

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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1 [PROCEEDINGS ON 8 NOVEMBER 2013]
 2 [09:15] CHAIRPERSON: Before I swear General
 3 Mpmembe in again, Adv Hemraj wishes to say something
 4 COMMISSIONER HEMRAJ: I just want to
 5 place something on record. The Chairman put certain of his
 6 prima facie views to the witness yesterday, which might be
 7 perceived as having a bearing on his credibility, and to
 8 clear any misperceptions I would like to place on record
 9 that these are not my views, nor have I come to any
 10 preliminary or prima facie views with regard to the
 11 evidence of this witness. Counsel for the police, I would
 12 be most obliged if you would convey that to the witness.
 13 This is also not the first time that the issue of
 14 preliminary or provisional views has been raised in the
 15 Commission and for my part I would like to place on record
 16 that each witness that testifies before this Commission is
 17 assured of the courtesy of having their evidence properly
 18 analysed only when all the evidence is before the
 19 Commission. Thank you, Mr Chairman.
 20 MS SELLO: Thank you, Commissioner, we'll
 21 convey that.
 22 CHAIRPERSON: Okay, do you want to say
 23 anything?
 24 COMMISSIONER TOKOTA: Also speaking for
 25 myself, I agree with Adv Hemraj, but I can also say that I

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1 did speak to the Chairman after the adjournment and he
 2 assured me that his views that are put to the witness is
 3 only meant to convey and give him an opportunity to deal
 4 with whatever prima facie view he has, so that the witness
 5 is not deprived of that opportunity, and I know that there
 6 are certain perceptions that may also be conveyed by
 7 whatever questions we put to the witnesses, but I also, I
 8 just want to align myself with Adv Hemraj that I also do
 9 not have any preliminary views on any evidence that has
 10 been given here until such time that the Commission shall
 11 have heard all the evidence placed before it.
 12 CHAIRPERSON: Thank you. Yes, I must add
 13 that I'm - as I thought I indicated to the witness -
 14 keeping an open mind; we'll make up our mind at the end. I
 15 had certain, which appeared to me to be prima facie
 16 difficulties and I in fact said to him that I thought it
 17 was my duty to put them to him so he could deal with them.
 18 I have always believed that it's the duty of a judicial
 19 officer and a person who's involved in a commission of this
 20 kind, if there are difficulties that he has, he should put
 21 it to the witness so that the witness has an opportunity to
 22 deal with them. The witness should not hear about them for
 23 the first time either during argument when it's too late
 24 for him to say anything, or even in the report or judgment
 25 when it's even further too late. But anyway, the position

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1 I think is now clear.
 2 Major-General, welcome back. We couldn't finish
 3 your evidence last time because certain people were, for
 4 reasons we don't have to go into, not before us, but
 5 they've now returned and it's only right that we should
 6 give them the opportunity to ask the questions that they
 7 would have asked if they hadn't absented themselves. Would
 8 you please stand? Would you swear that the further
 9 evidence you will give before this Commission will be the
 10 truth, the whole truth, and nothing but the truth? Please
 11 raise your right hand and say, "So help me God. I swear,
 12 so help me God."
 13 WILLIAM MPEMBE: I swear, so help me God.
 14 CHAIRPERSON: Thank you very much,
 15 General, you may be seated. Apparently, I'm told your
 16 microphone was off when you swore. It doesn't matter; it
 17 will be recorded as what I'm now saying that you were duly
 18 sworn. You can sit down, thank you. Mr Ntsebeza, are you
 19 going to be the first cross-examiner this morning?
 20 MR NTSEBEZA SC: Probably the only one,
 21 Mr Chairman, but -
 22 CHAIRPERSON: I understood you were going
 23 to only cross-examine for a short time and one of your
 24 colleagues was then going to take over, but you may have
 25 revised your plans on the matter.

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1 MR NTSEBEZA SC: That is my hope too, Mr
 2 Chairman. But we leave it on -
 3 CHAIRPERSON: Alright, anyway, let's not
 4 spend time on debating that. Let's get on with the cross-
 5 examination.
 6 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 7 Indeed. Thank you, Mr Chairman. Thank you, Commissioners.
 8 General, perhaps let me kick off by trying to understand to
 9 what extent you consider the oath you have just taken to be
 10 binding on your conscience? It is important, is it?
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 12 MR NTSEBEZA SC: When you say you have
 13 sworn to tell the truth, the whole truth, and nothing else
 14 but the truth, I understand that amongst other things you
 15 are meaning to be understood to say there is nothing that
 16 would stand in your way of speaking the truth. Is that a
 17 fair understanding of what you mean; nothing at all?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 MR NTSEBEZA SC: For instance, you
 21 wouldn't withhold anything if you knew that if you divulge
 22 it to this Commission and it is the truth, it might be
 23 negative either to the image of the SAPS or to what
 24 happened on the days in relation to which you are going to
 25 be testifying, 13th to the 16th?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I
 2 will ask the question to be repeated.
 3 MR NTSEBEZA SC: The question is –
 4 CHAIRPERSON: It might help, I wasn't
 5 following precisely myself, but if you can take it slowly
 6 and so that the witness and I can both understand it?
 7 MR NTSEBEZA SC: Yes. For instance let
 8 me just tell you where I'm coming from. I've looked at
 9 your career and I see that, and do you see this is GGG27.3,
 10 that you have been in the SAPS service for quite some time,
 11 from 1986 to date. Is that right?
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 13 MR NTSEBEZA SC: And in that period of
 14 time you have been promoted through the ranks to the rank
 15 which you now occupy. Is that right?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR NTSEBEZA SC: You are now – what
 18 position do you hold in the SAPS other than the title, the
 19 rank of Major-General? What position? Are you a deputy
 20 provincial commissioner?
 21 MAJOR-GENERAL MPEMBE: Deputy Provincial
 22 Commissioner, Operational Services.
 23 MR NTSEBEZA SC: Deputy Provincial
 24 Commissioner, and you'll correct me if I'm wrong, you are
 25 about 51 years of age?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR NTSEBEZA SC: When do police officers
 4 retire? Do they retire at 60 or 65?
 5 MAJOR-GENERAL MPEMBE: 65 – 60,
 6 Chairperson.
 7 MR NTSEBEZA SC: At 60. So you have got
 8 quite a long way to go, about nine years.
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR NTSEBEZA SC: And is it fair to say
 12 that you still have ambitions to go higher up in the ladder
 13 of, in your career? You have those ambitions. It's not
 14 illegitimate. Is that correct?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR NTSEBEZA SC: Now would it be fair to
 18 say – and you can deny it if it is not so – that the way
 19 you conduct yourself in this Commission may be a factor in
 20 determining whether you get promoted or not?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 MR NTSEBEZA SC: No? Your leader has –
 23 CHAIRPERSON: No, no, no, you can't say
 24 "your leader." I saw it was a spontaneous answer that he
 25 gave –

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1 MR NTSEBEZA SC: Yes, but –
 2 CHAIRPERSON: It wasn't appropriate for a
 3 member of the SAPS legal team to make an audible comment,
 4 and I trust that won't happen again, and I think the
 5 witness is giving his own spontaneous answer.
 6 MR NTSEBEZA SC: Ja. No, I'm just
 7 querying with you, General, because I want to be sure that
 8 under oath you have said the mere fact that you are
 9 ambitious and you are looking to be promoted will not cause
 10 you to say things that you know are untrue simply because
 11 you are looking to be promoted, and I understand that you
 12 said it will not.
 13 CHAIRPERSON: He's already given that
 14 answer. You don't have to repeat it. Well, he said it;
 15 you don't have to repeat it, so you can carry on to your
 16 next question.
 17 MR NTSEBEZA SC: Thank you, Mr Chairman.
 18 I want to be sure that that is what I understood because
 19 I'm going to make submissions at the end of this Commission
 20 and I don't want to make them on the basis that the witness
 21 had not, don't agree to –
 22 CHAIRPERSON: I take it your submissions
 23 will be based on the transcript, so you won't have a
 24 problem there.
 25 MR NTSEBEZA SC: Yes, it will be based on

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1 the transcript, but it will have also, Mr Chairman, with
 2 respect, eliminated all ambiguities. I simply want to make
 3 sure that we are clear. Now General, you are aware that I
 4 represent 33, or the families whose relatives got killed,
 5 particularly between the 13th and the 16th? You are aware
 6 of that?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MR NTSEBEZA SC: And you are aware that
 10 those families are here either by themselves or through
 11 their representatives, in order to establish what really
 12 happened there, and to the extent that you were involved in
 13 a commander position, they are keen to know what role you
 14 played in the events that took place between the 13th and
 15 the 16th.
 16 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 17 not clear about the question –
 18 CHAIRPERSON: I'm not sure of the
 19 question either. Perhaps it could be repeated with a
 20 question mark at the end?
 21 MR NTSEBEZA SC: Maybe let me put to you
 22 a statement. You wouldn't disagree if I put it to you that
 23 those whom I represent are keen to know what your role was
 24 in the events between the 13th and the 16th?
 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

<p style="text-align: right;">Page 15990</p> <p>1 that is my personal knowledge and only towards all the 2 actions that I have taken, I don't know them personally but 3 to my knowledge yes, I know that they are in the Commission 4 and they would like to know what was my role and my 5 contribution, and I was also in the command position. 6 MR NTSEBEZA SC: Yes, and I'll come to 7 this in more detail, but we have come to understand that 8 when you were put in command by Lieutenant-General Mbombo 9 of the operations, it was to be in command to execute a 10 plan that has now come to be known as the so-called Scott's 11 plan. Do you agree? 12 MAJOR-GENERAL MPEMBE: No, Chairperson, 13 with regard to Scott's plan. 14 MR NTSEBEZA SC: I don't want us to 15 examine this, re-examine this, but can I ask whether you 16 agree that part of the plan - and you were very central to 17 this - was that, stated in broad terms, the idea was to 18 encircle, disarm, and disperse the mineworkers at the 19 koppie. 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson, with specific references to the order. I 22 think it's only the order that is not correct, but I do 23 agree. 24 MR NTSEBEZA SC: What do you mean - 25 CHAIRPERSON: It's disperse, encircle,</p>	<p style="text-align: right;">Page 15992</p> <p>1 CHAIRPERSON: You see, the point is 2 apparently in mining vernacular a miner, the phrase "miner" 3 refers to a certified miner, and if you talk about 4 mineworkers I don't think there will be a misunderstanding. 5 MR NTSEBEZA SC: Yes. The plan, which is 6 usually called a tactical phase, as it was being unfolded 7 on the 16th, that was a plan with which you agreed? 8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson. 10 MR NTSEBEZA SC: And again I don't want 11 to be misunderstood; stated in its broadest terms, that 12 plan was to go to the koppie, encircle the miners, disarm 13 them - 14 CHAIRPERSON: No, no, that's not correct. 15 That was plan A. 16 MR NTSEBEZA SC: Yes. 17 CHAIRPERSON: The witness yesterday 18 explained to us that that wasn't possible because it was no 19 longer early morning and there were more than the small 20 number that that plan was designed to deal with. The plan 21 was to put a protective fence between the police neutral 22 area and the mineworkers who were on or in front of the 23 koppie, and thereafter to go through a gap into that area 24 and to take steps which would disperse them, encircle them, 25 and disarm them. That was the plan as the witness</p>
<p style="text-align: right;">Page 15991</p> <p>1 and disarm, not the other way around. That's the - 2 MR NTSEBEZA SC: Well, those three 3 elements were there. 4 CHAIRPERSON: That's the point he's 5 making. 6 MR NTSEBEZA SC: The idea was to make 7 sure that there were no mineworkers who are armed, that 8 there are no mineworkers who may be perceived to have 9 gathered at the koppie unlawfully, and to arrest those who 10 were reluctant or reticent and recalcitrant from either 11 being disarmed or from dispersing. Is that right? 12 CHAIRPERSON: What's the question? He 13 summarised in his own words his understanding of the plan. 14 Do you agree with his understanding and summary? 15 MAJOR-GENERAL MPEMBE: The only question 16 which I would like to ask, Chairperson, the clarity, is 17 miners around. I didn't understand miners around, because 18 he says "miners around," I didn't want to see minders 19 around. So I just wanted to understand that one. 20 CHAIRPERSON: I think he was referring to 21 the strikers who were on the koppie and in front of the 22 koppie, all of whom or a vast majority of whom were working 23 for Lonmin as mineworkers. Is that correct, Mr Ntsebeza? 24 That was the only point that you - 25 MR NTSEBEZA SC: Yes, Mr Chairman.</p>	<p style="text-align: right;">Page 15993</p> <p>1 explained it. 2 MR NTSEBEZA SC: So the plan was in the 3 way in which the Chairman has explained it - and I don't 4 want to disagree with the Chairman on that point - is that 5 you would disarm the miners at the mountain, amongst other 6 things? 7 MAJOR-GENERAL MPEMBE: Disarming was part 8 of the plan, but what was more important is the 9 chronological order in terms of which the plan could have 10 been implemented. 11 MR NTSEBEZA SC: Yes. 12 CHAIRPERSON: That's not an accurate 13 summary, because the witness said, as I recall, that the 14 idea was that the vast majority of the mineworkers who were 15 there would leave after a warning was given, and that the 16 idea was according to him that the militant group, or even 17 possibly only part of the militant group would remain 18 behind, and those are the ones who were going to be 19 dispersed and disarmed, and as I understood is evidence, 20 and General Annandale's evidence also, is any person at the 21 early stage left, not leaving his weapon behind but took 22 his weapon with him, he would be not prevented from doing 23 so. So the plan as you put it is oversimplified, but I 24 hope that my summary is more accurate and the witness has 25 heard it and we don't have to go over that ground again.</p>

