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 147 12 NOVEMBER 2013 PAGES 16207 TO 16401



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



	Page 16207		Page 16209
1	[PROCEEDINGS ON 12 NOVEMBER 2013]	1	MR MPOFU: Okay, we'll do so in due
2	[09:16] CHAIRPERSON: The Commission resumes.	2	course. In any event, I just want to tell you that one of
3	Major-General, you're still under oath.	3	the approaches that my team, or the people that I represent
4	WILLIAM MPEMBE: Correct, Commissioner.	4	are taking in this matter is that there were, the overall
5	CHAIRPERSON: Mr Mpofu.	5	approach that we are taking is that there were three, what
6	CROSS-EXAMINATION BY MR MPOFU: Thank	6	we call game changers, or turning points in this saga. The
7	you, Chairperson. Good morning, General.	7	first one is one that doesn't concern you because you were
8	MAJOR-GENERAL MPEMBE: Good morning,	8	no longer, we are not there yet, which is the alleged
9	Advocate.	9	attack by NUM on the strikers, which caused them to go to
10	MR MPOFU: General, I'm just going to	10	the koppie in the first place and to start arming
11	spend a few minutes just to deal with a broad outline of	11	themselves. That's what we, we call that the first game
12	where I'll be going with you, and hopefully those minutes	12	changer, but I'm not going to ask you much about that. I'm
13	will save us a couple of hours, just so that we are	13	sure you heard about it, but it's not, you were not there.
14	together. Okay?	14	You did hear about it, right?
15	MAJOR-GENERAL MPEMBE: That's correct,	15	MAJOR-GENERAL MPEMBE: Correct,
16	Chairperson.	16	Chairperson, I did hear about it.
17	CHAIRPERSON: I think that's a hope we	17	MR MPOFU: Yes, the second game changer
18	all share, Mr Mpofu.	18	is the killings that happened on the 13th, particularly the
19	MR MPOFU: Thank you, Chairperson.	19	killings of the police, of the two policemen and the injury
20	General, the events that we're going to discuss are, they	20	of one, and that is a matter in which you were essentially
21	involve quite serious issues, you would agree? Agree? You	21	involved, correct?
22	agree?	22	MAJOR-GENERAL MPEMBE: Both as an
23	MAJOR-GENERAL MPEMBE: Maybe if I may get	23	operational and overall commander, correct, Chairperson.
24	clarity, are you talking about what happened on the 13th	24	MR MPOFU: CJOC, ja, and the third game
25	until the 16th?	25	changer is the political interference which happened on the
	Page 16208		Page 16210
1	MR MPOFU: Yes, that's the period I'm	1	15th, which we are going to show influenced the decision to
2	talking about.	2	go tactical, to use your language, particularly on the 16th.
3	MAJOR-GENERAL MPEMBE: Correct,	3	You understand?
4	Chairperson, I agree.	4	MAJOR-GENERAL MPEMBE: I understand, but
5	MR MPOFU: Thank you, and that period	5	I don't know about political interference.
6	which we've just defined is a period when you were in	6	MR MPOFU: Yes, well that alone is an
7	charge, correct?	7	issue that I'm going to canvass with you at some stage.
8	MAJOR-GENERAL MPEMBE: Correct,	8	Now let's therefore start with just generally your
9	Chairperson.	9	responsibilities as CJOC. I think you've already answered
10	MD MDOFIL: And in that pariod 40 lives	10	the questions that or let me just sou this, sport from
11	MR MPOFU: And in that period 40 lives		the questions that – or let me just say this; apart from
11 12	were lost, five on the 13th, one on the 14th, and 34 on the	11	you being CJOC, you were also the deputy provincial
12	were lost, five on the 13th, one on the 14th, and 34 on the 16th, correct?	11 12	you being CJOC, you were also the deputy provincial commissioner, correct?
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1	Services. Operational Services, and I am still,	1	Now on the 13th, let's start with the 13th, it's
2	Chairperson, because I hear there is a speculation that I'm	2	your evidence that General Mbombo gave you a kind of wide-
3	a cluster commander. I'm still a deputy provincial	3	ranging instruction, which included dispersal and arrest of
4	commissioner.	4	people, correct?
5	MR MPOFU: Ja, no, your position can be	5	MAJOR-GENERAL MPEMBE: As stated in the
6	confusing, General. For example one of the things I'm	6	OB, correct, Chairperson.
7	going to canvass is that although you were CJOC, at some	7	MR MPOFU: Yes, and at that stage you had
8	stage you were not really in charge of the situation and	8	only 121 forces on the ground, correct?
9	you were merely a token leader, holding the title without	9	MAJOR-GENERAL MPEMBE: Plus or minus.
10	the responsibilities. What would you say to that?	10	MR MPOFU: Plus-minus, yes. You might
11	MAJOR-GENERAL MPEMBE: I hear it for the	11	not remember the exact number, but ja. Do you think it
12	first time –	12	would have been possible to carry out that instruction with
13	CHAIRPERSON: Do you mean without	13	about 120 or so policeman, supposedly to arrest and disarm
14	responsibilities, or do you mean without the authorities?	14	the thousands of people who were at the koppie?
15	MR MPOFU: Thank you, Chairperson, yes,	15	MAJOR-GENERAL MPEMBE: Chairperson,
16	without the authorities, would be more correct, yes.	16	thousands of people were not at the koppie at that time,
17	Without the authorities that goes with the position of	17	and I was not at the koppie on the 13th, on Monday.
18	CJOC.	18	MR MPOFU: No, that I accept, but your
19	CHAIRPERSON: You're going to be	19	evidence is that General Mbombo said you must arrest and
20	questioned about that. I can see you're nodding your head.	20	disarm people, like those people who were coming from Karee
21	It looks as if you're not going to agree with those	21 22	and people at the koppie. Isn't that your evidence? MAJOR-GENERAL MPEMBE: Firstly relates to
22 23	propositions, but anyway, Mr Mpofu at the moment is giving	22	MAJOR-GENERAL MPEMBE: Firstly relates to those that were at the railway line and going to the
23 24	you an outline – MR MPOFU: Yes.	23 24	koppie, but she did not say on Monday.
