's a matter	3	clear, isn't it?
4	we'll only know at the end of the matter.	4	MAJOR-GENERAL MPEMBE: Correct,
5	MR NTSEBEZA SC: Thank you, Mr Chairman.	5	Chairperson, being the overall commander.
6	Now I just want to go on to another subject, and that is	6	CHAIRPERSON: And on the 13th you actually
7	your experience in POP operations. Now did you say you	7	demonstrated - things may have gone wrong through no fault
8	have extensive experience in crowd management	8	of yours - but you demonstrated on the 13th that you have a
9	interventions?	9	shrewd knowledge of the application of the doctrine of
10	MAJOR-GENERAL MPEMBE: Chairperson, my	10	appropriateness.
11	experience is based on the training I said is in 1986, and	11	MAJOR-GENERAL MPEMBE: Correct,
12	the operational experience of 13 years being in charge of	12	Chairperson.
13	Operational Services, and also attended, which I've	13	MR NTSEBEZA SC: Now the Chairman
14	mentioned several operations which I led as an overall	14	mentions the 13th. Is it your evidence, if I understand you
15	commander and which were successful.	15	well, that other than having been operational commander of
16	MR NTSEBEZA SC: Yes, in your statement,	16	a crowd management operation on the 13th, you are claiming
17	exhibit HHH3, page 4, paragraph 6, you say, "I have	17	there were other situations where you were operational
18	extensive experience in crowd management interventions,"	18	commander with success?
19	and then you go on to say you shall refer some during your	19	CHAIRPERSON: Yes, you said that, either
20	evidence by way of example. So what I wanted to explore	20	operational commander or overall commander, but you
21	with you is what you claim to be your extensive experience	21	referred to a number of situations in the past, crowd
22	in management, in crowd management interventions. Do you	22	management situations which you handled successfully.
23	confirm that?	23	MAJOR-GENERAL MPEMBE: Correct,
24	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	24	Chairperson.
25	extensive in this regard means experience.	25	CHAIRPERSON: I think what Mr Ntsebeza
	Page 16015		Page 16017
1	MR NTSEBEZA SC: Well, you put it as	1	wants to know is in respect of those situations, were you
2	MR NTSEBEZA SC: Well, you put it as extensive experience. I don't know why you want to –	1 2	wants to know is in respect of those situations, were you the operational commander or the overall commander or at
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	Page 16018		Page 16020
1	five. I might also state that during the employee strikes	1	to take the General very quickly to the engagement with the
2	in Mafikeng, I did indicate that, the one of Ventersdorp, I	2	strikers at the railway line on the 13th and may I crave
3	spoke about Skierlik one, I also spoke about many others	3	your indulgence to play just probably four minutes and then
4	that took place in Mafikeng during public protests.	4	another four minutes of that video?
5	MR NTSEBEZA SC: So are those the	5	CHAIRPERSON: It's a clip we've seen already so
6	operations that amount to five? Skierlik, Ventersdorp,	6	you will identify it by giving me exhibit number and
		7	indicating at from what section we're going to see.
7	Mafikeng, and – CHAIRPERSON: He said several in	8	
8			5
9	Mafikeng, and he said about five. He didn't claim, or as	9	I believe, I'm told it's at 1 –
10	he put it, numerical accuracy.	10	CHAIRPERSON: [Microphone off, inaudible] give you
11	MR NTSEBEZA SC: Mr Chairman, I'm not –	11	an adjournment to get your papers in order.
12	CHAIRPERSON: And I don't think you	12	MR NTSEBEZA SC: Exhibit QQ2. Now to put
13	wanted that, anyway.	13	that straight, Mr Chairman, I believe that Z1 is the video
14	MR NTSEBEZA SC: No, no, I just wanted to	14	clip and exhibits QQ2 are the transcripts thereto.
15	get a sense because as a person who – now were there	15	[VIDEO SHOWN]
16	instances in the five-odd operations which you have	16	MR NTSEBEZA SC: General, we'll stop
17	referred to where the crowd was armed?	17	there for the moment. Now just as a precursor to the
18	MAJOR-GENERAL MPEMBE: Correct,	18	questions I'm going to suggest to you, I will make the
19	Chairperson, but not as armed as in Marikana.	19	submission that these mineworkers at that railway line, and
20	MR NTSEBEZA SC: So would it be fair to	20	you can get this from this clip, treated you with utmost
21	say that you have a fairly good understanding of the laws	21	respect. You may not have been agreeing to some of the
22	and the Standing Orders and the policies in the SAPS that	22	things that they were suggesting at that time and I'll come
23	govern crowd management interventions?	23	to that, but would it be fair to say, treated in the way
24	MAJOR-GENERAL MPEMBE: Not only	24	that they are speaking, raising their voices but they were
25	understanding, but application.	25	treating you with utmost respect, [African language] Tata,
	3 11		
	Page 16019		Page 16021
1	Page 16019 MR NTSEBEZA SC: Indeed. Now I just put	1	Page 16021 begging you father, et cetera, et cetera. Would you agree
1 2		1 2	0
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	Page 16022		Page 16024
1	the railway line an opportunity?	1	a translation of what is being said, as I understand it.
2	MAJOR-GENERAL MPEMBE: As stated in my	2	MR NTSEBEZA SC: Yes. Now I would assume
3	statement.	3	that on page 4 that these miners are repeatedly saying that
4	MR NTSEBEZA SC: Yes. Principally what	4	they are not fighting with anybody and I think that is on
5	was being spoken there is what is usually known as	5	page 4, page 6, page 7, page 8 up to page 12.
6	Fanagolo, do you agree?	6	CHAIRPERSON: What was the purpose of the song
7	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	7	that's quoted there, was that to show respect?
8	MR NTSEBEZA SC: What language do you	8	MR NTSEBEZA SC: Which one?
9	speak, I mean what is your mother tongue? Is it isiZulu or	9	CHAIRPERSON: The song that's quoted at the top of
10	Setswana or isiXhosa?	10	page 4, was that sung to show respect to the witness?
11	MAJOR-GENERAL MPEMBE: I speak isiZulu.	11	MR NTSEBEZA SC: Yes.
12	MR NTSEBEZA SC: That's your mother	12	CHAIRPERSON: It doesn't sound like a very
13	tongue?	13	respectful song to me.
14	MAJOR-GENERAL MPEMBE: But I also speak	14	MR NTSEBEZA SC: Well, the witness has
15	South Sotho, I also speak Setswana even though these others	15	already said they showed him the utmost respect. He
16	are not as good as the people themselves, even including	16	understands their culture and let me argue this at some
17	isiZulu. I did demonstrate already but I also added that	17	stage, the fact that testes are referred to in the song is
18	my background working from the mines also, that is also one	18	neither here nor there, in my respectful submission.
19	of the reasons why I was there.	19	CHAIRPERSON: That's an argument you can advance
20	MR NTSEBEZA SC: Yes, ja. Most of those	20	at the end of the hearing.
21	people or certainly most of those who are dead, whose	21	MR NTSEBEZA SC: Indeed, indeed, Mr
22	families I represent, come from the Eastern Cape, most from	22	Chair.