<p style="text-align: right;">Page 15994</p> <p>1 MR NTSEBEZA SC: Now what the Chair has 2 indicated is of course from your colleague, Colonel Scott. 3 That was his evidence, I understand. Now I just want to 4 know your understanding, what was your understanding of 5 what the police would go and do at the mountain on the 16th? 6 [09:35] MAJOR-GENERAL MPEMBE: Chairperson, I did 7 testify on this and I stick to what I testified. It was to 8 say firstly we started with the phase of showing of force 9 and thereafter showing of force, then the operational 10 commander will warn the protesters. Showing of force it 11 was the placing of the barbed wire, the Nyalala and also the 12 placing of the POP members, the placing of POP members who 13 will be given the rubber bullet, will also be given the 14 stun grenades, will also be using the teargas. Then at 100 15 metres it will be the POP and the STF and the TRT who will, 16 in case when the members of POP were in danger, then they 17 will come to the fore. Then the dispersal will take place 18 whereby the commander will give the command to disperse, 19 show of force will again take place and we expected that to 20 the members. The strikers they will start to disperse when 21 all the actions were taking place and we'll also expect 22 that a certain group will remain, that will not disperse 23 all the strikers that were not there. And then during the 24 process of dispersing then the strikers will be – while 25 they were being persuaded, - pursued, not persuaded,</p>	<p style="text-align: right;">Page 15996</p> <p>1 MR NTSEBEZA SC: As it has happened 2 where? 3 MAJOR-GENERAL MPEMBE: I'm sorry, 4 Chairperson, I was still answering. 5 CHAIRPERSON: He's still busy with his 6 answer, when he's finished you can ask him the next 7 question. 8 MAJOR-GENERAL MPEMBE: And it is my 9 testimony before this Commission that now the strikers were 10 also armed and the police were also armed. Then it was my 11 testimony that we had mitigating plan or plan in terms of 12 how would mitigate that. And I even testified to this 13 Commission that it was my belief that it will be – there 14 was a risk of the plan which that risk was mitigated, not 15 what has happened on that day. 16 MR NTSEBEZA SC: In your view that plan 17 taking place at the mountain was it the best way you could 18 have achieved your objectives, namely; to make sure that in 19 the end the miners were disarmed, they have been dispersed 20 and the risk of fatalities has been minimised? Is that 21 your evidence? 22 MAJOR-GENERAL MPEMBE: Chairperson, it is 23 my testimony before this Commission as an overall commander 24 I tried many alternatives starting from the 13th of Monday. 25 MR NTSEBEZA SC: Starting from?</p>
<p style="text-align: right;">Page 15995</p> <p>1 pursued in the dispersal process they will be encircled, 2 disarmed and arrested. But those that will voluntarily put 3 their weapons nothing will take place in terms of being 4 arrested. 5 MR NTSEBEZA SC: So that was your 6 understanding of the plan that was what was going to 7 happen. 8 MAJOR-GENERAL MPEMBE: Yes, Chair. 9 MR NTSEBEZA SC: And I take it that you 10 believed in that plan which is why you endorsed it. As you 11 stated Scott may have given a different view of how the 12 plan was going to be executed but what you have told this 13 Commission now is something that you genuinely believed in. 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. 16 MR NTSEBEZA SC: And is it your evidence 17 that you believed that if that plan went accordingly, I 18 don't want to say according to plan, there would be no 19 fatalities or there would be minimal fatalities? What was 20 your view of the plan from that perspective? 21 MAJOR-GENERAL MPEMBE: Chairperson, my 22 view of the plan, as I said even before, during the 23 dispersal process, if the dispersal process took place in 24 the normal way, as it has happened, it would go in a normal 25 way.</p>	<p style="text-align: right;">Page 15997</p> <p>1 CHAIRPERSON: Starting from the 13th. 2 MR NTSEBEZA SC: Oh, thank you, thank 3 you, Mr Chairman. 4 MAJOR-GENERAL MPEMBE: Starting from the 5 13th of Monday I personally, as an overall commander, 6 changed caps and took an operational commander's position, 7 I personally persuaded, which of course I was not 8 successful, spoke to the protesters themselves. I also 9 escorted the protesters after I negotiated with them, 10 despite what happened on Monday we continued negotiating. 11 I personally, as an overall commander involved the unions, 12 involved the mine management and whereby I personally 13 pleaded with all the leaders to solve the problem. And in 14 short, Chairperson, in conclusion is that the plan of 15 dispersal according to my testimony was our last resort. 16 MR NTSEBEZA SC: Now, General, if you 17 believed that there was any alternative way of disarming 18 the miners other than doing so at the mountain would you 19 have opted for that? 20 MAJOR-GENERAL MPEMBE: Chairperson, I do 21 not understand the question. 22 MR NTSEBEZA SC: I'll repeat the 23 question. If you believed that there was an alternative 24 way of disarming the miners other than at the mountain 25 would you have gone for that plan?</p>

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1 MAJOR-GENERAL MPEMBE: Chairperson, my
 2 testimony is that all the alternatives according to me were
 3 exhausted.
 4 MR NTSEBEZA SC: I see, so it could only
 5 be done at the mountain according to you. Did you
 6 understand the question?
 7 MAJOR-GENERAL MPEMBE: No, Chairperson.
 8 MR NTSEBEZA SC: According to you all
 9 alternatives having been explored by you and those who are
 10 in the planning the only way in which the miners could be
 11 disarmed would be when it happened at the mountain, is that
 12 your evidence?
 13 MAJOR-GENERAL MPEMBE: Chairperson, the
 14 mountain was not chosen by the police, it's where the
 15 strikers were.
 16 MR NTSEBEZA SC: Did you understand the
 17 question?
 18 MAJOR-GENERAL MPEMBE: Chairperson, I
 19 asked that the question should be repeated.
 20 MR NTSEBEZA SC: I will repeat –
 21 CHAIRPERSON: If you say to the witness
 22 do you understand the question it doesn't always elicit a
 23 satisfactory answer because the witness may think he
 24 understands the question whereas in fact he doesn't. I can
 25 understand the witness who genuinely doesn't understand

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1 then say I'm sorry I don't understand please repeat. But
 2 sometimes the witness thinks he understands and doesn't.
 3 I'm not sure what the position is here, but try to avoid
 4 that problem in future. Repeat the question clearly for
 5 him so he can understand it. If he doesn't understand it
 6 I'm sure he will say so and then we can move on.
 7 MR NTSEBEZA SC: Thank you, Mr Chairman.
 8 General, let's make this easy. I understand you to be
 9 saying all other alternatives of disarming the mineworkers
 10 had been exhausted. Was that your evidence?
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 12 MR NTSEBEZA SC: And the only way in
 13 which they could be disarmed was in pursuance of your plan
 14 by disarming them at the mountain, is that right?
 15 MAJOR-GENERAL MPEMBE: It was to disperse
 16 them. Correct, Chairperson.
 17 MR NTSEBEZA SC: The only way to disarm
 18 the miners, having explored all the alternatives according
 19 to your evidence was for you in terms of the plan that was
 20 executed to do it at the mountain. Do you disagree with
 21 that?
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 23 It is to say disperse at the mountain.
 24 MR NTSEBEZA SC: General Mpeembe, I don't
 25 want to be unfair to you. I've specifically been asking

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1 you, step by step, about your plan to disarm the miners.
 2 Did you understand that to be my trend? I'm talking about
 3 disarming, just disabuse your mind about encircle and
 4 dispersing, I'm talking about disarming the mineworkers.
 5 Now that you understand that that is my emphasis let me put
 6 the question to you. Is it your evidence that your plan,
 7 all other alternatives having been exhausted, to disarm the
 8 mineworkers was to do it at the mountain?
 9 MAJOR-GENERAL MPEMBE: Chairperson, the
 10 plan was to disperse, encircle disarm and arrest.
 11 Disarming is part of the plan, not only the only objective,
 12 there were so many objectives and many activities could
 13 have happened during those processes.
 14 MR NTSEBEZA SC: General, in the interest
 15 of time I will make the submission that you are
 16 deliberately evading the question. The question is very
 17 clear, it's specific to one aspect of the operation, that
 18 is to disarm the miners and you understand the question but
 19 you are deliberately evading it. Do you want to make any
 20 comment before I move on?
 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 22 I am not avoiding the question, but it is my testimony that
 23 the plan that I approved it has many actions inside, not
 24 only of disarming.
 25 MR NTSEBEZA SC: I understood that

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1 perfectly, but let me go and I'll make the submission.
 2 COMMISSIONER HEMRAJ: General, did you
 3 consider at any stage whether there might be any plan or
 4 any method by which only a disarming could take place as
 5 opposed to going through this whole process of dispersing,
 6 encircling and disarming? Did you ever apply your mind as
 7 Mr Ntsebeza suggested to just disarming the persons of the
 8 weapons?
 9 MAJOR-GENERAL MPEMBE: Disarming that we
 10 expected before the dispersal, it was basically when the
 11 strikers themselves volunteered. But the disarming by the
 12 police the process has to follow through dispersal process
 13 because you cannot go to the disarming before dispersal,
 14 before pursuing, dividing them in smaller groups and
 15 thereafter encircling them. And then the disarming could
 16 take place, so that's why I'm persistently stating that the
 17 process of getting to disarm it has many actions there in
 18 the process, but not directly going to disarming.
 19 MR NTSEBEZA SC: Now, General, I will put
 20 it to you and I won't move higher than that. That you are
 21 evading giving a direct answer on the disarming of
 22 mineworkers because you know that it was not the best way
 23 to deal with the mineworkers. There were other
 24 alternatives which you deliberately didn't want to put in
 25 doing that.

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1 CHAIRPERSON: The suggestion is rather
 2 vague, if there are other alternatives as you're suggesting
 3 perhaps you should put them to him –
 4 MR NTSEBEZA SC: Thank you, Chairman.
 5 CHAIRPERSON: I know what the objection
 6 is going to be.
 7 MR NTSEBEZA SC: Well let me withdraw the
 8 question, I suppose I can put it some other way. Was it
 9 your, now when I say your I'm asking about you, the overall
 10 commander and you as part of the leadership of the SAPS on
 11 that day, was it your considered view that if you dispersed
 12 the miners at the mountain there was a good likelihood that
 13 there would be no fatalities or there would be minimal
 14 fatalities?
 15 MAJOR-GENERAL MPEMBE: Chairperson, I
 16 already answered it, that there were risks involved and
 17 there would have been minimal, not fatalities but also
 18 injuries. Now that the strikers were also armed and the
 19 police were armed but that there were mitigating factors
 20 that we did put in place.
 21 MR NTSEBEZA SC: Now be patient with me,
 22 General, sometimes you know, I forget. So do you say you
 23 anticipated that there might be fatalities?
 24 CHAIRPERSON: I think it's clear from the
 25 answer, yes he says, but there were mitigating factors if I

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1 can use his expression, things that they had done and were
 2 doing in the hope of reducing that risk as much as
 3 possible. I think that's his evidence. Am I understanding
 4 your evidence correctly?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NTSEBEZA: Thank you. Now I'd like us
 8 to go to exhibit GGG4. If it could be put up, Mr Chairman.
 9 CHAIRPERSON: I think you will remember
 10 this document. You were asked about it previously when you
 11 were here. I'm not sure whether Mr Ntsebeza was here at
 12 the time, but you and I were and you were asked about it at
 13 some length. Do you remember the document?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MR NTSEBEZA SC: This is where you are in
 17 conversation with Mr Kwadi of Lonmin and Mr Zokwana and for
 18 the record Mr Zokwana is the President of the NUM. Do you
 19 agree?
 20 [09:55] MAJOR-GENERAL MPEMBE: I agree, only to
 21 add is that there were also General Annandale, General
 22 Naidoo –
 23 MR NTSEBEZA SC: Yes.
 24 MAJOR-GENERAL MPEMBE: And also the
 25 delegation of Mr Zokwana.

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1 MR NTSEBEZA SC: Yes. Now what time of
 2 the day was this when you had this meeting here on the 15th?
 3 MAJOR-GENERAL MPEMBE: It was in the
 4 evening.
 5 MR NTSEBEZA SC: Yes, and by that time a
 6 decision had been taken to go into tactical phase, is it?
 7 CHAIRPERSON: Had the decision been taken
 8 at that stage to your knowledge to go into the tactical
 9 phase the next day, when you had this conversation firstly
 10 with Mr Zokwana and secondly with Mr Mathunjwa? What time
 11 was this discussion?
 12 MAJOR-GENERAL MPEMBE: It was during the
 13 evening.
 14 CHAIRPERSON: Yes, but what time? You
 15 know, was it 8 o'clock, 9 o'clock, 10 o'clock, 11 o'clock?
 16 MAJOR-GENERAL MPEMBE: It was from 6
 17 o'clock, it ended after –
 18 CHAIRPERSON: So early evening really.
 19 MAJOR-GENERAL MPEMBE: Ja, early evening,
 20 yes.
 21 CHAIRPERSON: And at that stage to your
 22 knowledge had any decision been taken by anyone at any
 23 level to go into the tactical phase, as it's being called,
 24 the next day? I say to your knowledge; in other words,
 25 something may have happened elsewhere, but, or may not have

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1 happened elsewhere, but I'm interested in what – I think
 2 what's relevant is what you were aware of at that time,
 3 what had been communicated to you. So early evening,
 4 Wednesday evening, when you had these discussions with Mr
 5 Zokwana and Mr Mathunjwa, did you know of any decision at
 6 that stage already to embark upon the tactical phase the
 7 next day? I think that's the question. Mr Ntsebeza, is
 8 that right?
 9 MR NTSEBEZA SC: Yes, Mr Chairman.
 10 MAJOR-GENERAL MPEMBE: No, Chairperson.
 11 MR NTSEBEZA SC: But as I understand the
 12 conversation, amongst other things you were seeking the
 13 assistance of the president of the NUM in identifying the
 14 residences of those people whose homes could be visited.
 15 We turn to page 674, it's page, typed page 5, paginated
 16 674, line 26. Do you see that? Where you say, "Thanks,
 17 President. Lastly then it will be a process, this is a
 18 process and I need to communicate. You say to us the
 19 members they are – now I need to do my job and you all also
 20 call me to remove firearms. I cannot go there and disarm
 21 people. It would be bloodshed. So then I need, and go in
 22 a specific house, disarm them. That is the only way,"
 23 that's on page 675. Do you see that?
 24 MAJOR-GENERAL MPEMBE: I see it,
 25 Chairperson.