24	CHAIRPERSON: - and us as well, of the	24	MR MPOFU: No, I'm sorry, she gave you an
20		20	witt will of 0. No, this sorry, she gave you un
	Page 16212		Page 16214
1	Page 16212 ground he's going to cover in the cross-examination. So	1	Page 16214 instruction to arrest people, including the people at the
1 2	5	1 2	
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	5 1/045		D 4/047
1	Page 16215 120 people?	1	Page 16217 had at that stage were POP and TRT, correct?
2	COMMISSIONER HEMRAJ: But Mr Mpofu, if	2	MAJOR-GENERAL MPEMBE: No, Chairperson.
3	you –	3	MR MPOFU: Okay, there was also –
4	MAJOR-GENERAL MPEMBE: Chairperson, it's	4	MAJOR-GENERAL MPEMBE: I just want to
5	an assumption, question -	5	explain it –
6	COMMISSIONER HEMRAJ: Mr Mpofu, if you	6	MR MPOFU: Ja, no let me –
7	are saying that it's not germane only to the Monday, then	7	MAJOR-GENERAL MPEMBE: I just want to
8	surely that question must take into account that additional	8	explain my no. Nobody considered it feasible, hence I
9	police were brought in?	9	change a cap of being an operational commander. It is my
10	MR MPOFU: No, that's exactly why I	10	testimony to this Commission that I took an operational
11	asked, I've ruled out the other days. I'm saying if you	11	decision and I applied situational appropriateness.
12	say it's possible it's Monday, Tuesday, whatever, let's now	12	MR MPOFU: Yes. No, that may well be
13	confine ourselves just to the Monday. That's why I	13	S0 -
14	prefaced the question like that. Ja, so limiting ourselves	14	CHAIRPERSON: I'm sorry, Mr Mpofu, are
15	to the question of Monday, which you have said it's one of	15	you busy still with the question of the adequacy of the
16	the possibilities, what's your answer?	16	forces, the members at his disposal, is that what -
17	MAJOR-GENERAL MPEMBE: Chairperson, it's	17	MR MPOFU: Yes, in fact I –
18	difficult for me to speculate.	18	CHAIRPERSON: Can I just –
19	MR MPOFU: Well, I will speculate for	19	MR MPOFU: Sorry, Chairperson –
20	you. That would have been an impossible instruction to	20	CHAIRPERSON: Can I just – in the police
21	carry out. What's your comment?	21	occurrence book FFF25 we have the instruction you received
22	MAJOR-GENERAL MPEMBE: No, Chairperson,	22	from Lieutenant-General Mbombo as entry number 37 on the
23	in the sense the General Mbombo gives a strategic	23	13th of August at 12:45, and this is how it reads - I don't
24	instruction; I need to operationalise that instruction	24	know if it is going to be put up for us, but it's exhibit
25	according to the circumstances and according to the means	25	FFF25, it's the page relating to the 13th of August and it's
	Page 16216		Page 16218
1	that I have, taking into account all legal aspects of crowd	1	entry number 37. There it is; it's on the screen now. Now
2	management. She did not in any way prescribe how, when,	2	it reads as follows, "JOC visit," this is a note in the
3	and how to do it. That has to be decided by the overall	3	handwriting I take it of Lieutenant-General Mbombo, signed
4	commander. MR MPOFU: Okay, I promise vou I'm not	4	by her, "and as shown, the different points of gathering,"
5		5	I take it, it means shown by different points of gathering, "the planning has been adjusted to disperse the gatherings.
6	going to ask you to speculate a lot, but if that	6	
7 8	instruction had to be carried out on Monday, you as the operational commander, what would you have done?	7 8	All police officials on duty to conduct searches and confiscate all dangerous weapons. All those who can be
		0 9	identified in the footage should be picked up and
9 10	MAJOR-GENERAL MPEMBE: Chairperson, it's exactly what I did, to negotiate, apply situational	9 10	deployment to key strategic areas should be enhanced. In
11	appropriateness.	11	terms of our policy on crowd management, all members to
12	MR MPOFU: At the koppie?	12	conduct themselves within the limits of this policy, unless
12	MAJOR-GENERAL MPEMBE: The same, and I	12	the situation dictates otherwise; ensure that peace
14	said it also to the protesters at the railway line, and	14	prevails." Signed Lieutenant-General Mbombo. Those were
15	while in the process assembling the required resources, as	15	the instructions you received?