23	Mqanduli, Ncala where I was born, et cetera, et cetera.	23	CHAIRPERSON: The witness wants to say something.
24	They speak isiXhosa and you are quite comfortable in	24	MAJOR-GENERAL MPEMBE: Chairperson, in
25	isiXhosa?	25	reference to respect I was only referring to me. I did not
	Page 16023		Page 16025
1	Page 16023 MAJOR-GENERAL MPEMBE: I don't understand	1	Page 16025 also include the song, it's correct.
1 2	-	1 2	-
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	Page 16026		Page 16028
1	MAJOR-GENERAL MPEMBE: Correct,	1	CHAIRPERSON: That's at page 9, round
2	Chairperson, but later on it was found that those people	2	about line 20, and I can't speak the vernacular, I heard a
3	were not dead.	3	passage in the, on the clip which clearly was that passage
4	MR NTSEBEZA SC: Don't get ahead of	4	because there's a reference to NUM. Where is the complaint
5	yourself, General, I'm just putting questions to you.	5	about Lonmin you're talking about?
6	CHAIRPERSON: Mr Ntsebeza, I don't want to clip	6	MR NTSEBEZA SC: I'm told it's page 9, Mr
7	your wings at all but we have the transcript before us, we	7	Chairman.
8	know what was said so it's not necessary to put the whole	8	CHAIRPERSON: No, page 9 talks about
9	transcript to him but if there's a particular passage that	9	NUM –
10	will lay the foundation for a question you want to ask him	10	MR NTSEBEZA SC: Yes.
11	then I'll allow you to do it, but please try to keep this	11	CHAIRPERSON: But I'm asking your learned
12	as short as you can because we have the transcript, we've	12	friend where the passage is that he refers to where things
13	seen the video before and again, time is precious.	13	were said about Lonmin. [Microphone off, inaudible]
14	[11:18] MR NTSEBEZA SC: Yes, I appreciate that,	14	something about Lonmin on page 6, round about line, between
15	Mr Chairman, thank you very much. I just don't want it to	15	lines 15 and 20, and then there's a reference to the
16	be said that there was an opportunity to put - that's why	16	security guards of the mine and so forth on page 6, but the
17	I'm just putting to them; he agrees or disagrees, the	17	passage that Mr Ntsebeza is referring to is the passage on
18	record will show what it says. And from the clip, and you	18	page 9 where in terms he says, "On Saturday when we came
19	have already covered it by saying it was discovered that,	19	back the mine security shot at us" - that's what you were
20	you know, the two people that they say were killed were	20	saying – "together with the people from NUM and killed two
21	found not to have died, but they were giving you their	21	of our people. That's the reason we're carrying weapons."
22	version of the incidents of the 11th, and by that time you	22	That's the passage I think that Mr Ntsebeza refers to.
23	already knew of the incidents, the shooting by security	23	Truth is it refers to both Lonmin security (which I don't
24	police and, I mean security, Lonmin security, and by the	24	think is accurately actually, but anyway we won't go there
25	NUM. Do you agree that they were giving that, their own	25	now) for the Saturday, but also refers to NUM, and that's
	Page 16027		Page 16029
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	Page 16030		Page 16032
1	number 1 says that, "We will give you," I think the word	1	a very good summary. General, I just want to put this to
2	should be "our weapons when you bring our employer."	2	you; in my looking at that clip, firstly there is a moment
3	That's lines 15 to 17 on page 10.	3	where it appears you seek an understanding from them, 'Oh,
4	MR NTSEBEZA SC: Yes, in fact on page 8	4	so are you saying if we go up to the mountain, when we get
5	he says, "Let all the men come with us to where we are	5	there, you know, you will hand over your' - and there's a,
6	settled. After you will bring the boss from the mine, the	6	sort of a unison of agreement. Did you get that in the
7	one we want money from, to give us a response" -	7	clip?
8	CHAIRPERSON: Ja, that's page 8 –	8	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
9	MR NTSEBEZA SC: Yes.	9	I get that in the clip.
10	CHAIRPERSON: - lines 10 to 18, ends up	10	MR NTSEBEZA SC: And I put this to you;
11	with the words –	11	up until the time when you got a phone call, and it shows
12	MR NTSEBEZA SC: "Then we will give" –	12	in the clip, the video gives the impression that you are
13	CHAIRPERSON: - "We're not fighting with	13	almost there in the sense that you understand what they are
14	anyone."	14	proposing, you don't disagree with it. Then a phone call
15	MR NTSEBEZA SC: Yes, "Then we will give	15	comes and you take a distance and you take the phone. Do
16	you the weapons. We are not fighting with anyone."	16	you remember that portion in the clip?
17	CHAIRPERSON: It goes on to say, "You	17	MAJOR-GENERAL MPEMBE: I remember the
18	come with us to the place where we are all gathered" -	18	portion, Chairperson.
19	MR NTSEBEZA SC: Yes.	19	MR NTSEBEZA SC: And I believe the phone
20	CHAIRPERSON: - "and afterwards you will	20	call was from General Mbombo.
21	go to our management when he pays us," etcetera. Now, so I	21	MAJOR-GENERAL MPEMBE: No, Chairperson.
22	think we know what was said and it was said several times.	22	MR NTSEBEZA SC: Who was it from?
23	MR NTSEBEZA SC: Yes.	23	MAJOR-GENERAL MPEMBE: It was for her,
24	CHAIRPERSON: The witness put up his	24	not from.
25	hand; he'd like to say something. I think we should give	25	MR NTSEBEZA SC: From you? So you were
	Page 16031		Page 16033
1	Page 16031 him a chance, don't you think, Mr Ntsebeza?	1	Page 16033 phoning the JOC?
1 2		1 2	=
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	Page 16034		Page 16036
1	MAJOR-GENERAL MPEMBE: Yes, I –	1	well, you say to these personalities in the JOC, 'Look, the
2	CHAIRPERSON: But he's asking you	2	situation is such that now I have to change deck a little
3	something about what you said over the telephone to either	3	bit. My mission here was to disarm these people here at
4	General Mbombo or someone at the JOC. So the real answer	4	this railway line. There has been an exchange of views
5	you've got to give to us is if you can remember, what did	5	between us and them; they are not handing their weapons.
6	you say to General Mbombo when you spoke to her, and what	6	There is a suggestion that they make about me and us
7	did you say to the person at the JOC who you spoke to in	7	accompanying them to the mountain and I think that is an
8	the course of that conversation that's being referred to.	8	opportunity that must, we must give that an opportunity, a
9	MAJOR-GENERAL MPEMBE: Chairperson, I did	9	chance.' More or less is that how the communication went
10	say, and I'm repeating it again, is to say I told General	10	between you and them?