<p style="text-align: right;">Page 16006</p> <p>1 MR NTSEBEZA SC: And then of course you 2 go on, you know, and you say, "I cannot just wake up and 3 say I go to that house. I'm not going to tell you what 4 should I do, but you have your members there inside. You 5 have the members who are, and I wonder that facilitation 6 should take place. I'm here, I need to be told. I need to 7 go to the house because that is the only way. Beating this 8 elephant bit by bit" - I supposed "eating it" - "because me 9 going there to the mountain disarming people, it is going 10 to be bloodshed." You see that? 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 12 MR NTSEBEZA SC: "That one I can assure 13 you." You see that? "Those blankets here they have, and 14 those things, I saw being cut by police officers in front 15 of me. They did that. So now that is what I'm saying the 16 leadership are calling upon. You have to give me to say 17 which houses, which people, and I need statements, I need 18 evidence that I should now start doing my work. With the 19 increase of 12 000, I cannot go there. My job is to get 20 those people disarmed. 24 hours I'm here; I need to get 21 that information, so as the union you need to work around 22 the clock with that." Then you say line 21, 22, "If you 23 were there, President, you could count how many people? 24 Between 3 to 4 000? So if you charge those people with the 25 number of police you have with what they have cut the</p>	<p style="text-align: right;">Page 16008</p> <p>1 as the 15th in the evening you knew that to go ahead with 2 the plan of disarming the miners at the mountain was going 3 to lead to bloodshed, not so? I see you are thinking. 4 MAJOR-GENERAL MPEMBE: Chairperson, I did 5 explain the bloodshed that I was referring to in the sense 6 that what has happened since Saturday until that time, and 7 also what could happen in future, and I even said that I 8 did not talk of a bloodshed of what actually happened on 9 the 16th. 10 MR NTSEBEZA SC: I don't understand your 11 answer, but the text says what it says, and the text says 12 you want whom you call "Comrade President," Mr Zokwana, at 13 some stage, you want him to assist you with information 14 where does who stay so that you can go and disarm them 15 there, and that is the only way, you say that more than 16 once. Is that right? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson, as I have indicated earlier on is to say those 19 were the alternatives that I have already referred to. 20 MR NTSEBEZA SC: Now in this conversation 21 you say more than that. You say, "Disarm them where they 22 live. It is the only way. The other way is going to lead 23 to bloodshed." Is that right? 24 MAJOR-GENERAL MPEMBE: Chairperson, I 25 said I wanted an information by that time to go and get the</p>
<p style="text-align: right;">Page 16007</p> <p>1 people, they are also psyched up. Definitely anyone would 2 come up with whatever thing, they will have to act and we 3 are also not prepared to use less bullets, and I know that 4 you do not want us to shoot, shoot. Here it is that the 5 police are shooting, killing people, and we do not want to 6 go that route, but at the same time we are also not 7 prepared that our members should die, but they have a duty 8 to disarm." That was you, General, was it not? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 MR NTSEBEZA SC: Now I want to be able to 12 argue that not only was it foreseeable that people would be 13 killed if you sought to disarm them at the mountain, but 14 you had also a view as to how it had to be done; a surprise 15 raid at where they stay, and disarming them there. Is that 16 a fair assessment of this evidence? Let's take it step by 17 step. You say in your own words to go and try and disarm 3 18 to 4 000 people at them mountain, there would be a 19 bloodbath. There would be bloodshed. 20 CHAIRPERSON: You said a bloodbath, he 21 said bloodshed. 22 MR NTSEBEZA SC: Yes. 23 CHAIRPERSON: There's a difference 24 between the two, I think. 25 MR NTSEBEZA SC: I concede. So as early</p>	<p style="text-align: right;">Page 16009</p> <p>1 people. That was the alternative that I was referring to. 2 MR NTSEBEZA SC: We need to – 3 CHAIRPERSON: Did Mr Zokwana, he promised 4 you that he would try to get the information, the passage 5 that comes later on that hasn't been read yet, so he 6 insisted that the people who gave you the information, 7 their identity should not be revealed, and I understand it 8 you were happy with that. Did he, Mr Zokwana's people come 9 back to you with this information? 10 MAJOR-GENERAL MPEMBE: No, Chairperson. 11 CHAIRPERSON: Of course they didn't have 12 very much time to get it, did they, because you said this 13 the Wednesday evening, right? That's correct, isn't it? 14 It was Wednesday evening, and by the time the decision was 15 taken to proceed to the tactical phase there hadn't been 16 very much time for them to come back to you with the 17 information you've asked for. That's correct, isn't it? 18 MAJOR-GENERAL MPEMBE: It is correct, 19 Chairperson, by, if to explain by that time when I spoke 20 with Mr Zokwana and with, I spoke with them earlier on. 21 CHAIRPERSON: Yes, yes, we know – 22 MAJOR-GENERAL MPEMBE: In the morning – 23 CHAIRPERSON: So this is the early 24 evening of the Wednesday. 25 MAJOR-GENERAL MPEMBE: Yes, and where Mr</p>

<p style="text-align: right;">Page 16010</p> <p>1 Zokwana, where I indicated to them that there were members 2 of NUM, so at that time I did expect that he could be 3 saying to me, because there are members of, the shop 4 steward there, because he also complained during the day 5 that his members were taken there against their will. So I 6 believe that he could have given me the information at that 7 time, so that during the night of the process I could raid 8 and also arrest those that are perpetrators. 9 CHAIRPERSON: Yes, for the raid that 10 you're talking about, didn't you really need a cordon and 11 search authorisation under section 13(7) of the Police 12 Services Act, which you in fact applied for the following 13 day? Isn't that right? According to the evidence there 14 was an application, a document was drawn up on the 15 Wednesday, but I don't think it was carried through, but on 16 the Thursday morning Captain Moolman came through early in 17 the morning, according to evidence and her statement we 18 got, and she prepared documentation for an application to 19 the Provincial Commissioner, I think she said at your 20 request, for authorisation under section 13(7) of the act, 21 which would then empower the police to in a demarcated area 22 go in, form a cordon around it, go in, search, and seize 23 weapons. That's correct, isn't it? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>	<p style="text-align: right;">Page 16012</p> <p>1 said that that was the last resort, to disperse was the 2 last resort to me, and I said the alternatives were 3 exhausted. 4 MR NTSEBEZA SC: General, I don't want to 5 be unfair to you. The words say what they say. "Only" 6 means "only." Any dictionary in the world will tell you 7 "only" means "only," without exception. Your expression in 8 the presence of Major-General Annandale and everybody was 9 that the only way to disarm these mineworkers is not to go 10 to the mountain and confront them, that will lead to 11 bloodshed. Is that not a correct summation of your 12 evidence, I mean of what you were saying to them there on 13 that day? I see you don't answer. Now the Chairman 14 suggests to you – he's not suggesting, he's simply saying 15 it would appear that there was no time within which you 16 could have got the information. Now as overall operational 17 commander, of course you could have – 18 CHAIRPERSON: He's the overall commander. 19 The operational commander was Brigadier Calitz. Don't 20 telescope the two into one. That happened on the 13th, but 21 it wasn't happening on the 16th. 22 MR NTSEBEZA SC: Thank you, Mr Chairman. 23 Now you could have persuaded your colleagues to adjourn the 24 implementation of the plan to disarm the people at the 25 mountain, in favour of what you now call "the only way."</p>
<p style="text-align: right;">Page 16011</p> <p>1 CHAIRPERSON: And of course there wasn't 2 an opportunity to do that, I take it because of the 3 decision that was taken to proceed with the tactical phase 4 if they didn't voluntarily hand over their weapons on the 5 morning of, the Thursday morning. That's also right, 6 isn't? 7 MAJOR-GENERAL MPEMBE: I did also say, 8 Chairperson, that the cordon and search, it was in case we 9 had the information that we – 10 CHAIRPERSON: Yes, yes, yes, no I 11 understand, but you applied for it and you got the 12 authorisation, but obviously you couldn't, firstly it was 13 from a certain time later on the Thursday for 36 hours, but 14 you firstly needed the information and Zokwana's people 15 hadn't come back with the information. That's correct, 16 isn't it? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 MR NTSEBEZA SC: Thank you, Mr Chairman. 20 I would want to believe that you sincerely thought that 21 this was the only way, and it's even more so now that you 22 agree with the Chairman that actually an application had 23 been made to do the raid. You really believed that that 24 was the only way? 25 MAJOR-GENERAL MPEMBE: Chairperson, I</p>	<p style="text-align: right;">Page 16013</p> <p>1 You could have done that. 2 MAJOR-GENERAL MPEMBE: Chairperson, my 3 statement, my supplementary statement sums up the reason of 4 going to tactical, and after I have done many other issues, 5 and I even said today to the Commission, going tactical was 6 the last resort. 7 [10:14] CHAIRPERSON: Yes, no, we heard you say 8 that. Mr Ntsebeza, you will remember that Mr Madlanga did 9 question the witness very fully on this exhibit GGG4, so 10 obviously I understand you've got to put a few facts in, as 11 it were, to make your point, but please be as brief as you 12 can because don't plough too much over land that's already 13 been ploughed because you'll just waste time. 14 MR NTSEBEZA SC: No, I'm in full 15 agreement with you, Mr Chairman. In fact, I was going to 16 move on, save only to say, General, we will argue that you 17 knew even as late as the 15th in the evening, 15th of 18 August, that the only way to disarm the mineworkers was to 19 go to where they stay, but you decided not to do that. 20 Comment? 21 MAJOR-GENERAL MPEMBE: No, Chairperson. 22 MR NTSEBEZA SC: We will argue – 23 CHAIRPERSON: I think you've made the 24 point, Mr Ntsebeza, unless there's some new aspects you 25 want to put. The material that you want for the purpose of</p>

<p style="text-align: right;">Page 16014</p> <p>1 your argument is on record; you've given the witness an 2 opportunity to answer. His answer, if it's satisfactory is 3 satisfactory; if it isn't, it isn't, but that's a matter 4 we'll only know at the end of the matter. 5 MR NTSEBEZA SC: Thank you, Mr Chairman. 6 Now I just want to go on to another subject, and that is 7 your experience in POP operations. Now did you say you 8 have extensive experience in crowd management 9 interventions? 10 MAJOR-GENERAL MPEMBE: Chairperson, my 11 experience is based on the training I said is in 1986, and 12 the operational experience of 13 years being in charge of 13 Operational Services, and also attended, which I've 14 mentioned several operations which I led as an overall 15 commander and which were successful. 16 MR NTSEBEZA SC: Yes, in your statement, 17 exhibit HHH3, page 4, paragraph 6, you say, "I have 18 extensive experience in crowd management interventions," 19 and then you go on to say you shall refer some during your 20 evidence by way of example. So what I wanted to explore 21 with you is what you claim to be your extensive experience 22 in management, in crowd management interventions. Do you 23 confirm that? 24 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 25 extensive in this regard means experience.</p>	<p style="text-align: right;">Page 16016</p> <p>1 understand about that. He participated, and he says with 2 success, in crowd management situations. That's also 3 clear, isn't it? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson, being the overall commander. 6 CHAIRPERSON: And on the 13th you actually 7 demonstrated - things may have gone wrong through no fault 8 of yours - but you demonstrated on the 13th that you have a 9 shrewd knowledge of the application of the doctrine of 10 appropriateness. 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 MR NTSEBEZA SC: Now the Chairman 14 mentions the 13th. Is it your evidence, if I understand you 15 well, that other than having been operational commander of 16 a crowd management operation on the 13th, you are claiming 17 there were other situations where you were operational 18 commander with success? 19 CHAIRPERSON: Yes, you said that, either 20 operational commander or overall commander, but you 21 referred to a number of situations in the past, crowd 22 management situations which you handled successfully. 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 CHAIRPERSON: I think what Mr Ntsebeza</p>
<p style="text-align: right;">Page 16015</p> <p>1 MR NTSEBEZA SC: Well, you put it as 2 extensive experience. I don't know why you want to – 3 MAJOR-GENERAL MPEMBE: Chairperson, in my 4 statement I also said I'll refer to that extensive in terms 5 of the number of crowd management that I successfully 6 handled. 7 MR NTSEBEZA SC: Correct me if I'm wrong, 8 but you seem to have referred in terms of practical 9 experience in these crowd management interventions to the 10 standoff in Ventersdorp in 2010 between the ANC Youth 11 League on the one hand and members of Mr Eugene 12 Terre'blanche's, I would assume AWB party. You remember 13 you testifying about that? 14 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 15 MR NTSEBEZA SC: Now have you ever been a 16 member of a POP unit post 1994? 17 MAJOR-GENERAL MPEMBE: No, Chairperson, 18 but I have been in charge of POP and I was personally 19 taking part in those interventions. 20 MR NTSEBEZA SC: I don't understand your 21 answer, General. 22 CHAIRPERSON: The answer is pretty clear; 23 he hasn't been a member of a POP group, but he's been in 24 charge of operations in which POP members were involved. I 25 think that's all he said. I don't know what's difficult to</p>	<p style="text-align: right;">Page 16017</p> <p>1 wants to know is in respect of those situations, were you 2 the operational commander or the overall commander or at 3 what level were you functioning in those situations? 4 MAJOR-GENERAL MPEMBE: Chairperson, the 5 ones, the sample that I have taken, and it might include 6 even some more on that, that's where I interchange my 7 position from an overall commander going down as an 8 operational commander. 9 MR NTSEBEZA SC: How many times, other 10 than the operation on the 13th, have you been involved in 11 crowd management? Do you know? 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 13 MR NTSEBEZA SC: How many times? 14 MAJOR-GENERAL MPEMBE: Chairperson, I did 15 give an example. It might be many, but – 16 CHAIRPERSON: He doesn't want an example; 17 he just wants a number. He says, he wants to know, I take 18 it he's not going to insist on arithmetical accuracy 19 necessarily, but he wants to know whether it was three, or 20 six, or nine, or 12, or more than that. That's, he wants 21 to know in what ballpark the number is of the number of 22 crowd management situations that you've successfully dealt 23 with. 24 MAJOR-GENERAL MPEMBE: Chairperson, not 25 being accurate in numerical orders, but it can be more than</p>

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1 five. I might also state that during the employee strikes
 2 in Mafikeng, I did indicate that, the one of Ventersdorp, I
 3 spoke about Skierlik one, I also spoke about many others
 4 that took place in Mafikeng during public protests.
 5 MR NTSEBEZA SC: So are those the
 6 operations that amount to five? Skierlik, Ventersdorp,
 7 Mafikeng, and –
 8 CHAIRPERSON: He said several in
 9 Mafikeng, and he said about five. He didn't claim, or as
 10 he put it, numerical accuracy.
 11 MR NTSEBEZA SC: Mr Chairman, I'm not –
 12 CHAIRPERSON: And I don't think you
 13 wanted that, anyway.
 14 MR NTSEBEZA SC: No, no, I just wanted to
 15 get a sense because as a person who – now were there
 16 instances in the five-odd operations which you have
 17 referred to where the crowd was armed?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson, but not as armed as in Marikana.
 20 MR NTSEBEZA SC: So would it be fair to
 21 say that you have a fairly good understanding of the laws
 22 and the Standing Orders and the policies in the SAPS that
 23 govern crowd management interventions?
 24 MAJOR-GENERAL MPEMBE: Not only
 25 understanding, but application.