	we did.	16	MAJOR-GENERAL MPEMBE: Correct,
16			Chairperson.
16 17		17	
17	MR MPOFU: The point I'm really driving	17 18	
17 18	MR MPOFU: The point I'm really driving at is this, and I'd like your comment – can I continue,	18	CHAIRPERSON: Right, and the reference to
17 18 19	MR MPOFU: The point I'm really driving at is this, and I'd like your comment – can I continue, Chairperson?	18 19	CHAIRPERSON: Right, and the reference to the different points of gathering in the first line I take
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Page 16219 Page 16219 2 Charperson. all police difiais on duty, can you give us an estimate as to the rumber of 5 3 CHARPERSON: Right, so the syntree goes 4 on. "The planning has been adjusted to dayserve the 4 operation" 5 gathering, "sin therefore you ware instructed liner als to 5 SMADR GENERAL MPEMBE: I have to consult the XPSTs that awas on Monday. 7 correct, text tr 7 CHARPERSON: Weil, perhaps you can do that after 9 indust the kappe, correct, Chairperson, Hill 8 MADR-GENERAL MPEMBE: I was not solution of uping the tea adjournment, you can 10 CHARPERSON: Right, then she goes on, 10 MADR-GENERAL MPEMBE: Vex. 11 CHARPERSON: Weil, perhaps you can do that after 16 MADR-GENERAL MPEMBE: Vex. 12 contrigate all diagenous waspons. "This refers to the 17 MadDR-GENERAL MPEMBE: Nation of this tage give us a 13 perple. the methers on the sorperation: commander -10 16 MADR-GENERAL MPEMBE: Nation of the tage. 14 wata you do that you were made the operational commander -10 16 MADR-GENERAL MPEMBE: Nation of thi			1	
2 Chaliperson. CHAIRPERSON: Right, so the sentence goes or. The planning has been adjusted the depense the geople, who were under your command at that stage in the operation? correct, just H2 correct, just H2 correct, inst H2 correct, H4 for H2 correct, H4 for H4	1		1	5
3 GRAMERESSON: Right soft the sentence goes 3 papelengis papae				
4 operation? 5 gehening insolon adjusted to disports the 5 gehening insolon adjusted to disports on the kopie. 7 contract, kent it? 6 disperse any gehening of stokers on the kopie. 7 MAUGR-GENERAL MPEMBE: 14 locid of GENERAL MPEMBE: 15 or adjournment, you can 16 be adjournment or during the tea adjournment, you can 17 value in a construct starches and 18 people, the members of the service who were put under your 19 construct when you were made the operational commander of 10 of MAUGR-GENERAL MPEMBE: 16 of MAUGR-GENERAL MPEMBE: 17 contract when you were made the operational commander of 16 of MAUGR-GENERAL MPEMBE: 17 of disals on duly usere medic the operation all police 16 of MAUGR-GENERAL MPEMBE: 17 of disals on duly usere medic the operation all police 17 of MAUGR-GENERAL MPEMBE: 17 of MAUGR-GENERAL MPEMBE: 17 of MAUGR-GENERAL MPEMBE: 18 the trapports of the service pair under your command for 18 the purposes of the operation all police officials on 10 of MAUGR-GENERAL MPEMBE: 17 of MAUGR-GENERAL MPEMBE: 17 of MAUGR-GENERAL MPEMBE: 17 of MAUGR-GENERAL MPEMBE: 18 of the operation is that correct? 19 (07.3) MAUGR-GENERAL MPEMBE: 19 (07.3) MAUGR-GENERAL MPEMBE: 10 of MAUGR-GENERAL MPEMBE: 11 of MAUGR-GENERAL MPEMBE: 11 of MAUGR-GENERAL MPEMBE: 11 of MAUGR-GENERAL MPEMBE: 11 or adverse made the operation is that correct? 11 of MAUGR-GENERAL MPEMBE: 11 of MAUGR-GENERAL MPEMBE: 11 of MAUGR-GENERAL MPEMBE: 12 of MAUGR-				
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	Page 16223		Page 16225
1	succeeded.	1	MAJOR-GENERAL MPEMBE: There were a lot
2	MR MPOFU: You have, you have succeeded,	2	of members of the police that were there that were being
3	Chairperson, and even more helpful would be to go to slide	3	mobilised.
4	L42. Yes, and before we deal with slide 42, you knew,	4	MR MPOFU: General –
5	possibly not from personal knowledge but let me say the	5	MAJOR-GENERAL MPEMBE: The STF –
6	police knew that on the previous day between 2 000 and	6	MR MPOFU: I'm sorry, sorry to cut you.
7	3 000 people had – or rather in the past two days, 11th and	7	MR NGALWANA: Sorry, Mr Chairman. Mr
8	the 12th, groups of about 2 000 to 3 000 people had gathered	8	Chairman –
9	at the koppie, correct?	9	CHAIRPERSON: [Microphone off, inaudible] answer.
10	MAJOR-GENERAL MPEMBE: It is correct,	10	MR MPOFU: Yes. No, I thought –
11	Chairperson. Me, in particular, I was not there, I was on	11	CHAIRPERSON: [Microphone off, inaudible] let him
12	leave.	12	finish.
13	MR MPOFU: Yes. No, no, I accept that.	13	MR MPOFU: I'm sorry, yes. Ja, please
14	I'm just saying it was known to the police that the trend	14	answer the question.
15	on the 11th and the 12th, there were gatherings of about	15	MAJOR-GENERAL MPEMBE: The mobilisation
16	2 000 to 3 000 people. Okay, now slide 42 says initially	16	started before the incident of the 13th.
17	there were 121 members and then it says an additional 96	17	MR MPOFU: Is that your answer?
18	were deployed after the incident with the protesters and	18	MAJOR-GENERAL MPEMBE: Correct,
19	that's why I was dealing with before the incident, which is	19	Chairperson.
20	the 121 which is more or less what you were saying about	20	MR MPOFU: Do you still remember what the
21	the 100 or so, correct?	21	question was?
22	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	22	MAJOR-GENERAL MPEMBE: Particularly with
23	MR MPOFU: And by the time you were given	23	the STF.
24	that instruction the other 96 had not been deployed because	24	MR MPOFU: Yes, so does that answer
25	it was before the incident, correct?	25	really deal with the STF? Please answer the question,
	Dogo 14334		Daga 14224
1	Page 16224 MAJOR-GENERAL MPEMBE: Yes, Chairperson.	1	Page 16226 General.
1 2	6	1 2	-
	MAJOR-GENERAL MPEMBE: Yes, Chairperson.		General.