11	Mbombo that I am taking a decision with regard to the	11	MAJOR-GENERAL MPEMBE: It included that
12	situation and I'm going to apply situational	12	they should disarm, but in the case where they don't
13		12	voluntarily disarm, that is the case, but the main priority
	appropriateness. The miners are, I wanted them to be disarmed, but in the case where they don't disarm, or in		
14	, and the second s	14	was that it could be important for me that they should go
15	the case where they don't voluntarily disarm, we are going	15	there disarmed and we can escort them. The reason why I
16	to escort them.	16	wanted to escort them, it was the allegation that they put
17	MR NTSEBEZA SC: Ja, and was there an	17	that NUM or securities were shooting at them, but the
18	agreement between you and General Mbombo on that?	18	condition that I put to them that was very clear,
19	MAJOR-GENERAL MPEMBE: Yes, I could say	19	unequivocally, unarmed.
20	it's an agreement with General Mbombo, but normally in such	20	MR NTSEBEZA SC: No, General, you know, I
21	cases an operational commander will take such decisions.	21	don't want us to complicate this thing. When you went
22	MR NTSEBEZA SC: Yes.	22	there, when you confronted and you stopped the mineworkers
23	MAJOR-GENERAL MPEMBE: And General Mbombo	23	there, I mean some of the first things that you said
24	will always agree if you also give her the good reasons.	24	earlier on in the video, which we didn't play because it
25	MR NTSEBEZA SC: Now do you speak to	25	has been played before, if you recall you said, these
	Page 16025		Page 16027
1	Page 16035 anyone in the JOC, and who, if you did?	1	Page 16037 things that you are carrying are not permissible in law.
1 2	Page 16035 anyone in the JOC, and who, if you did? MAJOR-GENERAL MPEMBE: I spoke to	1 2	things that you are carrying are not permissible in law.
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	Page 16038		Page 16040
1	MR NTSEBEZA SC: No, you counted – you	1	MAJOR-GENERAL MPEMBE: No Chairperson, I
2	phoned. That's the point I want to make. If you say you	2	was not seeking clarity. I was actually telling them that
3	phoned, you phoned in order to tell General Mbombo and	3	the decision that I have made and that I am going to take,
4	whoever else, Calitz or whoever else was in the JOC, to	4	it's a situational appropriateness decision, intervention,
5	tell them that you are now taking a decision not to disarm	5	made my decision based on that intervention.
6	them because there is another proposal. Then what you	6	MR NTSEBEZA SC: Yes, you see I want to
7	would be expected to do is to say okay, let's go. Not so?	7	suggest to you and we'll go to – what page is it – I want
8	MAJOR-GENERAL MPEMBE: No, Chairperson.	8	to suggest to you that on page 11 this becomes very clear.
9	MR NTSEBEZA SC: What would have been	9	You come from the phone, line 14, and to their surprise you
10	expected of you to do?	10	say I'm going to take those weapons. And look at their
11	MAJOR-GENERAL MPEMBE: It's exactly what	11	response, we agreed, we agreed and you say yes, as though
12	I said, that I personally counted for them to disarm.	12	to say yes, we agreed but I'm counting now, I'm counting.
13	CHAIRPERSON: Sorry to interrupt you.	13	And they say give us feedback obviously from, you know.
14	It's not quite as simple as that. The way I understand it	14	How do you explain that? And I will put to you that -
15	- but if I'm wrong I hope you'll correct me - is that you	15	MR MAENETJE: Sorry, Mr Chairman, I would
16	wanted them to lay down their weapons. You wanted to	16	like to bring to the attention of my colleague that this
17	disarm them, and you were going to give them a count of 10	17	transcript is incomplete, there are gaps there. So when he
18	to do that. But you'd already decided - I think this is	18	puts questions to the witness he must bear that in mind.
19	the point, is it not – that if they didn't comply and	19	MR NTSEBEZA SC: Mr Chair, we don't have
20	didn't put down their weapons and started walking away, you	20	forever. We could play the video and the General, unless
21	wouldn't attack them in order to disarm them; you would	21	the objection is that he should not even answer the
22	then accompany them to the koppie. So first prize was they	22	question.
23	must lay down their arms, but if they don't, second prize	23	CHAIRPERSON: I don't know that I quite understand
24	was we'll accompany them to the koppie. Is that a correct	24	the point you're making. Let me put it to you the way I
25	summary of what you said over the telephone to General	25	think you're putting it and then if I'm wrong you will
	Page 16039		Page 16041
1	Page 16039 Mbombo and Brigadier Calitz?	1	Page 16041 correct me. Are you suggesting to the witness that he, in
1 2		1 2	
	Mbombo and Brigadier Calitz?		correct me. Are you suggesting to the witness that he, in
2	Mbombo and Brigadier Calitz? MAJOR-GENERAL MPEMBE: Yes, Chairperson.	2	correct me. Are you suggesting to the witness that he, in his exchanges with the mineworkers, the strikers, agreed to
2 3	Mbombo and Brigadier Calitz? MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR NTSEBEZA SC: So it explains then why	2 3	correct me. Are you suggesting to the witness that he, in his exchanges with the mineworkers, the strikers, agreed to allow them to go with their weapons to the koppie and then
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	Page 16042		Page 16044
1	law and I wanted them to drop the dangerous weapons. And	1	MR NTSEBEZA SC: Yes.
2	then on the phone I did explain that taking the situation	2	CHAIRPERSON: And he makes it clear that he's
3	into account, after they have spoken to me several times to	3	going to take those spears, as he puts it, and to which
4	say go with us to the mountain, is that if they do not drop	4	they then say, we agreed, we agreed.
5	the weapons I am not going to force them to take the	5	MR NTSEBEZA SC: Mm.
6	weapons but I will escort them.	6	CHAIRPERSON: But surely there's no basis for
7	MR NTSEBEZA SC: When they say to you,	7	putting to him that he agreed, surely the most you can put
8	give us feedback, what do you think the feedback was for?	8	is - I don't want to interrupt you unduly but I mean I do
9	MAJOR-GENERAL MPEMBE: Chairperson, they	9	want to save time – surely the most you can put to him is
10	referred to many, to that they want the Lonmin management	10	that is there scope for a misunderstanding, that that they
11	and I could also demonstrate to all what they asked me on	11	you agreed.
12	that conversation that was done later and that is my	12	MR NTSEBEZA SC: Well –
13	testimony.	13	CHAIRPERSON: I mean I don't see how you can put
14	CHAIRPERSON: Mr Ntsebeza, I'm not sure we're	14	to him he agreed.
15	going to solve this just off the transcript because as has	15	MR NTSEBEZA SC: Yes. No, no, I mean I'm
16	been pointed out, there are gaps in the transcript there	16	not wanting to stretch it that far, Mr Chairman.
17	and – but unless this is covered in one of the gaps, I	17	CHAIRPERSON: Sorry, can I then ask him a couple
18	can't find a passage in the transcript where he says "I	18	of questions and see whether we can cut a path through the
19	agree." It may well be, of course, that there was a	19	bushes at this point? You've heard the exchange between me
20	misunderstanding, that they thought perhaps from his body	20	and Mr Ntsebeza.
21	language or lack of direct response when they put to him	21	MAJOR-GENERAL MPEMBE: Correct.
22	what their attitude was, that he was agreeing and they may	22	CHAIRPERSON: They said to you, we agreed, we
23	well have thought when he spoke on the telephone that he	23	agreed. There's nothing in the record that indicates that
24	was consulting someone, perhaps a superior, as to what to	24	you did agree. Thinking about it now and having seen the
25	do, that may be why they're asking for feedback. There may	25	video again today, do you think it possible that there may
-			
	Page 16043		Page 16045
1	Page 16043 well have been a misunderstanding, they may have thought he	1	Page 16045 have been a misunderstanding, that the strikers may have
1 2	5	1 2	
	well have been a misunderstanding, they may have thought he		have been a misunderstanding, that the strikers may have
2	well have been a misunderstanding, they may have thought he agreed but his attitude is that he didn't and there's	2	have been a misunderstanding, that the strikers may have thought that you had agreed their proposal, that they
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1	Page 16046 we're not interested in what he thought, we're interested	1	Page 16048 MR NTSEBEZA SC: It's from page 7.