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1 MR NTSEBEZA SC: Indeed. Now I just put
 2 a couple of questions to you which I put to your colleague,
 3 Brigadier Mkhwanazi. Just for your comment, and – if
 4 you'll bear with me, Mr Chairman. I need to find the
 5 place. Mr Chairman, I'll come back to that. I seem to
 6 have lost the –
 7 CHAIRPERSON: Mr Ntsebeza, I was
 8 proposing to take the tea adjournment at about half past
 9 10, but if you would prefer me to take it now so that you
 10 can collect your notes and so forth on your next point,
 11 I'll be happy to do it now. But I'm in your hands. Tell
 12 me when it will be convenient for you.
 13 MR NTSEBEZA SC: Three minutes either way
 14 will not harm us, Mr Chairman, if we could take it now.
 15 CHAIRPERSON: Very well, we'll take the
 16 tea adjournment now.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [10:58] CHAIRPERSON: I hope to set an example to
 19 everybody by turning my hone off so that we don't have
 20 disturbances. General, you're still under oath.
 21 MAJOR-GENERAL MPEMBE: Yes.
 22 CHAIRPERSON: Mr Ntsebeza?
 23 MAJOR-GENERAL MPEMBE: s.u.o.
 24 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 25 Thank you, Mr Chairman, Commissioners. Mr Chairman, I want

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1 to take the General very quickly to the engagement with the
 2 strikers at the railway line on the 13th and may I crave
 3 your indulgence to play just probably four minutes and then
 4 another four minutes of that video?
 5 CHAIRPERSON: It's a clip we've seen already so
 6 you will identify it by giving me exhibit number and
 7 indicating at from what section we're going to see.
 8 MR NTSEBEZA SC: Yes, yes, Mr Chairman.
 9 I believe, I'm told it's at 1 –
 10 CHAIRPERSON: [Microphone off, inaudible] give you
 11 an adjournment to get your papers in order.
 12 MR NTSEBEZA SC: Exhibit QQ2. Now to put
 13 that straight, Mr Chairman, I believe that Z1 is the video
 14 clip and exhibits QQ2 are the transcripts thereto.
 15 [VIDEO SHOWN]
 16 MR NTSEBEZA SC: General, we'll stop
 17 there for the moment. Now just as a precursor to the
 18 questions I'm going to suggest to you, I will make the
 19 submission that these mineworkers at that railway line, and
 20 you can get this from this clip, treated you with utmost
 21 respect. You may not have been agreeing to some of the
 22 things that they were suggesting at that time and I'll come
 23 to that, but would it be fair to say, treated in the way
 24 that they are speaking, raising their voices but they were
 25 treating you with utmost respect, [African language] Tata,

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1 begging you father, et cetera, et cetera. Would you agree
 2 with that proposition?
 3 MAJOR-GENERAL MPEMBE: I agree.
 4 MR NTSEBEZA SC: In fact you say in your
 5 supplementary statement exhibit HHH, triple H3 –
 6 CHAIRPERSON: Paragraph?
 7 MR NTSEBEZA SC: Page 4 paragraph 6.
 8 CHAIRPERSON: Thank you.
 9 MR NTSEBEZA SC: That the choice of you
 10 to be the one to talk to them was because you speak the
 11 language, their language and you understand their culture
 12 or belief systems. You put it this way, "In addition to
 13 what I said in paragraph 9 of the original statement, I
 14 wish to add the following. I pause here to point out that
 15 the reason I did not ask Brigadier Calitz as operational
 16 commander to lead this interception of marchers near the
 17 railway line was that, 1. he does not speak any of the
 18 languages with which those marchers are conversant and in
 19 my experience language is one of the major factors in the
 20 success or failure of intervention in such events. 2. I
 21 speak their language and I understand their culture or
 22 belief systems. 3. I have extensive experience in crowd
 23 management." We did deal with that. So would it be fair to
 24 say that that's one of the reasons that you yourself
 25 decided that you need to give some form of negotiation on

<p style="text-align: right;">Page 16022</p> <p>1 the railway line an opportunity?</p> <p>2 MAJOR-GENERAL MPEMBE: As stated in my</p> <p>3 statement.</p> <p>4 MR NTSEBEZA SC: Yes. Principally what</p> <p>5 was being spoken there is what is usually known as</p> <p>6 Fanagolo, do you agree?</p> <p>7 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>8 MR NTSEBEZA SC: What language do you</p> <p>9 speak, I mean what is your mother tongue? Is it isiZulu or</p> <p>10 Setswana or isiXhosa?</p> <p>11 MAJOR-GENERAL MPEMBE: I speak isiZulu.</p> <p>12 MR NTSEBEZA SC: That's your mother</p> <p>13 tongue?</p> <p>14 MAJOR-GENERAL MPEMBE: But I also speak</p> <p>15 South Sotho, I also speak Setswana even though these others</p> <p>16 are not as good as the people themselves, even including</p> <p>17 isiZulu. I did demonstrate already but I also added that</p> <p>18 my background working from the mines also, that is also one</p> <p>19 of the reasons why I was there.</p> <p>20 MR NTSEBEZA SC: Yes, ja. Most of those</p> <p>21 people or certainly most of those who are dead, whose</p> <p>22 families I represent, come from the Eastern Cape, most from</p> <p>23 Mqanduli, Ncala where I was born, et cetera, et cetera.</p> <p>24 They speak isiXhosa and you are quite comfortable in</p> <p>25 isiXhosa?</p>	<p style="text-align: right;">Page 16024</p> <p>1 a translation of what is being said, as I understand it.</p> <p>2 MR NTSEBEZA SC: Yes. Now I would assume</p> <p>3 that on page 4 that these miners are repeatedly saying that</p> <p>4 they are not fighting with anybody and I think that is on</p> <p>5 page 4, page 6, page 7, page 8 up to page 12.</p> <p>6 CHAIRPERSON: What was the purpose of the song</p> <p>7 that's quoted there, was that to show respect?</p> <p>8 MR NTSEBEZA SC: Which one?</p> <p>9 CHAIRPERSON: The song that's quoted at the top of</p> <p>10 page 4, was that sung to show respect to the witness?</p> <p>11 MR NTSEBEZA SC: Yes.</p> <p>12 CHAIRPERSON: It doesn't sound like a very</p> <p>13 respectful song to me.</p> <p>14 MR NTSEBEZA SC: Well, the witness has</p> <p>15 already said they showed him the utmost respect. He</p> <p>16 understands their culture and let me argue this at some</p> <p>17 stage, the fact that testes are referred to in the song is</p> <p>18 neither here nor there, in my respectful submission.</p> <p>19 CHAIRPERSON: That's an argument you can advance</p> <p>20 at the end of the hearing.</p> <p>21 MR NTSEBEZA SC: Indeed, indeed, Mr</p> <p>22 Chair.</p> <p>23 CHAIRPERSON: The witness wants to say something.</p> <p>24 MAJOR-GENERAL MPEMBE: Chairperson, in</p> <p>25 reference to respect I was only referring to me. I did not</p>
<p style="text-align: right;">Page 16023</p> <p>1 MAJOR-GENERAL MPEMBE: I don't understand</p> <p>2 the question, Chairperson.</p> <p>3 CHAIRPERSON: Are you comfortable with isiXhosa as</p> <p>4 a language? I know that isiXhosa and isiZulu are quite</p> <p>5 close to each other.</p> <p>6 MR NTSEBEZA SC: Yes.</p> <p>7 CHAIRPERSON: And a person speaking Zulu, most of</p> <p>8 what he says can be understood by an isiXhosa speaker and</p> <p>9 vice versa. Is that the basis of the question, Mr</p> <p>10 Ntsebeza?</p> <p>11 MR NTSEBEZA SC: Yes, yes, Mr Chairman.</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>13 understand isiXhosa very well and I can speak isiXhosa but</p> <p>14 I cannot speak isiXhosa like the person from Eastern Cape.</p> <p>15 MR NTSEBEZA SC: Yes. I'm not asking</p> <p>16 trick questions, you can just agree some. Now is it fair,</p> <p>17 and I'm going to put certain propositions to you, that</p> <p>18 during your conversation with these miners they said a</p> <p>19 number of important things to you and I'll put them to you</p> <p>20 as emanating from this clip one at a time. Firstly –</p> <p>21 CHAIRPERSON: It would be helpful perhaps if you</p> <p>22 gave us the references to exhibit QQ.</p> <p>23 MR NTSEBEZA SC: Yes, Mr Chairman. It's</p> <p>24 QQ2 –</p> <p>25 CHAIRPERSON: QQ2 yes. QQ2 is a 14 page document,</p>	<p style="text-align: right;">Page 16025</p> <p>1 also include the song, it's correct.</p> <p>2 MR NTSEBEZA SC: Yes, I mean look, that</p> <p>3 would be something between me and the Chairman and the</p> <p>4 Commissioners at the end but look, I don't want to go down</p> <p>5 this path because it's got cultural connotations and what</p> <p>6 have you and you'll be surprised if you hear some of us</p> <p>7 singing, some of the things we'd barely associate when we</p> <p>8 are culturally situated, but do you accept the correctness</p> <p>9 of my proposition to you that those mineworkers repeatedly</p> <p>10 told you that they were not fighting with anyone, that</p> <p>11 their business was with the employer and that please</p> <p>12 facilitate the employer coming to them and engaging them.</p> <p>13 MAJOR-GENERAL MPEMBE: Correct,</p> <p>14 Chairperson. Chairperson, I just want to add to my</p> <p>15 previous question, my previous answer of showing respect</p> <p>16 and I need to say when they were talking to me, yes, they</p> <p>17 talked in utmost respect but their refusal to lay down</p> <p>18 their weapons, that was not respect. So I just want to add</p> <p>19 that one, I have already testified about it.</p> <p>20 MR NTSEBEZA SC: I'll take that on board.</p> <p>21 I disagree with you but I don't want to engage you in</p> <p>22 argument. Secondly, would you agree that they told you</p> <p>23 that they were carrying their weapons to protect themselves</p> <p>24 because they had been shot at by Lonmin security and by</p> <p>25 NUM?</p>

<p style="text-align: right;">Page 16026</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson, but later on it was found that those people 3 were not dead. 4 MR NTSEBEZA SC: Don't get ahead of 5 yourself, General, I'm just putting questions to you. 6 CHAIRPERSON: Mr Ntsebeza, I don't want to clip 7 your wings at all but we have the transcript before us, we 8 know what was said so it's not necessary to put the whole 9 transcript to him but if there's a particular passage that 10 will lay the foundation for a question you want to ask him 11 then I'll allow you to do it, but please try to keep this 12 as short as you can because we have the transcript, we've 13 seen the video before and again, time is precious. 14 [11:18] MR NTSEBEZA SC: Yes, I appreciate that, 15 Mr Chairman, thank you very much. I just don't want it to 16 be said that there was an opportunity to put – that's why 17 I'm just putting to them; he agrees or disagrees, the 18 record will show what it says. And from the clip, and you 19 have already covered it by saying it was discovered that, 20 you know, the two people that they say were killed were 21 found not to have died, but they were giving you their 22 version of the incidents of the 11th, and by that time you 23 already knew of the incidents, the shooting by security 24 police and, I mean security, Lonmin security, and by the 25 NUM. Do you agree that they were giving that, their own</p>	<p style="text-align: right;">Page 16028</p> <p>1 CHAIRPERSON: That's at page 9, round 2 about line 20, and I can't speak the vernacular, I heard a 3 passage in the, on the clip which clearly was that passage 4 because there's a reference to NUM. Where is the complaint 5 about Lonmin you're talking about? 6 MR NTSEBEZA SC: I'm told it's page 9, Mr 7 Chairman. 8 CHAIRPERSON: No, page 9 talks about 9 NUM – 10 MR NTSEBEZA SC: Yes. 11 CHAIRPERSON: But I'm asking your learned 12 friend where the passage is that he refers to where things 13 were said about Lonmin. [Microphone off, inaudible] 14 something about Lonmin on page 6, round about line, between 15 lines 15 and 20, and then there's a reference to the 16 security guards of the mine and so forth on page 6, but the 17 passage that Mr Ntsebeza is referring to is the passage on 18 page 9 where in terms he says, "On Saturday when we came 19 back the mine security shot at us" - that's what you were 20 saying – "together with the people from NUM and killed two 21 of our people. That's the reason we're carrying weapons." 22 That's the passage I think that Mr Ntsebeza refers to. 23 Truth is it refers to both Lonmin security (which I don't 24 think is accurately actually, but anyway we won't go there 25 now) for the Saturday, but also refers to NUM, and that's</p>
<p style="text-align: right;">Page 16027</p> <p>1 version of the incidents of the 11th? 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 3 MR NGALWANA: Sorry, Chair, Thando 4 Ntsonkota on behalf of NUM. May I just, with respect to Mr 5 Dumisa just – Mr Ntsebeza – 6 CHAIRPERSON: Mr Ntsebeza. 7 MR NGALWANA: Yes, just interpose an 8 objection. From that footage – 9 CHAIRPERSON: Well, I'm sure you'll 10 interpose objections always with respect to those whose 11 questions your objecting to. 12 MR NGALWANA: Thank you, Chair. 13 CHAIRPERSON: You don't have to preface 14 it every time by saying that 15 MR NGALWANA: Thank you, Chair. Having 16 listened to that QQ2, the footage that has just been 17 played, that was not the version that was explained to the 18 witness by the protesters that they were shot at on the 11th 19 by NUM. What they are saying is in fact that they were 20 shot at by Lonmin security. 21 MR NTSEBEZA SC: Page 9 they say so. I 22 think they do say that – 23 CHAIRPERSON: There is a reference in the 24 transcript to NUM, which I saw earlier - 25 MR NGALWANA: - my apologies.</p>	<p style="text-align: right;">Page 16029</p> <p>1 the bit you're referring to. So your objection is half 2 right and half wrong, so let Mr Ntsebeza carry on. 3 MR NTSEBEZA SC: And is it so that what 4 they told you was that they were carrying their weapons to 5 protect themselves because they had been shot at - that's 6 the point that has been made by them, by the Chair - they 7 had been shot at by Lonmin and NUM? 8 MAJOR-GENERAL MPEMBE: It is correct, 9 that's what they told me. 10 MR NTSEBEZA SC: Yes, and they also 11 repeatedly asked you, in other words the police, to escort 12 them to the koppie. Do you agree with that? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 MR NTSEBEZA SC: In other words they 15 didn't want to go alone. They said come along, escort us, 16 get to the mountain; when we get there, we give you the 17 weapons. Now fourthly they said if you escorted them to 18 the koppie and called their employer to come and respond to 19 their request, they would hand over their weapons. In fact 20 there's a time – 21 CHAIRPERSON: That's page 10. 22 MR NTSEBEZA SC: Yes. 23 CHAIRPERSON: It's Lonmin worker 2 24 beginning at line 9 on page 10, says about handing over the 25 weapons there, that's at the koppie, and Lonmin worker</p>