2	MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR MPOFU: Right. Now, what I'm going to	2	General. MAJOR-GENERAL MPEMBE: The STF were
2 3	MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR MPOFU: Right. Now, what I'm going to argue is that the, what can really be described as the	2 3	General. MAJOR-GENERAL MPEMBE: The STF were called by General Annandale as a specialised head. He
2 3 4	MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR MPOFU: Right. Now, what I'm going to argue is that the, what can really be described as the deluge of the other hundreds and hundreds of additional	2 3 4	General. MAJOR-GENERAL MPEMBE: The STF were called by General Annandale as a specialised head. He might have an idea but at that time I might not have an
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1	Page 16227 Annandale and I think the person who called General	1	Page 16229 MR MPOFU: Thank you, thank you for that
2	Annandale could give this Commission a correct answer.	2	
3	MR MPOFU: Who is that person?	3	MAJOR-GENERAL MPEMBE: - but for the fact
4	MAJOR-GENERAL MPEMBE: I don't know but	4	that the protesters refused to hand over the weapons, no.
5	the Provincial Commissioner might know who, because the	5	MR MPOFU: Yes, no, we'll get there. All
6	communication was done through the Provincial Commissioner.	6	I'm saying is that your motivation, your admirable
7	CHAIRPERSON: General Mbombo will give evidence,	7	motivation of going there and given the fact that you know
8	we'll ask her but it's also possible we can save time by	, 8	the language paid dividends because in the end you had to
9	asking the police if they can get that information for us	9	speak to them in isiZulu and they were speaking in Xhosa
10	and give it to us from the bar, as it were. That'll save	10	and Fanagolo but you understood each other correct?
11	time but I think you're right, Lieutenant-General Mbombo	11	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
12	should be able to give us the information anyway but it	12	MR MPOFU: And if you had, I mean we can
13	will save time perhaps if, even before she comes, the	13	- once again I don't want to get too much into the area of
14	police legal team provide us with that information.	14	speculation but had you not taken that decision and sent
15	MR NGALWANA: Thanks, Mr Chairman.	14	Brigadier Calitz and the interpreter was not made
16	CHAIRPERSON: I'm sure they'll be willing to do	16	available, that there could have been a problem at least
17	SO.	17	from his point of view in doing what you did, which was to
18	MR NGALWANA: We will do that, Mr	18	make the appeals that you did and interact quite
19	Chairman.	19	extensively with the protesters, correct?
20	MR MPOFU: Right. One of the key and	20	MR NGALWANA: Sorry, Mr Chairman –
21	possibly admiral decisions that you took was, despite the	21	MAJOR-GENERAL MPEMBE: No, Chair.
22	fact that you could have chosen to stay in the JOC and send	22	MR NGALWANA: Okay.
23	Calitz, Brigadier Calitz, you decided to go yourself,	23	MR MPOFU: Ja, I prefer the answer from
24	correct?	24	the witness.
25	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	25	CHAIRPERSON: I have a problem with the question,
	Page 16228		Dama 1/000
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1	MR MPOFU: And the key reason that you	1	the question is of course speculative and it's probably not
2	MR MPOFU: And the key reason that you decided not to send Brigadier Calitz but to go yourself was	1 2	the question is of course speculative and it's probably not very profitable to speculate but if Brigadier Calitz had
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2 3 4	MR MPOFU: And the key reason that you decided not to send Brigadier Calitz but to go yourself was because you thought that you understood the language and the culture of the people involved, correct?	2 3 4	the question is of course speculative and it's probably not very profitable to speculate but if Brigadier Calitz had gone there with, say, Lieutenant-Colonel Merafi or one of the other senior officers with him who was able to speak
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1	Page 16231 had been, the two important decisions you made might not	1	Page 16233 and you did listen to them as well.
2	have been made. That's what he says. I take it the answer	2	CHAIRPERSON: I think listened to, he means comply
3	to that has got to be yes, it might not have happened or it	3	with the request. He doesn't mean hear.
4	might have happened. I mean, is that right?	4	MR MPOFU: Yes, that's exactly what I'm
5	MAJOR-GENERAL MPEMBE: Correct,	5	clarifying. So you said, they said to you, we'll give you
6	Chairperson.	6	these arms but we'll give you at the koppie when you can
7	MR MPOFU: Yes. Well, and the	7	have access to all the arms, correct, and you listened?
8	Chairperson was speculating, for example, that had you not	8	MAJOR-GENERAL MPEMBE: Yes, I did listen,
9	been there Lieutenant-Colonel Merafi could have done the	9	Chairperson.
10	interpretational services, which is correct but we know	10	MR MPOFU: And they also said to you,
11	what he would have done about the actual – whether to allow	11	Baba, we're not fighting with you. They said something
12	the -	12	between seven and ten times, we're not fighting, we're not
13	CHAIRPERSON: No – no, hang on. That's not a good	13	fighting, we're not fighting, and you listened. Correct?
14	point, Mr Mpofu. We know what Colonel Merafi would have	14	MAJOR-GENERAL MPEMBE: I listened and I
15	done.	15	also said I'm not fighting with them but the problem that I
16	MR MPOFU: Yes, that's what I'm saying.	16	had is the carrying of dangerous weapons.
17	CHAIRPERSON: No – no, but this was on the basis	17	MR MPOFU: Ja, don't go ahead of me,
18	that if he'd sent Brigadier Calitz along we don't know what	18	General, if you may. The third thing they said to you was
19	Brigadier Calitz would have done. Brigadier Calitz might	19	that they were carrying those arms in order to protect
20	have agreed with Colonel Merafi or he might have taken the	20	themselves against the NUM and mine security, correct, who
21	stance independently which the witness took. We're in the	21	had attacked them previously, correct?