1	Ũ		
2	in what the strikers thought. Is that a possibility?	2	CHAIRPERSON: Thank you.
3	MAJOR-GENERAL MPEMBE: Chairperson,	3	[VIDEO SHOWN]
4	seeing that sentence, one can say yes but that was not the	4	CHAIRPERSON: Sorry, sorry, let's stop it for a
5	situation.	5	moment. I am informed by Mr Tokota that we're actually on
6	CHAIRPERSON: I understand your case is you didn't	6	page 9 of the transcript. What is being talked about is
7	agree and there's nothing in the transcript which indicates	7	the shooting.
8	you did but – certainly not expressly, but that's not the	8	COMMISSIONER TOKOTA: Saturday.
9	point of the question. The point is could they, did they	9	CHAIRPERSON: On the Saturday, so it's round about
10	perhaps think you had? And you've said, you've conceded it	10	line 18 on page 9, is that correct Mr Ntsebeza?
11	is a possibility. So perhaps you can now, now that I've	11	MR NTSEBEZA SC: Yes, Mr Chairman, I've
12	cut a path through the bush for you, would you like to	12	just seen the bottom of page 9.
13	proceed, Mr Ntsebeza?	13	CHAIRPERSON: So let's carry on.
14	MR NTSEBEZA SC: Thank you, Mr Chairman,	14	[VIDEO SHOWN]
15	I certainly would like to take another topic.	15	MR NTSEBEZA SC: Now, General –
16	COMMISSIONER HEMRAJ: Mr Ntsebeza, the	16	CHAIRPERSON: Sorry, I just want to record.
17	point that you were trying to make, does it become clearer	17	Having seen the clip again it's my impression and I think
18	if one actually looks at that part of the video as opposed	18	that both the Commissioners agree with me that there's
19	to relying on the transcript? I don't know if you want to	19	nothing from which one can say that the General agreed but
20	go that route but it just occurs to me that it might.	20	he's already conceded that there may have been, there's a
21	MR NTSEBEZA SC: Well, it does. If we	21	possibility that there was a misunderstanding, that the
22	can, perhaps if we could play that part where, which is	22	mineworkers thought there was but that does seem clear,
23	about a minute before we stopped because it covers a time	23	does it not, from what we have seen?
24	when you go to the telephone and then when you come back	24	MR NTSEBEZA SC: Mr Chairman, I won't
25	almost abrupt –	25	push it save only to say, which probably is the same as
	Page 16047		Page 16049
1	CHAIRPERSON: Perhaps let's do that. Can you then	1	what the Chair has indicated, namely that there may have
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	Page 16050		Page 16052
1	mobile telephone and speaks to somebody. And then Warrant	1	to be a more engaging attitude from you because it appears
2	Officer Masinya then makes the comment which is recorded.	2	you were understanding what they were putting to you?
3	The General then comes back having not replied to the	3	Would you agree with that?
4	passage from Lonmin worker number 1 which I read out and	4	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
5	instead having spoken from the telephone then comes back	5	with the following explanation. Firstly, before one takes
6	and says "I'm going to take those spears" and that then	6	a decision it should be based on the conduct and on the
7	causes the workers to say "not this one but a number," to	7	understanding of, between the two people. It's true that
8	say "we agree, we agree" and that would be the basis, I	8	by the time when I was communicating with them, that made
9	would think of the possible misunderstanding which the	9	the basis of me taking a decision of situational
10	witness very fairly conceded may have existed. I'm	10	appropriateness that will benefit on the either side.
11	reminded it's nearly noon and at noon we normally take a	11	Firstly, if they do agree to put the weapons down, I was
12	comfort break. Is it convenient at this stage and you can	12	still bound to escort them because of what they have
13	mull over what I've put to you and we can carry on -	13	already told me. I couldn't have known that they actually
14	MR NTSEBEZA SC: I had wanted to ask for	14	armed themselves because they were attacked, and I heard it
15	that comfort break earlier, Mr Chairman.	15	there. So obviously there was an obligation on my side as
16	CHAIRPERSON: Oh you did.	16	the government institution to protect them.
17	MR NTSEBEZA SC: I've been drinking a lot	17	Now if they did not, it was still the same in the
18	of water.	18	sense that even though they appear to be so innocent, I
19	CHAIRPERSON: I'm sorry I've caused you	19	didn't know that they killed people, but surely that
20	such discomfort, but we will take the adjournment now. Ten	20	movement we saw and there were people killed. So I would
21	minutes please and then we'll be back.	21	also still escort them. So on either side of the story I
22	[COMMISSION ADJOURNS COMMISSION RESUMES]	22	was still bound to escort them to protect those that might
23	[12:08] CHAIRPERSON: The Commission resumes.	23	be perceived for them not complying with what they want,
24	You're still under oath, Major-General.	24	and at the same time protecting them against what they are
25	WILLIAM MPEMBE: Correct, Chairperson.	25	telling me. So yes, I appeared on the video to have agreed
	Page 16051		Page 16053
1	Page 16051 CHAIRPERSON: You're more comfortable, Mr	1	Page 16053 with them – to have not agreed, to have listened to them
1	CHAIRPERSON: You're more comfortable, Mr	1	with them – to have not agreed, to have listened to them
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2	CHAIRPERSON: You're more comfortable, Mr Ntsebeza. Would you like to proceed with your cross- examination?	2	with them – to have not agreed, to have listened to them attentively, and that listening made me to take a decision of situational appropriateness, but not necessarily that I
2 3	CHAIRPERSON: You're more comfortable, Mr Ntsebeza. Would you like to proceed with your cross-	2 3	with them – to have not agreed, to have listened to them attentively, and that listening made me to take a decision
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	Page 16054		Page 16056
1	officers responsible for the case. Now when are you	1	elaborate that maybe Advocate might take note to this,
2	referring to? Are you asking whether then and there at the	2	that's what I testified. I even after that engaged the
3	railway line with his mobile phone he pursued the matter,	3	unions, engaged the mining management, because of the
4	or are you suggesting he was to have pursued it later?	4	information I got from the mineworkers.
5	MR NTSEBEZA SC: No, I'm sorry if I was	5	MR NTSEBEZA SC: Did you establish the
6	that dense, Mr Chairman. I'm simply asking as a matter of	6	true facts, and the true facts that in spite of their
7	course you have been told, you are in charge of an	7	belief that some, two of those people were shot dead, and
8	operation, which as you say has resulted in the death to	8	their belief was that they had been killed, that in fact
9	that point of people, and there was a belief that, you	9	they had not been killed? Did you do that? Did you go to
10	know, two of the mineworkers had been killed. Now	10	the union and say listen, Mathunjwa and all of you, you are
11	obviously as a top cop you, what I want to know is whether	11	wrong in thinking that those two miners were killed?