<p style="text-align: right;">Page 16030</p> <p>1 number 1 says that, "We will give you," I think the word 2 should be "our weapons when you bring our employer." 3 That's lines 15 to 17 on page 10. 4 MR NTSEBEZA SC: Yes, in fact on page 8 5 he says, "Let all the men come with us to where we are 6 settled. After you will bring the boss from the mine, the 7 one we want money from, to give us a response" – 8 CHAIRPERSON: Ja, that's page 8 – 9 MR NTSEBEZA SC: Yes. 10 CHAIRPERSON: - lines 10 to 18, ends up 11 with the words – 12 MR NTSEBEZA SC: "Then we will give" – 13 CHAIRPERSON: - "We're not fighting with 14 anyone." 15 MR NTSEBEZA SC: Yes, "Then we will give 16 you the weapons. We are not fighting with anyone." 17 CHAIRPERSON: It goes on to say, "You 18 come with us to the place where we are all gathered" – 19 MR NTSEBEZA SC: Yes. 20 CHAIRPERSON: - "and afterwards you will 21 go to our management when he pays us," etcetera. Now, so I 22 think we know what was said and it was said several times. 23 MR NTSEBEZA SC: Yes. 24 CHAIRPERSON: The witness put up his 25 hand; he'd like to say something. I think we should give</p>	<p style="text-align: right;">Page 16032</p> <p>1 a very good summary. General, I just want to put this to 2 you; in my looking at that clip, firstly there is a moment 3 where it appears you seek an understanding from them, 'Oh, 4 so are you saying if we go up to the mountain, when we get 5 there, you know, you will hand over your' – and there's a, 6 sort of a unison of agreement. Did you get that in the 7 clip? 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 9 I get that in the clip. 10 MR NTSEBEZA SC: And I put this to you; 11 up until the time when you got a phone call, and it shows 12 in the clip, the video gives the impression that you are 13 almost there in the sense that you understand what they are 14 proposing, you don't disagree with it. Then a phone call 15 comes and you take a distance and you take the phone. Do 16 you remember that portion in the clip? 17 MAJOR-GENERAL MPEMBE: I remember the 18 portion, Chairperson. 19 MR NTSEBEZA SC: And I believe the phone 20 call was from General Mbombo. 21 MAJOR-GENERAL MPEMBE: No, Chairperson. 22 MR NTSEBEZA SC: Who was it from? 23 MAJOR-GENERAL MPEMBE: It was for her, 24 not from. 25 MR NTSEBEZA SC: From you? So you were</p>
<p style="text-align: right;">Page 16031</p> <p>1 him a chance, don't you think, Mr Ntsebeza? 2 MR NTSEBEZA SC: Yes, General. 3 MAJOR-GENERAL MPEMBE: Thanks, 4 Chairperson. I just want to indicate to the Commission 5 that I'm not in possession of QQ2 and that I'll not be able 6 to – I understand it's on the board, but maybe it will be 7 advantageous also to see it. 8 CHAIRPERSON: QQ2 is being handed to you, 9 and it's open on page 8, I think, but anyway, when there 10 are references to passages in that you'll be able to find 11 them. 12 MAJOR-GENERAL MPEMBE: Thanks, 13 Chairperson. 14 CHAIRPERSON: The point you've made, Mr 15 Ntsebeza, I think we can sum up now – 16 MR NTSEBEZA SC: Yes. 17 CHAIRPERSON: - that they said to you 18 when you told them, please give me the weapons, they're 19 illegal, and so forth, they said "We'll give them to you, 20 but we'll do so at the koppie, and when you've brought our 21 employer to speak to us about the money," and that's a 22 summary of what he said. Now that's obviously right, 23 that's what it says. Now where do we go from here now, Mr 24 Ntsebeza? 25 MR NTSEBEZA SC: Yes, well I think that's</p>	<p style="text-align: right;">Page 16033</p> <p>1 phoning the JOC? 2 MAJOR-GENERAL MPEMBE: I phoned General 3 Mbombo, and I also informed the JOC. 4 MR NTSEBEZA SC: And basically you were 5 telling them this is the proposal from the mineworkers? 6 MAJOR-GENERAL MPEMBE: Chairperson, I did 7 testify that that's when I was telling them that I'm taking 8 a decision based on the intervention that is called 9 situational appropriateness. 10 MR NTSEBEZA SC: And that intervention 11 was I'll go with the flow, or what was the decision? What 12 was the – I just want to understand what you mean. 13 MAJOR-GENERAL MPEMBE: Chairperson, I 14 don't understand the question, with the flow. I say I was 15 informing – 16 CHAIRPERSON: He means, he's suggesting 17 to you that what you said was that you were prepared to 18 agree to what the mineworkers were saying and to escort 19 them effectively to the koppie, without demanding that they 20 hand over their weapons, and to deal with the situation 21 there in accordance with what they'd said to you they would 22 do. I think that's basically the question. Is that right? 23 MR NTSEBEZA SC: Yes, it is. 24 CHAIRPERSON: So do you understand it 25 now?</p>

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1 MAJOR-GENERAL MPEMBE: Yes, I –
 2 CHAIRPERSON: But he's asking you
 3 something about what you said over the telephone to either
 4 General Mbombo or someone at the JOC. So the real answer
 5 you've got to give to us is if you can remember, what did
 6 you say to General Mbombo when you spoke to her, and what
 7 did you say to the person at the JOC who you spoke to in
 8 the course of that conversation that's being referred to.
 9 MAJOR-GENERAL MPEMBE: Chairperson, I did
 10 say, and I'm repeating it again, is to say I told General
 11 Mbombo that I am taking a decision with regard to the
 12 situation and I'm going to apply situational
 13 appropriateness. The miners are, I wanted them to be
 14 disarmed, but in the case where they don't disarm, or in
 15 the case where they don't voluntarily disarm, we are going
 16 to escort them.
 17 MR NTSEBEZA SC: Ja, and was there an
 18 agreement between you and General Mbombo on that?
 19 MAJOR-GENERAL MPEMBE: Yes, I could say
 20 it's an agreement with General Mbombo, but normally in such
 21 cases an operational commander will take such decisions.
 22 MR NTSEBEZA SC: Yes.
 23 MAJOR-GENERAL MPEMBE: And General Mbombo
 24 will always agree if you also give her the good reasons.
 25 MR NTSEBEZA SC: Now do you speak to

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1 anyone in the JOC, and who, if you did?
 2 MAJOR-GENERAL MPEMBE: I spoke to
 3 Brigadier Calitz and I spoke to General Mbombo, and I later
 4 spoke to the commanders that were around me.
 5 CHAIRPERSON: I think the question
 6 relates to the telephone conversation that you had. So you
 7 had one telephone conversation with General Mbombo, and
 8 then another one with Brigadier Calitz. Is that right?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: And was Brigadier Calitz at
 12 the JOC at that stage?
 13 MAJOR-GENERAL MPEMBE: As I indicated
 14 before, he was at the JOC. He was, he did guide me –
 15 CHAIRPERSON: Yes.
 16 MAJOR-GENERAL MPEMBE: - and when I
 17 arrived he guided me because there was no chopper which was
 18 refuelling, and when the chopper arrived with Colonel
 19 Vermaak then he went back to the JOC, but I refer
 20 specifically to him because he was at the JOC, yes.
 21 CHAIRPERSON: Yes, and did you say to him
 22 what you had also said to General Mbombo?
 23 MAJOR-GENERAL MPEMBE: Same information,
 24 Chairperson.
 25 MR NTSEBEZA SC: So if I understand you

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1 well, you say to these personalities in the JOC, 'Look, the
 2 situation is such that now I have to change deck a little
 3 bit. My mission here was to disarm these people here at
 4 this railway line. There has been an exchange of views
 5 between us and them; they are not handing their weapons.
 6 There is a suggestion that they make about me and us
 7 accompanying them to the mountain and I think that is an
 8 opportunity that must, we must give that an opportunity, a
 9 chance.' More or less is that how the communication went
 10 between you and them?
 11 MAJOR-GENERAL MPEMBE: It included that
 12 they should disarm, but in the case where they don't
 13 voluntarily disarm, that is the case, but the main priority
 14 was that it could be important for me that they should go
 15 there disarmed and we can escort them. The reason why I
 16 wanted to escort them, it was the allegation that they put
 17 that NUM or securities were shooting at them, but the
 18 condition that I put to them that was very clear,
 19 unequivocally, unarmed.
 20 MR NTSEBEZA SC: No, General, you know, I
 21 don't want us to complicate this thing. When you went
 22 there, when you confronted and you stopped the mineworkers
 23 there, I mean some of the first things that you said
 24 earlier on in the video, which we didn't play because it
 25 has been played before, if you recall you said, these

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1 things that you are carrying are not permissible in law.
 2 You know, you must give it to them. So that was the very –
 3 you know I can see you're not – that was the main purpose
 4 until there was an interchange of discussions between you
 5 and the mineworkers, but your purpose stated, as you say,
 6 unequivocally right from the beginning was to say those
 7 things you are carrying are dangerous, you are not supposed
 8 to have them, you must hand them over. Isn't that a fair
 9 suggestion?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 MR NTSEBEZA SC: And therefore when there
 13 had been this interchange between you and the workers in
 14 terms whereof I suppose you felt there was sensibility in
 15 what they were putting to you, you felt you needed now to
 16 tell those in the JOC who are your leaders, superiors, and
 17 your colleagues, who knew what your mission there was, the
 18 mission there was to disarm those people, and then you felt
 19 you have to indicate to them that there is a need now to
 20 change deck. Is that a fair assessment?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 MR NTSEBEZA SC: Yes, tell us.
 23 MAJOR-GENERAL MPEMBE: Chairperson, it's
 24 not in the video, but there was a time where I counted that
 25 they should drop their weapons.

<p style="text-align: right;">Page 16038</p> <p>1 MR NTSEBEZA SC: No, you counted – you 2 phoned. That’s the point I want to make. If you say you 3 phoned, you phoned in order to tell General Mbombo and 4 whoever else, Calitz or whoever else was in the JOC, to 5 tell them that you are now taking a decision not to disarm 6 them because there is another proposal. Then what you 7 would be expected to do is to say okay, let’s go. Not so? 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR NTSEBEZA SC: What would have been 10 expected of you to do? 11 MAJOR-GENERAL MPEMBE: It’s exactly what 12 I said, that I personally counted for them to disarm. 13 CHAIRPERSON: Sorry to interrupt you. 14 It’s not quite as simple as that. The way I understand it 15 - but if I’m wrong I hope you’ll correct me - is that you 16 wanted them to lay down their weapons. You wanted to 17 disarm them, and you were going to give them a count of 10 18 to do that. But you’d already decided - I think this is 19 the point, is it not – that if they didn’t comply and 20 didn’t put down their weapons and started walking away, you 21 wouldn’t attack them in order to disarm them; you would 22 then accompany them to the koppie. So first prize was they 23 must lay down their arms, but if they don’t, second prize 24 was we’ll accompany them to the koppie. Is that a correct 25 summary of what you said over the telephone to General</p>	<p style="text-align: right;">Page 16040</p> <p>1 MAJOR-GENERAL MPEMBE: No Chairperson, I 2 was not seeking clarity. I was actually telling them that 3 the decision that I have made and that I am going to take, 4 it’s a situational appropriateness decision, intervention, 5 made my decision based on that intervention. 6 MR NTSEBEZA SC: Yes, you see I want to 7 suggest to you and we’ll go to – what page is it – I want 8 to suggest to you that on page 11 this becomes very clear. 9 You come from the phone, line 14, and to their surprise you 10 say I’m going to take those weapons. And look at their 11 response, we agreed, we agreed and you say yes, as though 12 to say yes, we agreed but I’m counting now, I’m counting. 13 And they say give us feedback obviously from, you know. 14 How do you explain that? And I will put to you that – 15 MR MAENETJE: Sorry, Mr Chairman, I would 16 like to bring to the attention of my colleague that this 17 transcript is incomplete, there are gaps there. So when he 18 puts questions to the witness he must bear that in mind. 19 MR NTSEBEZA SC: Mr Chair, we don’t have 20 forever. We could play the video and the General, unless 21 the objection is that he should not even answer the 22 question. 23 CHAIRPERSON: I don’t know that I quite understand 24 the point you’re making. Let me put it to you the way I 25 think you’re putting it and then if I’m wrong you will</p>
<p style="text-align: right;">Page 16039</p> <p>1 Mbombo and Brigadier Calitz? 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 3 MR NTSEBEZA SC: So it explains then why 4 from the telephone, in spite of whatever had been said, you 5 simply say to them “Now I’m counting 1 to 10.” 6 [11:38] CHAIRPERSON: - beyond three, did he? 7 MR NTSEBEZA SC: Yes. Is that why then 8 from the phone to the mineworkers and say, I am now coming 9 to you. 10 MAJOR-GENERAL MPEMBE: Chairperson, it’s 11 now that on the phone but actually as I’m saying, a 12 situational appropriateness decision that I have is not 13 because I spoke to the people that they persuaded me or 14 instructed me to do that and that’s what I wanted to 15 explain. It’s me who took a situational appropriateness 16 decision and I say yes in that context which I’ve 17 explained. 18 MR NTSEBEZA SC: General, I never for one 19 moment suggested that you were acting on suggestions from 20 anybody. I just want to find out because I see a conduct 21 in the video clip where, as I said, I would argue, you 22 appear to seek clarification of what the miners mean, you 23 seem to accept it and on that basis you begin to say, let 24 me tell those who are expecting me to implement the plan 25 and the plan was to disarm the workers. Is that not right?</p>	<p style="text-align: right;">Page 16041</p> <p>1 correct me. Are you suggesting to the witness that he, in 2 his exchanges with the mineworkers, the strikers, agreed to 3 allow them to go with their weapons to the koppie and then 4 he said I’m counting and you’ve got to lay down your 5 weapons, in other words are you suggesting he went back on 6 what he’d agreed and are you saying that that’s why they 7 said we agreed, we agreed? 8 MR NTSEBEZA SC: Indeed, Mr Chairman. 9 CHAIRPERSON: Okay, that’s what you’re putting to 10 him, alright. So you understand the exchange between me 11 and counsel, Mr Ntsebeza? Do you under – 12 MAJOR-GENERAL MPEMBE: Yes, I understand. 13 CHAIRPERSON: So what’s your comment on that? Is 14 that correct? 15 MAJOR-GENERAL MPEMBE: No, Chairperson. 16 MR NTSEBEZA SC: What did you understand 17 them to be referring to when they said we agreed, we 18 agreed, because from the phone you say to them I’m taking 19 those weapons. Then their reaction is, we agreed, we 20 agreed. What did you take that to be? 21 MAJOR-GENERAL MPEMBE: Chairperson, I did 22 not agree that they will – I did not agree with them not to 23 tell them that I am not going to take their weapons, but 24 since from the beginning I indicated to them that they are 25 in possession of dangerous weapons and that is against the</p>