22	realms of speculation and inasmuch as Brigadier Calitz	22	MAJOR-GENERAL MPEMBE: They said so to
23	didn't go, I'm not sure if there's any profit to be derived	23	me, even though I did not agree with them on that point.
24	from trying to answer the question what would he have done	24	MR MPOFU: Well, did you know whether or
25	if he had gone, but anyway I won't stop you from following	25	not the NUM had attacked them or the security had attacked
	Page 16232		Page 16234
1	Page 16232 the line. I think I know where you're going but –	1	Page 16234 them? How could you to agree when you were not even there
1 2		1 2	0
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1	Page 16235	1	Page 16237
1	sure that is your duty as the operational commander of the	1	statement which is exhibit HHH3 amplifying what you said in
2	police there on the scene at that time?	2	Para 18 of the statement which I have just read you said
3	MAJOR-GENRAL MPEMBE: Correct,	3	that "I paused here to point out that Lieutenant-Colonel
4	Chairperson.	4	Merafe didn't agree with my approach, preferred that those
5	MR MPOFU: Yes, so that must mean that	5	protesters be dispersed and arrested right there and then.
6	you considered the possibility that they might be attacked	6	I maintained it would be unwise to arrest and disperse them
7	from which they might need your protection which you	7	at that time" Am I correct in thinking that that means
8	provided, correct?	8	that you communicated that to Merafe? You didn't just make
9	MAJOR-GENERAL MPEMBE: Definitely	9	the decision in your head to allow them to go and escort
10	correct, Chairperson.	10	them, you communicated that decision to Lieutenant Merafe,
11	MR MPOFU: Yes.	11	is that correct?
12	MAJOR-GENERAL MPEMBE: Chairperson, I	12	MAJOR-GENERAL MPEMBE: Correct,
13	just want to add definitely correct if they gave over the	13	Chairperson, to all the officers but not to the protestors,
14	weapons to me.	14	to the officers but not to the protesters.
15	MR MPOFU: Okay, anyway we'll come back	15	MR MPOFU: Thank you. Thanks,
16	to that. Now the issue is when you spoke to your	16	Chairperson. Yes, no I think we understand each other
17	commanders and then you came back to the strikers you did	17	correctly. In other words you told the commanders that
18	not tell them that you had decided that you would escort	18	you're going to let them go, correct?
19	them to the koppie, correct?	19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
20	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	20	MR MPOFU: And Merafe disagreed with you,
21	MR MPOFU: You also did not tell them	21	correct?
22	that they should not go anywhere near any settlement,	22	MAJOR-GENERAL MPEMBE: Lieutenant-Colonel
23	residential settlement, correct?	23	Merafe disagreed with me.
24	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	24	MR MPOFU: Well otherwise known as Merafe
25	MR MPOFU: Now in operations of this kind	25	to me, ja. And did you –
20		25	
	Page 16236		Page 16238
1	Page 16236 do you know that communication is very paramount, correct?	1	Page 16238 CHAIRPERSON: Sorry to interrupt you, can
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	Page 16239		Page 16241
1	wrong when he says –	1	Chairperson. But you decided not to communicate that
2	MAJOR-GENERAL MPEMBE: The stun grenade –	2	decision to the strikers, correct?
3	CHAIRPERSON: - that he had advised you	3	MAJOR-GENERAL MPEMBE: Correct,
4	that stun grenades should be used?	4	Chairperson.
5	MAJOR-GENERAL MPEMBE: Correct,	5	MR MPOFU: Despite the fact that you and
6	Chairperson. I also said it in my supplementary statement.	6	I have agreed communication in these situations and knowing
7	CHAIRPERSON: Yes, yes, I understand.	7	what each side is intending to do is paramount?
8	But the point is where he says that the General told us to	8	MAJOR-GENERAL MPEMBE: I didn't
9	let them go, that's correct. In other words - I take it	9	understand each side intending to do.
10	Baloyi wasn't one of the commanders, he was only a	10	MR MPOFU: No.
11	lieutenant.	11	MAJOR-GENERAL MPEMBE: Maybe you an and
12	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	12	maybe clarify it for that way.
13	CHAIRPERSON: Yes and in Merafe's	13	MR MPOFU: No, communication is a two way
14	statement which is exhibit GGG15 in Para 17 he says "when I	14	thing isn't it? If you say communication is paramount it
15	saw the miners were not going to listen to Major-General	15	means they say something and you give them information as
16	Mpembe and lay down their weapons I spoke to the General	16	well, it's the nature of communication, correct?
17	and informed him that we should disarm the miners and stop	17	MAJOR-GENERAL MPEMBE: In that sense
18	them from continuing seeing they were heading to the	18	correct, Chairperson.
19	direction of the informal settlement." Well I'm not sure	19	MR MPOFU: Yes, but you decided to
20	about that, we won't debate that at the moment. "And they	20	withhold the information that you had just shared with your
21	were very aggressive. Major-General Mpembe did not agree	21	commanders from the strikers, correct?
22	with me and other officers and said he doesn't want another	22	MAJOR-GENERAL MPEMBE: Correct,
23	Tatane incident which means he didn't us to confront the	23	Chairperson.
24	people. I informed Major-General Mpembe that I do not	24	COMMISSIONER HEMRAJ: But, Mr Mpofu, was
25	agree with him." And then later on in Para 18 he says	25	there sufficient opportunity to convey that to the strikers
	Page 16240		Page 16242
1	Page 16240 "Major-General Mpembe instructed us to follow the miners on	1	Page 16242 because when the General started counting the strikers then
1 2		1 2	
	"Major-General Mpembe instructed us to follow the miners on		because when the General started counting the strikers then
2	"Major-General Mpembe instructed us to follow the miners on foot and he was also walking with them. He further	2	because when the General started counting the strikers then started to move, isn't that so?