12	you pursued that information from that point going forward?	12	MAJOR-GENERAL MPEMBE: Correct,
13	Did you act on the information that the mineworkers were	13	Chairperson, but I didn't say you were wrong by saying that
14	telling you about, namely that somebody that been killed?	14	they were killed. Even Mr Mathunjwa was still his belief
15	MAJOR-GENERAL MPEMBE: Chairperson,	15	that there were people that were killed, but he was later
16	factually the docket was opened, it was investigated by,	16	informed correctly so, and he does also indicate in his
17	also by Brigadier Van Zyl, who was falling under me, and	17	statement that later on he also saw that they were not
18	that's why I understand that later on it was also	18	killed. But that came from the side of the police.
19	discovered that they actually didn't die but there was an	19	MR NTSEBEZA SC: Ja, General, I'm asking
20	attempted murder docket that was opened, and it's being	20	you. You're the witness in front of the Commission. Did
21	investigated, but I cannot be able to say at this stage	21	you cause the correct information to be disseminated to the
22	what is the status of the docket.	22	unions, like for instance on the 15th when you had this
23	MR NTSEBEZA SC: Before the 16th did you	23	briefing with Mathunjwa and Zokwana, did you tell them that
24	seek to find out about what had happened? In other words,	24	hey listen, by the way, you are mistaken to think that
25	did you show an interest in investigating this issue?	25	those two miners were shot and were killed, they actually
	5 1/055		D 4/057
1	Page 16055 There are people who you are being asked to come and	1	Page 16057 were not? Did you?
2	disarm, who are there saying no, but you can't do this	2	MAJOR-GENERAL MPEMBE: No, Chairperson,
3	because we are carrying these weapons because we are being	3	· · · · ·
4		3	because it was not asked. But it was disseminated as a
	attacked. Now, and they mention a time and a place and	4	because it was not asked. But it was disseminated as a general information for them to understand.
5	attacked. Now, and they mention a time and a place and people who they believe are responsible for the attack on		general information for them to understand.
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		I	
1	Page 16058	1	Page 16060
1	the SAPS that he was merely a civilian who was not	1	his belief, I mean, but Mr Ntsebeza, am I right? You want
2	involved. Are you aware of this?	2	to know the belief of this witness?
3	CHAIRPERSON: Is he the third deceased,	3	MR NTSEBEZA SC: Yes.
4	the one who had stab wounds –	4	CHAIRPERSON: I'm not quite sure where
5	MR NTSEBEZA SC: The third deceased, yes.	5	this point is getting us, but I don't want to stop you too
6	CHAIRPERSON: - who was found in front of	6	early because you may have a good point, but I'm not sure
7	one of the houses in the informal settlement? The answer	7	you do. But can I just endeavour again to cut a little bit
8	to that is yes, I take it?	8	of a path through the bush at this point? Are you able to
9	MR NTSEBEZA SC: Yes, yes, Mr Chairman,	9	help us at all in relation to information, apart from what
10	sorry.	10	I have repeated to you a few moments ago, about this third
11	MAJOR-GENERAL MPEMBE: Chairperson, with,	11	person who was found dead from stab wounds in front of one
12	maybe if I might wanted to know that, as a clarity, because	12	of the houses in the informal settlement? We've heard it's
13	there were other civilians on the scene. There was also	13	been put that he was one of the people at the railway line,
14	others somewhere –	14	but do you know anything more about him than that, from
15	CHAIRPERSON: My understanding is three	15	your own knowledge?
16	people from the other side, if one can call it that, were	16	MAJOR-GENERAL MPEMBE: No, Chairperson.
17	killed. One of them I think was killed on the field. One	17	It is, my explanation is as follows. When I spoke to the
18	was killed, and I think it seems to be common cause that he	18	people there, I couldn't pinpoint who is this one. It is
19	was a striking mineworker. Another one was killed on the	19	also before this Commission that immediately after scene,
20	other side of the river, and there's, I think there is or	20	after that scene on the 13th I was also taken to the JOC.
21	will be evidence that there was certain allegations from	21	So it might be that he was there, but I cannot say I saw
22	the police side that shots were being fired from his side	22	him there, and I cannot also agree that he was there. It
23	of the river and the police fired back and he was shot	23	is possible.
24	through the neck, I think, and then there's evidence that a	24	CHAIRPERSON: While we're on that, as I
25	third person died, also a civilian. He was found dead in	25	remember it from the inspection there was a railway line.
	Page 16059		Page 16061
1	front of – and there will, I believe, be evidence, there's	1	Then there was a field, and the actual engagement, if one
2	a statement that's been filed – in front of one of the	2	can call it that, the fighting and so on took place on the
3	houses in the informal settlement, and he was stabbed. He	3	field where the two policemen were killed, I think, and
4	wasn't shot by anybody, he was stabbed and so he died.	4	Baloyi was injured, and then is that where you were when
5	There's a photograph of him in one of the exhibits, and	5	you were taken away?
6	that's the person I think Mr Ntsebeza is asking you about.	6	MAJOR-GENERAL MPEMBE: I was in the
7	That's correct, Mr Ntsebeza?	7	field, not where the striker died.
8	MR NTSEBEZA SC: Yes, Mr Chairman.	8	CHAIRPERSON: So you didn't go to the
9	CHAIRPERSON: Now what do you want the	9	informal settlement?
10	witness to tell you about that person, if he knows anything	10	MAJOR-GENERAL MPEMBE: No, Chairperson.
11	about him part from what I've stated?	11	CHAIRPERSON: And you didn't go to the
12	MR NTSEBEZA SC: Yes, now just do you	12	area near the river?
13	also – I'm talking to you now about as a head of operations	13	MAJOR-GENERAL MPEMBE: No, Chairperson –
14	on the day, and General, I mean as a deputy commissioner of		CHAIRPERSON: You were taken away from
15	police in the province, do you hold the belief that he was	15	the field?
16	not part of those workers? Because if you don't then we	16	MAJOR-GENERAL MPEMBE: Correct,
17	will be saved the time of having to show by way of	17	Chairperson.
18	affidavit and some footages which we have prepared, that in	18	CHAIRPERSON: Where the two policemen
19	fact he was at that railway line on the day that you	19	sustained their injuries. Is that correct?
20	addressed the workers. That's the whole point of the	20	MAJOR-GENERAL MPEMBE: That's correct.
21	exercise, so –	21	CHAIRPERSON: Where one of the strikers,
22	MR NTSONKOTA: Sorry, Mr Chairman, before	22	I think [inaudible] –
23	the witness answers, I would like to know whether is it put	23	MAJOR-GENERAL MPEMBE: One of the
24	to the witness that is it his belief or SAPS's belief?	24	strikers, yes, correct, Chairperson.