<p style="text-align: right;">Page 16042</p> <p>1 law and I wanted them to drop the dangerous weapons. And 2 then on the phone I did explain that taking the situation 3 into account, after they have spoken to me several times to 4 say go with us to the mountain, is that if they do not drop 5 the weapons I am not going to force them to take the 6 weapons but I will escort them.</p> <p>7 MR NTSEBEZA SC: When they say to you, 8 give us feedback, what do you think the feedback was for?</p> <p>9 MAJOR-GENERAL MPEMBE: Chairperson, they 10 referred to many, to that they want the Lonmin management 11 and I could also demonstrate to all what they asked me on 12 that conversation that was done later and that is my 13 testimony.</p> <p>14 CHAIRPERSON: Mr Ntsebeza, I'm not sure we're 15 going to solve this just off the transcript because as has 16 been pointed out, there are gaps in the transcript there 17 and – but unless this is covered in one of the gaps, I 18 can't find a passage in the transcript where he says "I 19 agree." It may well be, of course, that there was a 20 misunderstanding, that they thought perhaps from his body 21 language or lack of direct response when they put to him 22 what their attitude was, that he was agreeing and they may 23 well have thought when he spoke on the telephone that he 24 was consulting someone, perhaps a superior, as to what to 25 do, that may be why they're asking for feedback. There may</p>	<p style="text-align: right;">Page 16044</p> <p>1 MR NTSEBEZA SC: Yes. 2 CHAIRPERSON: And he makes it clear that he's 3 going to take those spears, as he puts it, and to which 4 they then say, we agreed, we agreed. 5 MR NTSEBEZA SC: Mm. 6 CHAIRPERSON: But surely there's no basis for 7 putting to him that he agreed, surely the most you can put 8 is – I don't want to interrupt you unduly but I mean I do 9 want to save time – surely the most you can put to him is 10 that is there scope for a misunderstanding, that that they 11 you agreed. 12 MR NTSEBEZA SC: Well – 13 CHAIRPERSON: I mean I don't see how you can put 14 to him he agreed. 15 MR NTSEBEZA SC: Yes. No, no, I mean I'm 16 not wanting to stretch it that far, Mr Chairman. 17 CHAIRPERSON: Sorry, can I then ask him a couple 18 of questions and see whether we can cut a path through the 19 bushes at this point? You've heard the exchange between me 20 and Mr Ntsebeza. 21 MAJOR-GENERAL MPEMBE: Correct. 22 CHAIRPERSON: They said to you, we agreed, we 23 agreed. There's nothing in the record that indicates that 24 you did agree. Thinking about it now and having seen the 25 video again today, do you think it possible that there may</p>
<p style="text-align: right;">Page 16043</p> <p>1 well have been a misunderstanding, they may have thought he 2 agreed but his attitude is that he didn't and there's 3 nothing that I can see, unless there's something you want 4 to draw my attention to, where he says in terms, yes, I 5 agree, that's what we'll do. So absent something of that 6 kind by him, on what basis do you put – I'm not talking 7 about your clients' understanding now – not your clients, I 8 beg your pardon, the mineworkers – on what basis are you 9 putting to him that he agreed or are you merely putting 10 that they had said that he agreed?</p> <p>11 MR NTSEBEZA SC: Well, Mr Chairman, I 12 would merely say that there is a time when he appears to 13 have understood what the proposition is. He interrogates 14 it, he says to them, is this what you're proposing and then 15 when there is this sort of unison in agreement, I want to 16 suggest that that was the moment because the workers 17 themselves, not just one of them, Mambush and – almost all 18 of them, those who were speaking, that, yes, and then they 19 started to explain this, that and the next thing and they 20 are repetitive. So –</p> <p>21 CHAIRPERSON: I'm sorry but there's no passage in 22 the transcript –</p> <p>23 MR NTSEBEZA SC: No, there isn't, I –</p> <p>24 CHAIRPERSON: - where he says okay, I agree with 25 you.</p>	<p style="text-align: right;">Page 16045</p> <p>1 have been a misunderstanding, that the strikers may have 2 thought that you had agreed their proposal, that they 3 wouldn't hand over their arms and you would escort them to 4 the koppie? Is that a possibility?</p> <p>5 MAJOR-GENERAL MPEMBE: No, Chairperson, 6 because if you look at line number 7 of Warrant Officer 7 Masinya who was on the scene and also a couple of officers 8 can testify to this fact, he even says there, "The police 9 have given them ample time to negotiate but these people do 10 not want to hand in their weapons." So whatever action 11 that is going to take place, is because they are not co- 12 operating. So it does also show the impression and I 13 didn't communicate with them, he was also observing what 14 was the communication.</p> <p>15 CHAIRPERSON: Yes, I understand. That's not a 16 complete answer to the question. I understand that the 17 Warrant Officer didn't think you'd agreed, that seems clear 18 from what he said but the question is whether the strikers 19 who had been communicating with you possibly thought that 20 you had agreed because they put their proposition to you, 21 you then went and made a telephone call, as I understand, I 22 don't know how long the telephone call took but you made a 23 telephone call. Is it possible that they thought that 24 you'd agreed? That's the question and it's quite clear 25 that the Warrant Officer didn't think you'd agreed but</p>

<p style="text-align: right;">Page 16046</p> <p>1 we're not interested in what he thought, we're interested 2 in what the strikers thought. Is that a possibility? 3 MAJOR-GENERAL MPEMBE: Chairperson, 4 seeing that sentence, one can say yes but that was not the 5 situation. 6 CHAIRPERSON: I understand your case is you didn't 7 agree and there's nothing in the transcript which indicates 8 you did but – certainly not expressly, but that's not the 9 point of the question. The point is could they, did they 10 perhaps think you had? And you've said, you've conceded it 11 is a possibility. So perhaps you can now, now that I've 12 cut a path through the bush for you, would you like to 13 proceed, Mr Ntsebeza? 14 MR NTSEBEZA SC: Thank you, Mr Chairman, 15 I certainly would like to take another topic. 16 COMMISSIONER HEMRAJ: Mr Ntsebeza, the 17 point that you were trying to make, does it become clearer 18 if one actually looks at that part of the video as opposed 19 to relying on the transcript? I don't know if you want to 20 go that route but it just occurs to me that it might. 21 MR NTSEBEZA SC: Well, it does. If we 22 can, perhaps if we could play that part where, which is 23 about a minute before we stopped because it covers a time 24 when you go to the telephone and then when you come back 25 almost abrupt –</p>	<p style="text-align: right;">Page 16048</p> <p>1 MR NTSEBEZA SC: It's from page 7. 2 CHAIRPERSON: Thank you. 3 [VIDEO SHOWN] 4 CHAIRPERSON: Sorry, sorry, let's stop it for a 5 moment. I am informed by Mr Tokota that we're actually on 6 page 9 of the transcript. What is being talked about is 7 the shooting. 8 COMMISSIONER TOKOTA: Saturday. 9 CHAIRPERSON: On the Saturday, so it's round about 10 line 18 on page 9, is that correct Mr Ntsebeza? 11 MR NTSEBEZA SC: Yes, Mr Chairman, I've 12 just seen the bottom of page 9. 13 CHAIRPERSON: So let's carry on. 14 [VIDEO SHOWN] 15 MR NTSEBEZA SC: Now, General – 16 CHAIRPERSON: Sorry, I just want to record. 17 Having seen the clip again it's my impression and I think 18 that both the Commissioners agree with me that there's 19 nothing from which one can say that the General agreed but 20 he's already conceded that there may have been, there's a 21 possibility that there was a misunderstanding, that the 22 mineworkers thought there was but that does seem clear, 23 does it not, from what we have seen? 24 MR NTSEBEZA SC: Mr Chairman, I won't 25 push it save only to say, which probably is the same as</p>
<p style="text-align: right;">Page 16047</p> <p>1 CHAIRPERSON: Perhaps let's do that. Can you then 2 please find the section to which Mr Ntsebeza is referring 3 and we'll look at it again and perhaps it might be helpful 4 for the benefit of those of us who don't understand what's 5 said in the vernacular language to tell us, to give us the 6 spot in the transcript where it is so that we can follow it 7 to some extent but as has been pointed out, there are gaps 8 in the transcript. Now it's before the passage we're 9 looking, the portion we're looking at because what we can 10 see here is the General speaking on his telephone. The 11 suggestion is you go back about a minute. Is that right, 12 Mr Ntsebeza? Go back about a minute from – alright. We 13 need to place on record for the benefit of those who come 14 after us and for ourselves also later on, at what point in 15 the video we're stopping and starting. 16 MR NTSEBEZA SC: Can you tell – 17 CHAIRPERSON: Can you not tell us from where you 18 are? 19 SPEAKER: 18 minutes. 20 CHAIRPERSON: 18, one eight. This is 18 minutes 21 into the video clip, thank you. 22 [VIDEO SHOWN] 23 CHAIRPERSON: Sorry, can we stop? Can we stop for 24 a moment? Can you tell us where the transcript, what is 25 now being said will be found?</p>	<p style="text-align: right;">Page 16049</p> <p>1 what the Chair has indicated, namely that there may have 2 been an understanding on behalf of the workers that he had 3 agreed, that his demeanour right up to when he takes the 4 phone, and I'd like the Chairman to make a comment on this. 5 [11:57] His demeanour, he seeks to know where are you, 6 we're at the mountain and you know he's with them all the 7 way in their proposition. They say all those things and 8 then it's like oh we're at the mountain and then says okay. 9 Now – 10 CHAIRPERSON: So you asked me to make a 11 comment. There is that speech if I can call it that by a 12 person described as Lonmin Worker Number 1 at the foot of 13 page 10 where the mineworker concerned is answering the 14 question the General asked, where are you? And he says 15 "we're at the mountain, but if you want us we'll come to 16 the location of your choice or we'll come to the stadium to 17 hear what our employer says regarding our requests as he 18 wanted to come to us on Friday. We do not fight, even the 19 mine police we do not fight, we only spoke to them" and 20 then he goes on "and return to a place where we are 21 settled. When you called us the person from NUM was the 22 one who shot at us, he killed two of our people." And then 23 there's a patch here that's incoherent "we did not fight 24 with anyone, I'm begging of you, Sirs." And it's roughly 25 at that point that the General gets onto his telephone, his</p>

<p style="text-align: right;">Page 16050</p> <p>1 mobile telephone and speaks to somebody. And then Warrant 2 Officer Masinya then makes the comment which is recorded. 3 The General then comes back having not replied to the 4 passage from Lonmin worker number 1 which I read out and 5 instead having spoken from the telephone then comes back 6 and says "I'm going to take those spears" and that then 7 causes the workers to say "not this one but a number," to 8 say "we agree, we agree" and that would be the basis, I 9 would think of the possible misunderstanding which the 10 witness very fairly conceded may have existed. I'm 11 reminded it's nearly noon and at noon we normally take a 12 comfort break. Is it convenient at this stage and you can 13 mull over what I've put to you and we can carry on – 14 MR NTSEBEZA SC: I had wanted to ask for 15 that comfort break earlier, Mr Chairman. 16 CHAIRPERSON: Oh you did. 17 MR NTSEBEZA SC: I've been drinking a lot 18 of water. 19 CHAIRPERSON: I'm sorry I've caused you 20 such discomfort, but we will take the adjournment now. Ten 21 minutes please and then we'll be back. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [12:08] CHAIRPERSON: The Commission resumes. 24 You're still under oath, Major-General. 25 WILLIAM MPEMBE: Correct, Chairperson.</p>	<p style="text-align: right;">Page 16052</p> <p>1 to be a more engaging attitude from you because it appears 2 you were understanding what they were putting to you? 3 Would you agree with that? 4 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 5 with the following explanation. Firstly, before one takes 6 a decision it should be based on the conduct and on the 7 understanding of, between the two people. It's true that 8 by the time when I was communicating with them, that made 9 the basis of me taking a decision of situational 10 appropriateness that will benefit on the either side. 11 Firstly, if they do agree to put the weapons down, I was 12 still bound to escort them because of what they have 13 already told me. I couldn't have known that they actually 14 armed themselves because they were attacked, and I heard it 15 there. So obviously there was an obligation on my side as 16 the government institution to protect them. 17 Now if they did not, it was still the same in the 18 sense that even though they appear to be so innocent, I 19 didn't know that they killed people, but surely that 20 movement we saw and there were people killed. So I would 21 also still escort them. So on either side of the story I 22 was still bound to escort them to protect those that might 23 be perceived for them not complying with what they want, 24 and at the same time protecting them against what they are 25 telling me. So yes, I appeared on the video to have agreed</p>
<p style="text-align: right;">Page 16051</p> <p>1 CHAIRPERSON: You're more comfortable, Mr 2 Ntsebeza. Would you like to proceed with your cross- 3 examination? 4 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 5 Yes, much more comfortable, Mr Chairman. Now General, I 6 want to move on to something else. I just want to put a 7 proposition to you where I will want you to make a comment 8 that, and this is the proposition; it seems to me that when 9 one looks at this video, at that part of the clip, there is 10 a stage where one can argue that your demeanour before you 11 go and take that call – 12 CHAIRPERSON: He didn't go and take the 13 call; he said he went and made the call. 14 MR NTSEBEZA SC: Or when you made that 15 call, seems to be different to when you come back to the 16 workers, because up to the stage when you took the call, 17 and we now know that you took the call in order to tell 18 your colleagues, hey, listen, the situation seems here to 19 have changed and I have to take a sort of tactical 20 decision, operational decision, on the spot. Up to that 21 point one would get the impression that you were getting 22 along with the workers. There's an exchange where you seek 23 to know where are you in the mountain, they tell you this, 24 and even if there is no line we can point to say you 25 agreed. Would you agree that up to that point there seems</p>	<p style="text-align: right;">Page 16053</p> <p>1 with them – to have not agreed, to have listened to them 2 attentively, and that listening made me to take a decision 3 of situational appropriateness, but not necessarily that I 4 agreed with them, and I wanted that they should know that 5 they are committing an offence and me, I cannot allow them 6 to commit an offence, but I am obliged to protect them. 7 MR NTSEBEZA SC: Yes, thank you, General, 8 and I'll go with the Freudian slip about you having agreed. 9 General, we have now established that one of the Lonmin 10 workers had told you at the railway line the reason that 11 they were carrying weapons was on account of the fact that 12 they wanted to protect themselves because they had been 13 shot and they believed that two people had been killed. 14 Now at least that information you got there on that day, on 15 the 13th. You agree with that? 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 17 MR NTSEBEZA SC: Did you pursue the 18 matter with the officers that were responsible in the case? 19 MAJOR-GENERAL MPEMBE: I just want – I 20 don't understand the question – 21 CHAIRPERSON: I'm sorry, I don't quite 22 understand the question. 23 MR NTSEBEZA SC: We have information – 24 CHAIRPERSON: When are you referring to? 25 You say that, you ask did he pursue the matter with the</p>

<p style="text-align: right;">Page 16054</p> <p>1 officers responsible for the case. Now when are you 2 referring to? Are you asking whether then and there at the 3 railway line with his mobile phone he pursued the matter, 4 or are you suggesting he was to have pursued it later? 5 MR NTSEBEZA SC: No, I'm sorry if I was 6 that dense, Mr Chairman. I'm simply asking as a matter of 7 course you have been told, you are in charge of an 8 operation, which as you say has resulted in the death to 9 that point of people, and there was a belief that, you 10 know, two of the mineworkers had been killed. Now 11 obviously as a top cop you, what I want to know is whether 12 you pursued that information from that point going forward? 13 Did you act on the information that the mineworkers were 14 telling you about, namely that somebody that been killed? 15 MAJOR-GENERAL MPEMBE: Chairperson, 16 factually the docket was opened, it was investigated by, 17 also by Brigadier Van Zyl, who was falling under me, and 18 that's why I understand that later on it was also 19 discovered that they actually didn't die but there was an 20 attempted murder docket that was opened, and it's being 21 investigated, but I cannot be able to say at this stage 22 what is the status of the docket. 23 MR NTSEBEZA SC: Before the 16th did you 24 seek to find out about what had happened? In other words, 25 did you show an interest in investigating this issue?</p>	<p style="text-align: right;">Page 16056</p> <p>1 elaborate that maybe Advocate might take note to this, 2 that's what I testified. I even after that engaged the 3 unions, engaged the mining management, because of the 4 information I got from the mineworkers. 5 MR NTSEBEZA SC: Did you establish the 6 true facts, and the true facts that in spite of their 7 belief that some, two of those people were shot dead, and 8 their belief was that they had been killed, that in fact 9 they had not been killed? Did you do that? Did you go to 10 the union and say listen, Mathunjwa and all of you, you are 11 wrong in thinking that those two miners were killed? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson, but I didn't say you were wrong by saying that 14 they were killed. Even Mr Mathunjwa was still his belief 15 that there were people that were killed, but he was later 16 informed correctly so, and he does also indicate in his 17 statement that later on he also saw that they were not 18 killed. But that came from the side of the police. 19 MR NTSEBEZA SC: Ja, General, I'm asking 20 you. You're the witness in front of the Commission. Did 21 you cause the correct information to be disseminated to the 22 unions, like for instance on the 15th when you had this 23 briefing with Mathunjwa and Zokwana, did you tell them that 24 hey listen, by the way, you are mistaken to think that 25 those two miners were shot and were killed, they actually</p>
<p style="text-align: right;">Page 16055</p> <p>1 There are people who you are being asked to come and 2 disarm, who are there saying no, but you can't do this 3 because we are carrying these weapons because we are being 4 attacked. Now, and they mention a time and a place and 5 people who they believe are responsible for the attack on 6 them. I'm simply asking as the senior police officer, a 7 General at that, whether you did something with that 8 information. 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 10 I did, hence I did discover that none was killed, but there 11 was an attempted murder docket that was opened, but – 12 CHAIRPERSON: Did you enquire whether 13 this matter is being investigated; the answer to that 14 obviously was yes. Has a docket been opened? It follows 15 from the fact that it's being investigated, the answer to 16 that is yes. Were people killed? Answer to that, no, 17 people weren't killed. But it looked as if an attempt was 18 made to kill them, which is why the docket opened was in 19 respect of charges of attempted murder. Is that your 20 answer? 21 MAJOR-GENERAL MPEMBE: That's correct, 22 Chairperson, but also I want to add as a top cop, as 23 referred to by the Advocate, I went beyond that. 24 MR NTSEBEZA SC: Yes. 25 MAJOR-GENERAL MPEMBE: And I need to</p>	<p style="text-align: right;">Page 16057</p> <p>1 were not? Did you? 2 MAJOR-GENERAL MPEMBE: No, Chairperson, 3 because it was not asked. But it was disseminated as a 4 general information for them to understand. 5 MR NTSEBEZA SC: No, I'm asking you 6 specifically did you – here are the leaders who you are 7 having this conversation with, GGG4, did you know by then 8 that in fact there was no such a thing that these people 9 had been killed? 10 MAJOR-GENERAL MPEMBE: Chairperson, I 11 said no, because it was not asked, but later I did make 12 sure that they get the information. 13 CHAIRPERSON: It happened after the 16th. 14 Is that right? 15 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 16 CHAIRPERSON: Alright, I think you've 17 established the facts you may need on that issue. I don't 18 know if you can take it any further. I'm not sure if he's 19 under a duty to disclose it anyway, but anyway, the facts 20 are before us. 21 MR NTSEBEZA SC: Now there seems to be – 22 I'm moving to another subject. I don't know whether you 23 are aware, there seems to be a dispute as to whether Mr 24 Thembelakhe Mati who was killed on the 13th, was part of the 25 protester group. In fact there has been a suggestion from</p>