2 3	"Major-General Mpembe instructed us to follow the miners on foot and he was also walking with them. He further instructed POP members with two Nyalas to go to the front	2 3	because when the General started counting the strikers then started to move, isn't that so? MR MPOFU: Well that's even worse. Okay
2 3 4	"Major-General Mpembe instructed us to follow the miners on foot and he was also walking with them. He further instructed POP members with two Nyalas to go to the front of the march and stop them from entering the informal	2 3 4	because when the General started counting the strikers then started to move, isn't that so? MR MPOFU: Well that's even worse. Okay let's go there. So instead of saying to the strikers look
2 3 4 5	"Major-General Mpembe instructed us to follow the miners on foot and he was also walking with them. He further instructed POP members with two Nyalas to go to the front of the march and stop them from entering the informal settlement." Do you agree with that?	2 3 4 5	because when the General started counting the strikers then started to move, isn't that so? MR MPOFU: Well that's even worse. Okay let's go there. So instead of saying to the strikers look I've decided that we're going to escort you, you started
2 3 4 5 6	"Major-General Mpembe instructed us to follow the miners on foot and he was also walking with them. He further instructed POP members with two Nyalas to go to the front of the march and stop them from entering the informal settlement." Do you agree with that? MAJOR-GENERAL MPEMBE: Correct,	2 3 4 5 6	because when the General started counting the strikers then started to move, isn't that so? MR MPOFU: Well that's even worse. Okay let's go there. So instead of saying to the strikers look I've decided that we're going to escort you, you started counting, correct?
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	Page 16243		Page 16245
1	What do you say –	1	now decided to escort you to the koppie. That was the
2	MAJOR-GENERAL MPEMBE: No, Chairperson.	2	opportunity. Do you accept that?
3	The first thing, they did not give me a chance and the	3	MAJOR-GENERAL MPEMBE: Chairperson, I've
4	other issue that most probably because I was persistent on	4	been persistently requesting them to hand over the weapons.
5	that is that they should voluntarily hand over the weapons.	5	MR MPOFU: No.
6	And after they shall have handed over the weapons I could	6	MAJOR-GENERAL MPEMBE: Chairperson, may I
7	also communicate with them to say why I wanted the weapons	7	be allowed to answer the question?
8	because that to me it was a serious security risk. Because	8	CHAIRPERSON: Well I've got to let you
9	if I let them go with weapons it could have been a serious	9	answer the question. Of course I have to.
10	security risk, but if they handed over the weapons to me as	10	MAJOR-GENERAL MPEMBE: Thanks,
11	I counted I could have explained to them to say why I want	11	Chairperson.
12	the weapons. Secondly, I'm going to escort them, but	12	MR MPOFU: General Mpembe –
13	nonetheless all what they communicated to me on that day it	13	CHAIRPERSON: He wants to answer the
14	was done.	14	question –
15	CHAIRPERSON: Mr Mpofu has got another	15	MR MPOFU: I thought he was already
16	point. What Mr Mpofu, as I understand, says to you is	16	finished.
17	this. That's the position up to the time you started	17	CHAIRPERSON: But he has asked if he
18	counting, but subsequently we know from what you've told us	18	could answer the question, I told him I have to let him
19	and what you told Lieutenant-Colonel Merafe you decided to	19	answer the question –
20	let them go, not to seek to disarm them there and to escort	20	MR MPOFU: No, no, I misunderstood.
21	them. Now what Mr Mpofu wants to know is did you tell the	21	Sorry, General.
22	strikers as they were walking away, in disobedience of	22	MAJOR-GENERAL MPEMBE: Thanks,
23	course of your instructions, to lay down their arms, did	23	Chairperson for the intervention. Chairperson, I have
24	you tell them we will now escort you to the koppie or did	24	persistently been saying that I wanted the strikers to hand
25	you not? And the question flowing from that is did you in	25	over their weapons voluntarily. I never moved on that
<u> </u>	Page 16244		Page 16246
1	fact, practically speaking, have the opportunity to	1	point. There was no point where I have ever agreed with
2	communicate that to them. Those are the two questions	2	them that I will escort them to the mountain without them
3	which if Counsel had asked them I wouldn't allow it, but	3	handing over the weapons. My communication with Colonel
4	seeing I've done it I will. Can you answer?	4	Merafe and all other officers who were in command posts of
5	MAJOR-GENERAL MPEMBE: No, Chairperson,		
-		5	different units on that day, Chairperson, it's not that I'm
6	the video it's clearly an objective evidence. They were	5 6	grabbing the leaf because I'm sinking because I am not
	the video it's clearly an objective evidence. They were singing, seriously in disobedience, they couldn't listen, I		grabbing the leaf because I'm sinking because I am not sinking and the evidence is there, it's objective what I
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	Page 16247		Page 16249
1	protesters prior to them defying him.	1	arms. Now I'm asking you a question. We've now
2	CHAIRPERSON: That's correct, Mr Mpofu	2	established that you took the decision to let them go
3	isn't it?	3	before the counting, correct?
4	MR MPOFU: Well, Chairperson, I'd prefer	4	MAJOR-GENERAL MPEMBE: May you please
5	the answers to be given by the witness with respect. The	5	repeat that question?