25	CHAIRPERSON: No, clearly I think it's	25	CHAIRPERSON: Ja, and so does that mean
A	RCHIVE FOR JUSTICE		

1	Page 16062 that you can't help us in relation to the third civilian	1	Page 16064 CHAIRPERSON: All right and that'll be
2	who died there from stab wounds? You've got no knowledge	2	exhibit HHH53. The witness already has a copy, but we
3	of your own about that?	2	haven't so can you please make it available to us? If you
4	MAJOR-GENERAL MPEMBE: Correct,	4	haven't got them we'll just carry on because I don't to
5	Chairperson.	5	lose time.
6	MR NTSEBEZA SC: Mr Chairman, may I	6	MR NTSEBEZA SC: Now I believe as it says
7	request your permission to put up as an exhibit an	7	in that affidavit in paragraph 6, in fact from paragraph 1,
8	affidavit which has been circulated, from what I've been	, 8	paragraphs 5 and 6 the deponent makes the point that his
9	told, from one Lanford Gcopyelwa, who claims to be the	9	cousin can be seen seated with his face encircled and then
10	cousin of Mr Mati who was killed on 13th of August –	10	
11	CHAIRPERSON: Is it something that this	11	CHAIRPERSON: - so I take it we're being
12	witness can deal with, or do you just want to put it in as	12	referred back to the video we saw is it? The people
13	an exhibit that will help us moving forward?	13	sitting and standing, mostly sitting near the railway line
14	MR NTSEBEZA SC: Indeed, Mr Chairman, and	14	_
15	together with the annexures, because the annexures, if they	15	MR NTSEBEZA SC: It looks like still
16	are put up, might probably get the witness to have a	16	shots.
17	different view than the one he has expressed, because we	17	CHAIRPERSON: Oh still shots, still shots
18	locate in the annexures –	18	of the people at the railway line.
19	CHAIRPERSON: Okay, let's see the	19	MR NTSEBEZA SC: Yes.
20	exhibit. What's the next exhibit number?	20	CHAIRPERSON: The group of people who had
21	MS PILLAY: Chair, it will be HHH53.	21	come from Karee and you say – so he's visible on the
22	CHAIRPERSON: Have you seen this? Mr	22	photograph and his face is circled. Are we going to see
23	Ntsebeza says this affidavit has been circulated. Were you	23	the photograph, is the photograph one of the annexures that
24	given notice that it would be relied on during your cross-	24	the witness has seen, part of HHH53?
25	examination?	25	MR NTSEBEZA SC: Yes, Mr Chairman.
	Page 16063		Page 16065
1	MAJOR-GENERAL MPEMBE: Correct,	1	MAJOR-GENERAL MPEMBE: Correct,
2	MAJOR-GENERAL MPEMBE: Correct, Chairperson, it's also part of my –	2	MAJOR-GENERAL MPEMBE: Correct, Chairperson, there are photos here that are also being
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1	D		Dama 1/0/0
1	Page 16066 the scene if one can rely on the documents. Now that he's	1	Page 16068 right?
2	on the scene, dressed in a brown striped shirt with a blue	2	MR NTSEBEZA SC: Now you have seen those
3	jacket tied around his waist how's the witness going to	3	_
4	take us further in respect of him?	4	CHAIRPERSON: Sorry, is that right?
5	MR NTSEBEZA SC: No, Mr Chairman, that's	5	MR NTSEBEZA SC: Yes.
6	only because I wanted it on record the witness has said –	6	CHAIRPERSON: The Scorpion is a vehicle
7	CHAIRPERSON: You've got him record,	7	and mounted on the top of the vehicle, on the turret I
8	you've got him on the scene, the witness can take it no	8	think of the vehicle is a gun of some kind. Is that right?
9	further, you've made your point. Should we move onto the	9	And it's a Special Task Force Scorpion.
10	next one, if there is one?	10	MR NTSEBEZA SC: Yes.
11	MR NTSEBEZA SC: There is one.	11	CHAIRPERSON: And what's the date of the
12	CHAIRPERSON: You've gone through these	12	video, is it – or is that part of the information your
13	documents and you're satisfied, not that that binds us, but	13	attorney is going to give us on Monday?
14	you're satisfied that Mr Mati has been correctly placed on	14	MR NTSEBEZA SC: It was taken on the 14th
15	the scene –	15	of August. Now were you aware of that, of the presence of
16	MAJOR-GENERAL MPEMBE: Correct,	16	that Scorpion and –
17	Chairperson.	17	MAJOR-GENERAL MPEMBE: Chairperson, he's
18	CHAIRPERSON: As one of the group of	18	correct. I was aware of the vehicles of the STF, but the
19	striking mineworkers whom you addressed.	19	only thing that I was not aware of it was the machine gun
20	MAJOR-GENERAL MPEMBE: Correct,	20	mounted.
21	Chairperson, the only thing that I said is that at time I	21	MR NTSEBEZA SC: So you are not disputing
22	did not know that is his him.	22	that there was that machine gun mounted?
23	CHAIRPERSON: - and I think there about	23	MAJOR-GENERAL MPEMBE: Correct,
24	200 of them weren't there, so you didn't know all of them.	24	Chairperson, I'm not disputing it.
25	You only really dealt I take it with the people who spoke	25	MR NTSEBEZA SC: Who would have approved
	Page 16067		Page 16069
1	to you. Presumably with the leaders.	1	it, I mean you are the commander of operations. Something
2	MAJOR-GENERAL MPEMBE: Correct,	2	like that would have had to have your stamp of approval.
3	Chairperson.		
		3	Do you agree or am I wrong? Somebody else could have
4	MR NTSEBEZA SC: Now, you will have also	3 4	Do you agree or am I wrong? Somebody else could have brought it without you either consenting it to be brought
4 5	-		
	MR NTSEBEZA SC: Now, you will have also	4	brought it without you either consenting it to be brought
5	MR NTSEBEZA SC: Now, you will have also received clips that were precognising you about what is	4 5	brought it without you either consenting it to be brought along or your approving it.
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR NTSEBEZA SC: Now, you will have also received clips that were precognising you about what is going to be put to you today. And that is in relation to what we have come to know now as the STF Scorpion. Can we have the clips plate relevant to the STF Scorpion? CHAIRPERSON: This is an exhibit already is it? No? MR NTSEBEZA SC: No, it is not. CHAIRPERSON: I don't recognise it, but that doesn't prove anything. Is it an exhibit? If it isn't, let's make it one. MS PILLAY: Chair, it's not an existing exhibit. CHAIRPERSON: So what do we call it? MS PILLAY: HHH54. COMMISSIONER HEMRAJ: What is the origin of this exhibit, do we know where this emanates from? MR NTSEBEZA SC: I am instructed that we can give the information but apparently it's not ready now.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	brought it without you either consenting it to be brought along or your approving it. MAJOR-GENERAL MPEMBE: Chairperson, it's a testimony before the Commission that Major-General Annandale I did explain that he was the head of nationally specialised units and my testimony that I relied on him on the special equipments. My aware of the Scorpion as a vehicle and also other STF it was known to me according also to the plan as going to be used for the show of force. So machine gun was there, I could not know because it was not indicated as the show of force, but I did – I can admit that Major-General Annandale could have known about it. MR NTSEBEZA SC: It's not the sort of weapon you hide. CHAIRPERSON: If it's going to be part of a show of force you wouldn't hide it anyway would you, you would show it. MR NTSEBEZA SC: I'm just trying to get to understand how the witness, being in charge of the

	Page 16070		Page 16072
1	the 16th. Is there a clip of JJJ194.18? JJJ194.18. I want	1	in the circle on the windscreen, there is a machine gun or
2	JJJ194.18 which shows this Scorpion with this –	2	there is something protruding there which I'm told is a
3	CHAIRPERSON: Are we going to see this	3	machine gun.
4	clip? It looks as if the answer's no.	4	CHAIRPERSON: Did you see this vehicle,
5	MR NTSEBEZA SC: Anyway can we just show	5	are you able to confirm that what Counsel is putting is
6	that clip –	6	correct?