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1 the SAPS that he was merely a civilian who was not
 2 involved. Are you aware of this?
 3 CHAIRPERSON: Is he the third deceased,
 4 the one who had stab wounds –
 5 MR NTSEBEZA SC: The third deceased, yes.
 6 CHAIRPERSON: - who was found in front of
 7 one of the houses in the informal settlement? The answer
 8 to that is yes, I take it?
 9 MR NTSEBEZA SC: Yes, yes, Mr Chairman,
 10 sorry.
 11 MAJOR-GENERAL MPEMBE: Chairperson, with,
 12 maybe if I might wanted to know that, as a clarity, because
 13 there were other civilians on the scene. There was also
 14 others somewhere –
 15 CHAIRPERSON: My understanding is three
 16 people from the other side, if one can call it that, were
 17 killed. One of them I think was killed on the field. One
 18 was killed, and I think it seems to be common cause that he
 19 was a striking mineworker. Another one was killed on the
 20 other side of the river, and there's, I think there is or
 21 will be evidence that there was certain allegations from
 22 the police side that shots were being fired from his side
 23 of the river and the police fired back and he was shot
 24 through the neck, I think, and then there's evidence that a
 25 third person died, also a civilian. He was found dead in

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1 front of – and there will, I believe, be evidence, there's
 2 a statement that's been filed – in front of one of the
 3 houses in the informal settlement, and he was stabbed. He
 4 wasn't shot by anybody, he was stabbed and so he died.
 5 There's a photograph of him in one of the exhibits, and
 6 that's the person I think Mr Ntsebeza is asking you about.
 7 That's correct, Mr Ntsebeza?
 8 MR NTSEBEZA SC: Yes, Mr Chairman.
 9 CHAIRPERSON: Now what do you want the
 10 witness to tell you about that person, if he knows anything
 11 about him part from what I've stated?
 12 MR NTSEBEZA SC: Yes, now just do you
 13 also – I'm talking to you now about as a head of operations
 14 on the day, and General, I mean as a deputy commissioner of
 15 police in the province, do you hold the belief that he was
 16 not part of those workers? Because if you don't then we
 17 will be saved the time of having to show by way of
 18 affidavit and some footages which we have prepared, that in
 19 fact he was at that railway line on the day that you
 20 addressed the workers. That's the whole point of the
 21 exercise, so –
 22 MR NTSONKOTA: Sorry, Mr Chairman, before
 23 the witness answers, I would like to know whether is it put
 24 to the witness that is it his belief or SAPS's belief?
 25 CHAIRPERSON: No, clearly I think it's

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1 his belief, I mean, but Mr Ntsebeza, am I right? You want
 2 to know the belief of this witness?
 3 MR NTSEBEZA SC: Yes.
 4 CHAIRPERSON: I'm not quite sure where
 5 this point is getting us, but I don't want to stop you too
 6 early because you may have a good point, but I'm not sure
 7 you do. But can I just endeavour again to cut a little bit
 8 of a path through the bush at this point? Are you able to
 9 help us at all in relation to information, apart from what
 10 I have repeated to you a few moments ago, about this third
 11 person who was found dead from stab wounds in front of one
 12 of the houses in the informal settlement? We've heard it's
 13 been put that he was one of the people at the railway line,
 14 but do you know anything more about him than that, from
 15 your own knowledge?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson.
 17 It is, my explanation is as follows. When I spoke to the
 18 people there, I couldn't pinpoint who is this one. It is
 19 also before this Commission that immediately after scene,
 20 after that scene on the 13th I was also taken to the JOC.
 21 So it might be that he was there, but I cannot say I saw
 22 him there, and I cannot also agree that he was there. It
 23 is possible.
 24 CHAIRPERSON: While we're on that, as I
 25 remember it from the inspection there was a railway line.

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1 Then there was a field, and the actual engagement, if one
 2 can call it that, the fighting and so on took place on the
 3 field where the two policemen were killed, I think, and
 4 Baloyi was injured, and then is that where you were when
 5 you were taken away?
 6 MAJOR-GENERAL MPEMBE: I was in the
 7 field, not where the striker died.
 8 CHAIRPERSON: So you didn't go to the
 9 informal settlement?
 10 MAJOR-GENERAL MPEMBE: No, Chairperson.
 11 CHAIRPERSON: And you didn't go to the
 12 area near the river?
 13 MAJOR-GENERAL MPEMBE: No, Chairperson –
 14 CHAIRPERSON: You were taken away from
 15 the field?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 CHAIRPERSON: Where the two policemen
 19 sustained their injuries. Is that correct?
 20 MAJOR-GENERAL MPEMBE: That's correct.
 21 CHAIRPERSON: Where one of the strikers,
 22 I think [inaudible] –
 23 MAJOR-GENERAL MPEMBE: One of the
 24 strikers, yes, correct, Chairperson.
 25 CHAIRPERSON: Ja, and so does that mean

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1 that you can't help us in relation to the third civilian
 2 who died there from stab wounds? You've got no knowledge
 3 of your own about that?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR NTSEBEZA SC: Mr Chairman, may I
 7 request your permission to put up as an exhibit an
 8 affidavit which has been circulated, from what I've been
 9 told, from one Lanford Gcopyelwa, who claims to be the
 10 cousin of Mr Mati who was killed on 13th of August –
 11 CHAIRPERSON: Is it something that this
 12 witness can deal with, or do you just want to put it in as
 13 an exhibit that will help us moving forward?
 14 MR NTSEBEZA SC: Indeed, Mr Chairman, and
 15 together with the annexures, because the annexures, if they
 16 are put up, might probably get the witness to have a
 17 different view than the one he has expressed, because we
 18 locate in the annexures –
 19 CHAIRPERSON: Okay, let's see the
 20 exhibit. What's the next exhibit number?
 21 MS PILLAY: Chair, it will be HHH53.
 22 CHAIRPERSON: Have you seen this? Mr
 23 Ntsebeza says this affidavit has been circulated. Were you
 24 given notice that it would be relied on during your cross-
 25 examination?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson, it's also part of my –
 3 CHAIRPERSON: Alright, okay. So you're
 4 not taken by surprise by this. What's the exhibit number?
 5 MS PILLAY: HHH53.
 6 CHAIRPERSON: How do I describe it?
 7 Affidavit with annexures by, what's the name of the
 8 deponent?
 9 [12:27] MR NTSEBEZA SC: The deponent's name, Mr
 10 Chairman, is Lanford.
 11 CHAIRPERSON: Would you spell that for me
 12 please?
 13 MR NTSEBEZA SC: Lanford is L-A-N-F-O-R-
 14 D.
 15 CHAIRPERSON: L-A-N or m?
 16 MR NTSEBEZA SC: N for November.
 17 CHAIRPERSON: L-A-N with a g after it, L-
 18 A-N-G is it?
 19 MR NTSEBEZA SC: L-A-N-F-O-R-D for delta.
 20 CHAIRPERSON: And his surname?
 21 MR NTSEBEZA SC: Gcopyelwa, G-C-O-P-Y-E-
 22 L-W-A.
 23 CHAIRPERSON: N-G, sorry G-C-O-P-Y-E-L-W-
 24 A.
 25 MR NTSEBEZA SC: Indeed, Mr Chair.

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1 CHAIRPERSON: All right and that'll be
 2 exhibit HHH53. The witness already has a copy, but we
 3 haven't so can you please make it available to us? If you
 4 haven't got them we'll just carry on because I don't to
 5 lose time.
 6 MR NTSEBEZA SC: Now I believe as it says
 7 in that affidavit in paragraph 6, in fact from paragraph 1,
 8 paragraphs 5 and 6 the deponent makes the point that his
 9 cousin can be seen seated with his face encircled and then
 10 –
 11 CHAIRPERSON: - so I take it we're being
 12 referred back to the video we saw is it? The people
 13 sitting and standing, mostly sitting near the railway line
 14 –
 15 MR NTSEBEZA SC: It looks like still
 16 shots.
 17 CHAIRPERSON: Oh still shots, still shots
 18 of the people at the railway line.
 19 MR NTSEBEZA SC: Yes.
 20 CHAIRPERSON: The group of people who had
 21 come from Karee and you say – so he's visible on the
 22 photograph and his face is circled. Are we going to see
 23 the photograph, is the photograph one of the annexures that
 24 the witness has seen, part of HHH53?
 25 MR NTSEBEZA SC: Yes, Mr Chairman.

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson, there are photos here that are also being
 3 attached.
 4 CHAIRPERSON: Well you've got the
 5 advantage over me, you've seen it, but I think it may be
 6 shown to us. You're ahead of me, it's a good place to
 7 stay. At the top of page 2 "I attach slides with – there's
 8 something wrong with the English, but never mind "I attach
 9 slides" which were I suppose "taken from the video at the
 10 aforementioned time that depicts my cousin who's head is
 11 circled in white marked A1 and A2." So I take it it's
 12 slides taken from the video we've seen and are we now – so
 13 he goes on "he's seated, he's seen seated with the other
 14 miners in another video" and we're going to have that slide
 15 attached as well, his face is encircled. And then his
 16 clearly visible markings, so you've got a number of video
 17 clips and slides which indicate that he was on the scene.
 18 He was one of the miners or mineworkers depicted on these
 19 various videos. Do we have to see them or is it enough
 20 that what you've put on record now is before us?
 21 MR NTSEBEZA SC: Now in the B series and
 22 the C series of these photographs we will submit that if
 23 from nothing else, but just from the clothes he wears it
 24 was the last place is where he's lying down.
 25 CHAIRPERSON: It sounds as if you put on

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1 the scene if one can rely on the documents. Now that he's
 2 on the scene, dressed in a brown striped shirt with a blue
 3 jacket tied around his waist how's the witness going to
 4 take us further in respect of him?
 5 MR NTSEBEZA SC: No, Mr Chairman, that's
 6 only because I wanted it on record the witness has said –
 7 CHAIRPERSON: You've got him record,
 8 you've got him on the scene, the witness can take it no
 9 further, you've made your point. Should we move onto the
 10 next one, if there is one?
 11 MR NTSEBEZA SC: There is one.
 12 CHAIRPERSON: You've gone through these
 13 documents and you're satisfied, not that that binds us, but
 14 you're satisfied that Mr Mati has been correctly placed on
 15 the scene –
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 CHAIRPERSON: As one of the group of
 19 striking mineworkers whom you addressed.
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson, the only thing that I said is that at time I
 22 did not know that is his him.
 23 CHAIRPERSON: - and I think there about
 24 200 of them weren't there, so you didn't know all of them.
 25 You only really dealt I take it with the people who spoke

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1 to you. Presumably with the leaders.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 MR NTSEBEZA SC: Now, you will have also
 5 received clips that were precognising you about what is
 6 going to be put to you today. And that is in relation to
 7 what we have come to know now as the STF Scorpion. Can we
 8 have the clips plate relevant to the STF Scorpion?
 9 CHAIRPERSON: This is an exhibit already
 10 is it? No?
 11 MR NTSEBEZA SC: No, it is not.
 12 CHAIRPERSON: I don't recognise it, but
 13 that doesn't prove anything. Is it an exhibit? If it
 14 isn't, let's make it one.
 15 MS PILLAY: Chair, it's not an existing
 16 exhibit.
 17 CHAIRPERSON: So what do we call it?
 18 MS PILLAY: HHH54.
 19 COMMISSIONER HEMRAJ: What is the origin
 20 of this exhibit, do we know where this emanates from?
 21 MR NTSEBEZA SC: I am instructed that we
 22 can give the information but apparently it's not ready now.
 23 CHAIRPERSON: Well your attorney can hand
 24 it to us on Monday I think. So how do I describe it, video
 25 clip of STF Scorpion with gun mounted on turret. Is that

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1 right?
 2 MR NTSEBEZA SC: Now you have seen those
 3 –
 4 CHAIRPERSON: Sorry, is that right?
 5 MR NTSEBEZA SC: Yes.
 6 CHAIRPERSON: The Scorpion is a vehicle
 7 and mounted on the top of the vehicle, on the turret I
 8 think of the vehicle is a gun of some kind. Is that right?
 9 And it's a Special Task Force Scorpion.
 10 MR NTSEBEZA SC: Yes.
 11 CHAIRPERSON: And what's the date of the
 12 video, is it – or is that part of the information your
 13 attorney is going to give us on Monday?
 14 MR NTSEBEZA SC: It was taken on the 14th
 15 of August. Now were you aware of that, of the presence of
 16 that Scorpion and –
 17 MAJOR-GENERAL MPEMBE: Chairperson, he's
 18 correct. I was aware of the vehicles of the STF, but the
 19 only thing that I was not aware of it was the machine gun
 20 mounted.
 21 MR NTSEBEZA SC: So you are not disputing
 22 that there was that machine gun mounted?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson, I'm not disputing it.
 25 MR NTSEBEZA SC: Who would have approved

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1 it, I mean you are the commander of operations. Something
 2 like that would have had to have your stamp of approval.
 3 Do you agree or am I wrong? Somebody else could have
 4 brought it without you either consenting it to be brought
 5 along or your approving it.
 6 MAJOR-GENERAL MPEMBE: Chairperson, it's
 7 a testimony before the Commission that Major-General
 8 Annandale I did explain that he was the head of nationally
 9 specialised units and my testimony that I relied on him on
 10 the special equipments. My aware of the Scorpion as a
 11 vehicle and also other STF it was known to me according
 12 also to the plan as going to be used for the show of force.
 13 So machine gun was there, I could not know because it was
 14 not indicated as the show of force, but I did – I can admit
 15 that Major-General Annandale could have known about it.
 16 MR NTSEBEZA SC: It's not the sort of
 17 weapon you hide.
 18 CHAIRPERSON: If it's going to be part of
 19 a show of force you wouldn't hide it anyway would you, you
 20 would show it.
 21 MR NTSEBEZA SC: I'm just trying to get
 22 to understand how the witness, being in charge of the
 23 entire operation, would not have noticed this Scorpion on
 24 the 14th. But let me say this, I'm told that JJJ194.18
 25 shows this Scorpion with this machine gun mounted on it on

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1 the 16th. Is there a clip of JJJ194.18? JJJ194.18. I want
 2 JJJ194.18 which shows this Scorpion with this –
 3 CHAIRPERSON: Are we going to see this
 4 clip? It looks as if the answer's no.
 5 MR NTSEBEZA SC: Anyway can we just show
 6 that clip –
 7 CHAIRPERSON: What we have on the screen
 8 at the moment is there's a legend which says clip 3 showing
 9 one machine gun mounted on truck, so if that clip is, the
 10 legend relating to that that's showing on the screen is it
 11 possible for us to see the actual clip itself? If it's
 12 going to take us any further.
 13 MR NTSEBEZA SC: Can we show the
 14 photographs please?
 15 CHAIRPERSON: Anyway are all these – I've
 16 never seen them before, are these new exhibits?
 17 MR NTSEBEZA SC: It's a new exhibit, Mr
 18 Chairman.
 19 CHAIRPERSON: All right well Ms Pillay
 20 will help us to label it.
 21 CHAIRPERSON: No, don't go ahead, we've
 22 got to label the exhibit first. We've got to try to keep
 23 some order here. Ms Pillay.
 24 MS PILLAY: Chair, I'm sorry, JJJ – I
 25 just need 30 seconds.