6	issue I'm exploring is if I can just be allowed to explore	6	MR MPOFU: You and I have agreed that you
7	this point. Thank you, Chairperson. General, please work	7	took the decision to let them go and have the discussion
8	with me here. When -	8	with the Merafes of this world before you started the
9	CHAIRPERSON: Repeat your question and	9	counting.
10	then we will see whether you avoided the objection that's	10	CHAIRPERSON: No, that can't be right.
11	been raised. Repeat your question, Mr Mpofu.	11	What was the point of the counting? I understood that the
12	MR MPOFU: General Mpembe, one of the	12	point of the counting –
13	disagreements and Colonel Merafe was because you said you	13	MR MPOFU: That's what the witness said,
14	wanted to disarm these people at the koppie, correct?	14	Chairperson.
15	MAJOR-GENERAL MPEMBE: It was that we	15	CHAIRPERSON: Well let's ask him. What
16	should allow them to go, not to disarm them at the koppie.	16	was the point of the counting?
17	MR MPOFU: No, no, no, was it or was it	17	[10:15] MAJOR-GENERAL MPEMBE: It was that they
18	not one of the disagreements between you and Lieutenant-	18	should lay down their weapons.
19	Colonel Merafe that you were saying that the people should	19	CHAIRPERSON: Ja, that's the way I
20	be disarmed at the koppie and he was saying they should be	20	understood it.
21	disarmed there. Yes or no.	21	MR MPOFU: General, did you five minutes
22	MAJOR-GENERAL MPEMBE: Maybe it is just	22	ago agree that the disagreement with Merafe happened before
23	the difference, Chairperson, but what Colonel Merafe was	23	the counting, or not, or it's just my ear?
24	saying they should be disarmed there and myself we were	24	MR MATHIBEDI SC: Sorry, Mr Chairman,
25	saying if we disarm them here there will be a confrontation	25	before the witness answers, could I read the statement of
	Page 16248		Page 16250
1	Page 16248 because they are already showing the sign of refusal.	1	Page 16250 Merafe on this aspect?
1 2		1 2	=
	because they are already showing the sign of refusal.		Merafe on this aspect?
2	because they are already showing the sign of refusal. MR MPOFU: Correct, therefore they should	2	Merafe on this aspect? MR MPOFU: No, Chairperson, with the
2 3	because they are already showing the sign of refusal. MR MPOFU: Correct, therefore they should be disarmed at the koppie, correc6?	2 3	Merafe on this aspect? MR MPOFU: No, Chairperson, with the greatest respect –
2 3 4	because they are already showing the sign of refusal. MR MPOFU: Correct, therefore they should be disarmed at the koppie, correc6? MAJOR-GENERAL MPEMBE: Not necessarily	2 3 4	Merafe on this aspect? MR MPOFU: No, Chairperson, with the greatest respect – MR MATHIBEDI SC: No, no, no –
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7 rebutted. 7 arms. He said Merafe wanted him to disarm and disperse
 9 General, I want to ask you again, I'm giving you an 9 9 understood the difference between them was he didn't again
10 opportunity and you can explain to this Commission, and if 10 with any attempt to disperse them at that point, nor did h
11 you made a mistake before you can say so. We all make 11 want to disarm them, which I take it means going to then
12 mistakes. So I'll give you an opportunity again. Did the 12 and taking their arms away. He wanted them almost in a
13 discussion between you and Merafe and the generals about, 13 coercive way, he wanted them to lay down their arms
14 and what we've now referred to as the disagreement, occur 14 voluntarily. So there's quite a lot of blue water between
15 before the counting, yes or no? 15 the stances as expressed by him on the one hand and Me
16 MAJOR-GENERAL MPEMBE: It occurred before 16 on the other. So I'm not stopping you from proceeding w
17 the counting. 17 your cross-examination, but the cross-examination must
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18MR MPOFU:Thank you.18proceed on what he says and on a clear and accurate
18MR MPOFU:Thank you.18proceed on what he says and on a clear and accurate19MAJOR-GENERAL MPEMBE:The counting was19understanding of what he says, particularly as to the20not to disperse.The counting was they should lay down20nature of the disagreement between himself and Lieutena
18MR MPOFU: MAJOR-GENERAL MPEMBE:Thank you.18proceed on what he says and on a clear and accurate19MAJOR-GENERAL MPEMBE: not to disperse.The counting was they should lay down18proceed on what he says and on a clear and accurate20not to disperse.The counting was they should lay down19nature of the disagreement between himself and Lieutena21their weapons.That's all about counting.It was not21Colonel Merafe.But having said that, you may now proce
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18MR MPOFU: MAJOR-GENERAL MPEMBE: not to disperse. The counting was they should lay down their weapons.18proceed on what he says and on a clear and accurate understanding of what he says, particularly as to the nature of the disagreement between himself and Lieutena Colonel Merafe. But having said that, you may now proce 2218MR MPOFU: not to disperse. their weapons.18proceed on what he says and on a clear and accurate understanding of what he says, particularly as to the nature of the disagreement between himself and Lieutena Colonel Merafe. But having said that, you may now proce 2223weapons.2424MR MPOFU: Say, thank you, I'll help Say ou -
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1	Page 16255 MR MPOFU: So sorry.	1	Page 16257 at that stage, but to allow them to go to the koppie and to
2	COMMISSIONER HEMRAJ: Something that	2	escort them on the way with the dual purpose of protecting
3	appears on the record previously. When you had this	3	them from being attacked by their enemies, and preventing
4	conversation with Colonel Merafe and he said disarm and	4	them from attacking other people. I think that's his
5	disperse, did that include arresting anyone at that scene?	5	evidence, isn't it?