7	CHAIRPERSON: What we have on the screen	7	MAJOR-GENERAL MPEMBE: Chairperson, I
8	at the moment is there's a legend which says clip 3 showing	8	knew of the vehicles that they are there, but I did not see
9	one machine gun mounted on truck, so if that clip is, the	9	them. But I knew that Scorpion and also some of the
10	legend relating to that that's showing on the screen is it	10	vehicles like of the STF they were there for the purpose of
11	possible for us to see the actual clip itself? If it's	11	show of force.
12	going to take us any further.	12	CHAIRPERSON: But what Mr Ntsebeza is
13	MR NTSEBEZA SC: Can we show the	13	interested in he says that apart from the fact that on the
14	photographs please?	14	rear of this vehicle there's a machine gun, he says there's
15	CHAIRPERSON: Anyway are all these – I've	15	also a firearm of some sort protruding from the front
16	never seen them before, are these new exhibits?	16	windscreen. Can you see there's a second ring, red ring in
17	MR NTSEBEZA SC: It's a new exhibit, Mr	17	the photograph? Are you aware of that, can you help us on
18	Chairman.	18	that or is that something that we will possibly learn from
19	CHAIRPERSON: All right well Ms Pillay	19	someone else or we may even be given some submission by the
20	will help us to label it.	20	police to save time. Do you know about it?
21	CHAIRPERSON: No, don't go ahead, we've	21	MAJOR-GENERAL MPEMBE: No, Chairperson, I
22	got to label the exhibit first. We've got to try to keep	22	may not be in a position to help with any of those machine
23	some order here. Ms Pillay.	23	guns in the vehicle.
24	MS PILLAY: Chair, I'm sorry, JJJ – I	24	CHAIRPERSON: Are we going to see the
25	just need 30 seconds.	25	other selected shots now, Mr Ntsebeza?
	,	_	
	Page 16071		Page 16073
1	CHAIRPERSON: Are we not in the HHH	1	MR NTSEBEZA SC: Yes, Mr Chairman, if
2	series at the moment? We've not seen it before, unless	2	they can just be shown. There again the circles are
3	it's part of a series of things.	3	indicative, you can actually see what appears to be the
4	MS PILLAY: It will be HHH55.	4	barrel of a machine gun.
5	COMMISSIONER HEMRAJ: Ms Pillay, what is	5	CHAIRPERSON: All right. Well let's see
6	194.18, what is the description of that?	6	what the witness says about it. Do you agree with what Mr
7	MR NTSEBEZA SC: We will come to that	7	Ntsebeza said?
8	because this one, that 194.18 shows the Scorpion on the 16th	8	MAJOR-GENERAL MPEMBE: Chairperson, I can
9	of August.	9	see on the video all those protruding – what is it –
10	CHAIRPERSON: Now how do we describe this	10	equipment.
11	one HHH54, video clip of - well it says photographs.	11	CHAIRPERSON: He says they look like the
12	MR NTSEBEZA SC: These are selected	12	barrels of guns.
13	photographs -	13	GENERAL MPEMBE: It will be better when
14	CHAIRPERSON: Selected photographs –	14	the person can say it's the barrel of a gun because –
15	MR NTSEBEZA SC: - of the big gun mounted	15	CHAIRPERSON: You don't need this witness
16	on the Scorpion.	16	to prove that fact. It can be proved possibly even by way
	CHAIRPERSON: Machine gun on Scorpion.	17	of admission subsequently.
17			MR NTSEBEZA SC: Yes. Can we see more
	All right we've got that, are we going to be given a round	18	
18	All right we've got that, are we going to be given a round tour of these various photographs or is one enough?		
18 19	tour of these various photographs or is one enough?	19	photographs?
18 19 20	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph	19 20	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if
18 19 20 21	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph there is the mounted machine gun. Do you see that,	19 20 21	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if it can help my colleague, we are prepared to admit that
18 19 20 21 22	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph there is the mounted machine gun. Do you see that, General?	19 20 21 22	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if it can help my colleague, we are prepared to admit that this vehicle was there on the 14th and the 16th.
18 19 20 21 22 23	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph there is the mounted machine gun. Do you see that, General? MAJOR-GENERAL MPEMBE: I see it,	19 20 21 22 23	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if it can help my colleague, we are prepared to admit that this vehicle was there on the 14th and the 16th. MR NTSEBEZA SC: Thank you.
 18 19 20 21 22 23 24 	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph there is the mounted machine gun. Do you see that, General? MAJOR-GENERAL MPEMBE: I see it, Chairperson.	19 20 21 22 23 24	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if it can help my colleague, we are prepared to admit that this vehicle was there on the 14th and the 16th. MR NTSEBEZA SC: Thank you. CHAIRPERSON: And are you prepared to
 18 19 20 21 22 23 24 25 	tour of these various photographs or is one enough? MR NTSEBEZA SC: Now in that photograph there is the mounted machine gun. Do you see that, General? MAJOR-GENERAL MPEMBE: I see it,	19 20 21 22 23	photographs? MR MATHIBEDI SC: Sorry, Mr Chairman, if it can help my colleague, we are prepared to admit that this vehicle was there on the 14th and the 16th. MR NTSEBEZA SC: Thank you.

	Page 16074		Page 16076
1	the back but it had the barrel of some other firearm	1	STF brought machineguns with them, but he knew that General
2	protruding from the windscreen, or is that something you	2	Annandale had come and he'd brought presumably some
3	want to take instructions on?	3	equipment with him in order to do what had to be done. Is
4	MR MATHIBEDI SC: Mr Ntsebeza must take	4	that a fair summary?
5	instruction –	5	MAJOR-GENERAL MPEMBE: Correct,
6	CHAIRPERSON: Okay that we can be told	6	Chairperson.
7	later. Yes, Mr Ntsebeza what's the next point?	7	CHAIRPERSON: But you've seen machineguns
8	MR NTSEBEZA SC: Yes.	8	in your time?
9	CHAIRPERSON: We're worried about time,	9	MAJOR-GENERAL MPEMBE: As a police
10	Mr Ntsebeza –	10	officer I know machineguns.
11	MR NTSEBEZA SC: No, we're getting there.	11	MR NTSEBEZA SC: Yes, and assuming you
12	CHAIRPERSON: It sounds as if you've got	12	were aware – I'm simply saying would, just by looking at
		13	that one in the various photographs, this is the kind of
13	the police in a co-operative mood today, they agree with		
14	the all the facts that you want to put on record. I'm not	14	machinegun that uses various types of ammunition, including
15	suggesting they're not normally co-operative but –	15	solid rounds, explosive rounds, armour-piercing rounds,
16	MR NTSEBEZA SC: We'll be done. With	16	incendiary rounds? Looking at that, would that be the kind
17	that kind of concession from my friend, Advocate Mathibedi	17	of –
18	I think we are getting there. Now you know as head of	18	CHAIRPERSON: Are you able to help us on
19	operations in this I have to put it to you - firstly I'm	19	that?
20	told that what we have there is a 20 millimetre machine gun	20	MAJOR-GENERAL MPEMBE: Chairperson, I
21	and sometimes because of its fire power some people refer	21	only see the protruding, what is it? I don't see the whole
22	to it as a canon. Now, would you agree with that?	22	machinegun.