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1 CHAIRPERSON: Are we not in the HHH
 2 series at the moment? We've not seen it before, unless
 3 it's part of a series of things.
 4 MS PILLAY: It will be HHH55.
 5 COMMISSIONER HEMRAJ: Ms Pillay, what is
 6 194.18, what is the description of that?
 7 MR NTSEBEZA SC: We will come to that
 8 because this one, that 194.18 shows the Scorpion on the 16th
 9 of August.
 10 CHAIRPERSON: Now how do we describe this
 11 one HHH54, video clip of - well it says photographs.
 12 MR NTSEBEZA SC: These are selected
 13 photographs -
 14 CHAIRPERSON: Selected photographs –
 15 MR NTSEBEZA SC: - of the big gun mounted
 16 on the Scorpion.
 17 CHAIRPERSON: Machine gun on Scorpion.
 18 All right we've got that, are we going to be given a round
 19 tour of these various photographs or is one enough?
 20 MR NTSEBEZA SC: Now in that photograph
 21 there is the mounted machine gun. Do you see that,
 22 General?
 23 MAJOR-GENERAL MPEMBE: I see it,
 24 Chairperson.
 25 MR NTSEBEZA SC: But then there is also,

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1 in the circle on the windscreen, there is a machine gun or
 2 there is something protruding there which I'm told is a
 3 machine gun.
 4 CHAIRPERSON: Did you see this vehicle,
 5 are you able to confirm that what Counsel is putting is
 6 correct?
 7 MAJOR-GENERAL MPEMBE: Chairperson, I
 8 knew of the vehicles that they are there, but I did not see
 9 them. But I knew that Scorpion and also some of the
 10 vehicles like of the STF they were there for the purpose of
 11 show of force.
 12 CHAIRPERSON: But what Mr Ntsebeza is
 13 interested in he says that apart from the fact that on the
 14 rear of this vehicle there's a machine gun, he says there's
 15 also a firearm of some sort protruding from the front
 16 windscreen. Can you see there's a second ring, red ring in
 17 the photograph? Are you aware of that, can you help us on
 18 that or is that something that we will possibly learn from
 19 someone else or we may even be given some submission by the
 20 police to save time. Do you know about it?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 22 may not be in a position to help with any of those machine
 23 guns in the vehicle.
 24 CHAIRPERSON: Are we going to see the
 25 other selected shots now, Mr Ntsebeza?

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1 MR NTSEBEZA SC: Yes, Mr Chairman, if
 2 they can just be shown. There again the circles are
 3 indicative, you can actually see what appears to be the
 4 barrel of a machine gun.
 5 CHAIRPERSON: All right. Well let's see
 6 what the witness says about it. Do you agree with what Mr
 7 Ntsebeza said?
 8 MAJOR-GENERAL MPEMBE: Chairperson, I can
 9 see on the video all those protruding – what is it –
 10 equipment.
 11 CHAIRPERSON: He says they look like the
 12 barrels of guns.
 13 GENERAL MPEMBE: It will be better when
 14 the person can say it's the barrel of a gun because –
 15 CHAIRPERSON: You don't need this witness
 16 to prove that fact. It can be proved possibly even by way
 17 of admission subsequently.
 18 MR NTSEBEZA SC: Yes. Can we see more
 19 photographs?
 20 MR MATHIBEDI SC: Sorry, Mr Chairman, if
 21 it can help my colleague, we are prepared to admit that
 22 this vehicle was there on the 14th and the 16th.
 23 MR NTSEBEZA SC: Thank you.
 24 CHAIRPERSON: And are you prepared to
 25 admit that it had not only a machine gun protruding from

<p style="text-align: right;">Page 16074</p> <p>1 the back but it had the barrel of some other firearm 2 protruding from the windscreen, or is that something you 3 want to take instructions on? 4 MR MATHIBEDI SC: Mr Ntsebeza must take 5 instruction – 6 CHAIRPERSON: Okay that we can be told 7 later. Yes, Mr Ntsebeza what's the next point? 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: We're worried about time, 10 Mr Ntsebeza – 11 MR NTSEBEZA SC: No, we're getting there. 12 CHAIRPERSON: It sounds as if you've got 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 15 suggesting they're not normally co-operative but – 16 MR NTSEBEZA SC: We'll be done. With 17 that kind of concession from my friend, Advocate Mathibedi 18 I think we are getting there. Now you know as head of 19 operations in this I have to put it to you - firstly I'm 20 told that what we have there is a 20 millimetre machine gun 21 and sometimes because of its fire power some people refer 22 to it as a canon. Now, would you agree with that? 23 [12:47] MAJOR-GENERAL MPEMBE: Chairperson, I 24 have already indicated that there is nothing that I will 25 agree on machineguns because I was not aware of. The only</p>	<p style="text-align: right;">Page 16076</p> <p>1 STF brought machineguns with them, but he knew that General 2 Annandale had come and he'd brought presumably some 3 equipment with him in order to do what had to be done. Is 4 that a fair summary? 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson. 7 CHAIRPERSON: But you've seen machineguns 8 in your time? 9 MAJOR-GENERAL MPEMBE: As a police 10 officer I know machineguns. 11 MR NTSEBEZA SC: Yes, and assuming you 12 were aware – I'm simply saying would, just by looking at 13 that one in the various photographs, this is the kind of 14 machinegun that uses various types of ammunition, including 15 solid rounds, explosive rounds, armour-piercing rounds, 16 incendiary rounds? Looking at that, would that be the kind 17 of – 18 CHAIRPERSON: Are you able to help us on 19 that? 20 MAJOR-GENERAL MPEMBE: Chairperson, I 21 only see the protruding, what is it? I don't see the whole 22 machinegun. 23 CHAIRPERSON: Yes, but I take it that the 24 SAPS in response to a query from Mr Ntsebeza's side will be 25 able to provide the necessary information.</p>
<p style="text-align: right;">Page 16075</p> <p>1 equipment of the STF that I was aware of, it was the 2 Scorpion vehicle and the others, and when it comes to 3 specialised units, it's my testimony before this Commission 4 that it was one of the reasons why Major-General Annandale 5 was of an assistance to me because he's in charge of that 6 specialised unit. 7 CHAIRPERSON: You can't tell us if it was 8 a barrel, but it sounds from what we've heard as if the 9 police will be able to take, counsel will be able to take 10 instructions and make the necessary admission. So I don't 11 know if we need spend much more time on this. You'll get 12 the information you want on record sooner or later, Mr 13 Ntsebeza. 14 MR NTSEBEZA SC: Yes, Mr Chairman, I just 15 wanted to understand, General, are you saying that you 16 don't know anything about machineguns generally, or are you 17 saying you do not know that this one was there? We accept 18 the concession that has been made on behalf of the SAPS 19 that it was there on the 14th and the 16th, but I just want 20 to know, when you say you don't know anything about 21 machineguns, are you saying as a trained policeman at that 22 rank, you don't know that – 23 CHAIRPERSON: I don't think he says that. 24 I don't think he's suggesting he's never seen a machinegun 25 in his life, but what he says is he doesn't know that the</p>	<p style="text-align: right;">Page 16077</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 MR NTSEBEZA SC: Now you see, why I'm 4 taking a little bit of time with you on this is because I 5 want to put it to you, which I do, that the kind of 6 armoury, including this machinegun, that was brought to the 7 various scenes at the koppie, etcetera, etcetera, are the 8 kind of armoury that would be used more in counter- 9 terrorism engagements than for crowd management. Would you 10 agree with that? 11 CHAIRPERSON: The witness said he doesn't 12 know what weaponry was brought to the scene, but do you 13 know anything about counter-terrorism activities? If the 14 weapons brought by the STF, included in the arsenal they 15 brought were the weapons of the kind that Mr Ntsebeza has 16 described, would you agree with the proposition that that's 17 the kind of weaponry you use in counter-terrorism 18 operations, or is that something that you can't help us on? 19 MAJOR-GENERAL MPEMBE: Chairperson, I 20 would say in counter-terrorisms there were many weapons 21 used, including the machineguns, but I need to explain on 22 the Marikana. I could have known about it if it was 23 mentioned in the plan which I approved. So that's why I'm 24 saying that I did not know that we do have a machinegun 25 there.</p>

<p style="text-align: right;">Page 16078</p> <p>1 CHAIRPERSON: So are you in effect saying 2 that the plan did not envisage the use of machineguns in 3 order to deal with the situation that you had encountered? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 MR NTSEBEZA SC: Let me put it – 7 CHAIRPERSON: Your learned friend is 8 going to intervene. 9 MR NTSEBEZA SC: Oh, sorry. 10 CHAIRPERSON: Maybe to assist you, or 11 maybe not. 12 MR NGALWANA: Mr Chairman, in dealing 13 with the concerns of my colleagues, one of the aspects that 14 we are going to deal with is we'll provide an affidavit 15 that these machineguns were not functionally on those days. 16 CHAIRPERSON: So they were there more for 17 show than anything else, show of force. Yes, but it sounds 18 as if the witness can't help us. When you've seen and got 19 the affidavit, you can look at it and if you don't agree 20 with it, you can make further investigations, but let's 21 proceed for the moment. I don't think this witness can 22 help us very much on this issue. Am I right? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR NTSEBEZA SC: Mr Chairman, can I just</p>	<p style="text-align: right;">Page 16080</p> <p>1 say what they will be saying, this machinegun, would you 2 agree it's not the kind of weapon you'd carry to, or to use 3 or for deployment in crowd control situations? In other 4 words, you don't say when I'm going to control a crowd, let 5 me bring the machinegun, 22, 20mm shotgun, machineguns. 6 Would you agree with that? 7 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 8 In dispersing the crowd you cannot even use the 9mm because 9 there are equipments that are used in crowd management. 10 MR NTSEBEZA SC: Yes, and I'm sure now 11 that you say it was the responsibility of your colleague 12 and whatever, you must be wondering – I'm talking about 13 you, in spite of what my learned friend has said – you must 14 be wondering in your mind what was that thing doing there; 15 why was it brought in the first place on the 14th, let alone 16 on the 16th. 17 CHAIRPERSON: Were you wondering? Are 18 you wondering? What's the answer to that? 19 MAJOR-GENERAL MPEMBE: Chairperson, I 20 don't know "wondering" of not knowing about a machinegun, 21 but I did know about the Scorpion and the Casspirs, but I 22 did not, it's true that I did not know about the 23 machineguns on the Scorpions, but knowing very well that 24 you don't use such weapons in crowd management, and also 25 the other weapons which I've already mentioned, one would</p>
<p style="text-align: right;">Page 16079</p> <p>1 take instructions? 2 CHAIRPERSON: Of course. 3 MS PILLAY: Chair, while Mr Ntsebeza is 4 taking instructions, may I ask that HHH55 be marked as a 5 bundle of documents, a bundle of photographs and 6 screenshots showing the STF vehicle? You'll see that the 7 document has several – 8 CHAIRPERSON: I've written down selected 9 stream of STF machine of, photographs of STF machinegun on 10 Scorpion, and together with bundle of other photographs? 11 MS PILLAY: They're photographs and 12 screenshots. 13 CHAIRPERSON: Sorry? 14 MS PILLAY: Screenshots. 15 CHAIRPERSON: Okay, I see. So actually 16 the whole thing is actually a bundle of – that's the way to 17 do it; it's a bundle of selected screenshots of this STF – 18 MR NTSEBEZA SC: Indeed. 19 CHAIRPERSON: - Scorpion and associated 20 weaponry. Can I call it that? 21 MR NTSEBEZA SC: Indeed, Chairman. 22 General, you will know that earlier on we had talked about 23 your experience in crowd management, this, that, and the 24 next thing. The only thing I want to put to you, whether 25 or not the affidavits that SAPS says they will be providing</p>	<p style="text-align: right;">Page 16081</p> <p>1 say that that's why I could not know that machineguns were 2 there. 3 MR NTSEBEZA SC: Mr Chairman, you'll be 4 pleased to know that I kept my promise, so 1 minute, 2 5 minutes to 1, and that's the end of my cross-examination of 6 the witness. 7 CHAIRPERSON: You always keep your 8 promises, Mr Ntsebeza. It's nice to see. So that's the 9 end of your questions. Now the next – 10 MR NTSEBEZA SC: That's the end of my 11 questions. 12 CHAIRPERSON: Yes, well we are going to 13 adjourn now until Monday 9 o'clock. I gather that there 14 will then be cross-examination on behalf of AMCU. Is that 15 correct? 16 MR NTSEBEZA SC: Yes, Mr Chairman, can I 17 just place one thing on record I've just been instructed 18 about, and that's in relation to JJJ205. It appears that 19 yesterday in re-examination of Colonel Scott my colleague, 20 Adv Semenya, referred to exhibit JJJ205, which is a video 21 clip, as emanating from the Socio-Economic Rights 22 Institute, SERI. I'm told that that is not correct. It is 23 so that SERI has provided similar CCTV material to the 24 evidence leaders, but it was not the footage identified as 25 JJJ205. Enquiries have been made and I am instructed that</p>

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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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