23	[12:47] MAJOR-GENERAL MPEMBE: Chairperson, I	23	CHAIRPERSON: Yes, but I take it that the
24	have already indicated that there is nothing that I will	24	SAPS in response to a query from Mr Ntsebeza's side will be
25	agree on machineguns because ${\rm I}$ was not aware of. The only	25	able to provide the necessary information.
		1	
	Page 16075		Page 16077
1	equipment of the STF that I was aware of, it was the	1	Page 16077 MAJOR-GENERAL MPEMBE: Correct,
1 2	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to	1 2	
	equipment of the STF that I was aware of, it was the		MAJOR-GENERAL MPEMBE: Correct,
2	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to	2	MAJOR-GENERAL MPEMBE: Correct, Chairperson.
2 3	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission	2 3	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm
2 3 4	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale	2 3 4	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I
2 3 4 5	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale was of an assistance to me because he's in charge of that	2 3 4 5	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I want to put it to you, which I do, that the kind of
2 3 4 5 6	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale was of an assistance to me because he's in charge of that specialised unit.	2 3 4 5 6	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I want to put it to you, which I do, that the kind of armoury, including this machinegun, that was brought to the
2 3 4 5 6 7	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale was of an assistance to me because he's in charge of that specialised unit. CHAIRPERSON: You can't tell us if it was	2 3 4 5 6 7	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I want to put it to you, which I do, that the kind of armoury, including this machinegun, that was brought to the various scenes at the koppie, etcetera, etcetera, are the
2 3 4 5 6 7 8	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale was of an assistance to me because he's in charge of that specialised unit. CHAIRPERSON: You can't tell us if it was a barrel, but it sounds from what we've heard as if the	2 3 4 5 6 7 8	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I want to put it to you, which I do, that the kind of armoury, including this machinegun, that was brought to the various scenes at the koppie, etcetera, etcetera, are the kind of armoury that would be used more in counter-
2 3 4 5 6 7 8 9	equipment of the STF that I was aware of, it was the Scorpion vehicle and the others, and when it comes to specialised units, it's my testimony before this Commission that it was one of the reasons why Major-General Annandale was of an assistance to me because he's in charge of that specialised unit. CHAIRPERSON: You can't tell us if it was a barrel, but it sounds from what we've heard as if the police will be able to take, counsel will be able to take	2 3 4 5 6 7 8 9	MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NTSEBEZA SC: Now you see, why I'm taking a little bit of time with you on this is because I want to put it to you, which I do, that the kind of armoury, including this machinegun, that was brought to the various scenes at the koppie, etcetera, etcetera, are the kind of armoury that would be used more in counter- terrorism engagements than for crowd management. Would you
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		1	
	Page 16078	1	Page 16080
1	CHAIRPERSON: So are you in effect saying	1	say what they will be saying, this machinegun, would you
2	that the plan did not envisage the use of machineguns in	2	agree it's not the kind of weapon you'd carry to, or to use
3	order to deal with the situation that you had encountered?	3	or for deployment in crowd control situations? In other
4	MAJOR-GENERAL MPEMBE: Correct,	4	words, you don't say when I'm going to control a crowd, let
5	Chairperson.	5	me bring the machinegun, 22, 20mm shotgun, machineguns.
6	MR NTSEBEZA SC: Let me put it –	6	Would you agree with that?
7	CHAIRPERSON: Your learned friend is	7	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
8	going to intervene.	8	In dispersing the crowd you cannot even use the 9mm because
9	MR NTSEBEZA SC: Oh, sorry.	9	there are equipments that are used in crowd management.
10	CHAIRPERSON: Maybe to assist you, or	10	MR NTSEBEZA SC: Yes, and I'm sure now
11	maybe not.	11	that you say it was the responsibility of your colleague
12	MR NGALWANA: Mr Chairman, in dealing	12	and whatever, you must be wondering – I'm talking about
13	with the concerns of my colleagues, one of the aspects that	13	you, in spite of what my learned friend has said – you must
14	we are going to deal with is we'll provide an affidavit	14	be wondering in your mind what was that thing doing there;
15	that these machineguns were not functionally on those days.	15	why was it brought in the first place on the 14th, let alone
16	CHAIRPERSON: So they were there more for	16	on the 16th.
17	show than anything else, show of force. Yes, but it sounds	17	CHAIRPERSON: Were you wondering? Are
18	as if the witness can't help us. When you've seen and got	18	you wondering? What's the answer to that?
19	the affidavit, you can look at it and if you don't agree	19	MAJOR-GENERAL MPEMBE: Chairperson, I
20	with it, you can make further investigations, but let's	20	don't know "wondering" of not knowing about a machinegun,
21	proceed for the moment. I don't think this witness can	21	but I did know about the Scorpion and the Casspirs, but I
22	help us very much on this issue. Am I right?	22	did not, it's true that I did not know about the
23	MAJOR-GENERAL MPEMBE: Correct,	23	machineguns on the Scorpions, but knowing very well that
24	Chairperson.	24	you don't use such weapons in crowd management, and also
25	MR NTSEBEZA SC: Mr Chairman, can I just	25	the other weapons which I've already mentioned, one would
	Page 16079		Page 16081
1	Page 16079 take instructions?	1	Page 16081 say that that's why I could not know that machineguns were
1 2	-	1 2	
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2 3	take instructions? CHAIRPERSON: Of course. MS PILLAY: Chair, while Mr Ntsebeza is	2 3	say that that's why I could not know that machineguns were there. MR NTSEBEZA SC: Mr Chairman, you'll be
2 3 4	take instructions? CHAIRPERSON: Of course. MS PILLAY: Chair, while Mr Ntsebeza is taking instructions, may 1 ask that HHH55 be marked as a	2 3 4	say that that's why I could not know that machineguns were there. MR NTSEBEZA SC: Mr Chairman, you'll be pleased to know that I kept my promise, so 1 minute, 2
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1	exhibit JJJ205 is the footage handed to the media at a	
2	conference held by the Marikana Support Committee. So Mr	
3	Chairman, I was instructed that exhibit JJJ205 should	
4	probably therefore, with your permission, be described as	
5	such.	
6	CHAIRPERSON: Thank you, we will change	
7	the - well, I suppose we'd better wait to hear what the	
8	police have to say about that. My notes, for what's it	
9	worth, that I made as to how that exhibit would be	
10	described reads, "JJJ205, annotated version of previously	
11	undisclosed video clip emanating from JJJ194." That's the	
12	way I described it, so, and perhaps Mr Budlender and his	
13	colleagues can sort the matter out at some stage over the	
14	adjournment. But thank you very much for that. We will	
15	now adjourn until 9 o'clock on Monday morning when the	
16	Major-General will be cross-examined, I think it's by Ms	
17	Barnes, is it?	
18	MR NTSEBEZA SC: Yes, Mr Chairman.	
19	CHAIRPERSON: Who appears on behalf of	
20	AMCU, and there will be further cross-examination	
21	thereafter, but we'll cross all those bridges when we get	
22	to them. We'll now adjourn until Monday morning, 9	
23	o'clock.	
24	MR NTSEBEZA SC: Thank you, Mr Chairman.	
25	[COMMISSION ADJOURNED]	
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Tel: 011 021 6457 Fax: 011 440 9119

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