6	MAJOR-GENERAL MPEMBE: Correct,	6	MR MPOFU: Except, Chairperson, you know,
7	Chairperson.	7	I'm going to move from this, but this is actually so
8	COMMISSIONER HEMRAJ: Yes, thank you.	8	simple. Then there would not have been a disagreement with
9	CHAIRPERSON: In other words was the	9	Merafe if that was the sequence of events. The true
10	dispersal, in other words to take the form of breaking up	10	sequence of events –
11	the gathering by taking the gatherers into custody?	11	CHAIRPERSON: I think that's a matter for
12	MAJOR-GENERAL MPEMBE: Correct,	12	argument. I see clear blue water between the stances of
13	Chairperson.	13	the two, but if I'm wrong you can persuade me in due
14	CHAIRPERSON: You did say that previously	14	course –
15	in a passage which has been shown to me, which is at page	15	MR MPOFU: I will.
16	11121 on – good gracious – day 103 of our sitting.	16	CHAIRPERSON: - or endeavour to do so,
17	MAJOR-GENERAL MPEMBE: I didn't hear	17	that the blue water that I see is imaginary.
18	that.	18	MR MPOFU: Okay, thank you, Chairperson.
19	CHAIRPERSON: You there spoke about	19	Did you say, General, "Realising that a violent
20	arrests, that Merafe effectively wanted you to disarm the	20	confrontation" –
21	people and arrest them. Now is that correct, or is that a	21	MAJOR-GENERAL MPEMBE: Sorry,
22	misunderstanding of what Merafe was saying?	22	Chairperson.
23	MAJOR-GENERAL MPEMBE: It is correct,	23	MR MPOFU: I'm sorry? He wants to -
24	Chairperson, because he wanted all the processes being	24	CHAIRPERSON: No, we must give the
25	done, despite that we could see the resistance from the	25	witness a chance –
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1	Page 16256	1	Page 16258
1	protesters themselves.	1	MR MPOFU: Yes, of course.
2	protesters themselves. MR MPOFU: You know – alright, and your	2	MR MPOFU: Yes, of course. CHAIRPERSON: It's no good that you and I
2 3	protesters themselves. MR MPOFU: You know – alright, and your difference with him was that you wanted those processes to	2 3	MR MPOFU: Yes, of course. CHAIRPERSON: It's no good that you and I have the battle; you must have it with him, and it must be
2 3 4	protesters themselves. MR MPOFU: You know – alright, and your difference with him was that you wanted those processes to be done at the koppie, correct?	2 3 4	MR MPOFU: Yes, of course. CHAIRPERSON: It's no good that you and I have the battle; you must have it with him, and it must be peaceful with gloves on it. Yes, General, what do you want
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2 3 4 5 6	protesters themselves. MR MPOFU: You know – alright, and your difference with him was that you wanted those processes to be done at the koppie, correct? MAJOR-GENERAL MPEMBE: No, Chairperson, I said we have to apply situational appropriateness.	2 3 4 5	MR MPOFU: Yes, of course. CHAIRPERSON: It's no good that you and I have the battle; you must have it with him, and it must be peaceful with gloves on it. Yes, General, what do you want to say? MAJOR-GENERAL MPEMBE: Chairperson, at
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	Page 16259		Page 16261
1	says is, and let me read it to you, because this is what is	1	didn't want a Tatane situation, correct?
2	the basis of his question. He says, "When they were	2	MAJOR-GENERAL MPEMBE: No, Chairperson,
3	about," I think I read it before, but let's read it again.	3	because we did employ also other methods of persuading them
4	"When they were about approximately 300 metres away from	4	to disarm. We did bring in the negotiators, so I couldn't
5	us, the General told us to let them go and we would disarm	5	say on the 13th –
6	them at the mountain. One senior colonel," presumably	6	CHAIRPERSON: That was later. That was
7	that's Merafe – if he's a lieutenant-colonel I'm not sure	7	on the Tuesday. Is that right? The other methods were
8	how senior he was as a colonel, but we won't worry about	8	used later.
9	that – "One senior colonel advised the General that if we	9	MAJOR-GENERAL MPEMBE: Correct,
10	intended to disarm them it was better to disarm them there	10	Chairperson.
11	because at the mountain they would outnumber us. The	11	CHAIRPERSON: The negotiators came,
12	General told us to follow them." So you didn't talk to	12	Lieutenant-Colonel McIntosh I think, came and dealt, and
13	Baloyi, but what Baloyi in fact says is that a senior	13	spoke to the strikers at the koppie and endeavoured to
14	colonel – I assume it's Merafe – advised you that if you	14	negotiate with them. But that was on the Tuesday.
15	intended to disarm them it was better to disarm them at the	15	MAJOR-GENERAL MPEMBE: Correct,
16	mountain because you would be outnumbered - sorry, it would	16	Chairperson. Chairperson, what I wanted to indicate is
17	be better to disarm them there because at the mountain you	17	that it's not correct to say I was going to disarm them at
18	would be outnumbered by them. Now is that correct? Is	18	the mountain, because there were well going to be other
19	that what Colonel Merafe or some other, some senior colonel	19	alternative methods, which we did do before resorting to
20	said to you at the time?	20	the disarmament process, which is known as dispersal
21	MAJOR-GENERAL MPEMBE: Correct,	21	process. So it is not correct to say I wanted to go and
22	Chairperson, only Colonel Merafe.	22	disarm them at the mountain.
23	MR MPOFU: Thank you. Thank you very	23	MR MPOFU: Yes.
24	much. Now, and it is at that point that you said you did	24	MAJOR-GENERAL MPEMBE: While if other
25	not want – the reason that you were taking your stance that	25	methods could have been, could have worked, we could not
	Page 16260		Page 16262
1	Page 16260 they should be disarmed elsewhere was because you did not	1	Page 16262 have, because as I've indicated, dispersing the protesters,
1 2	6	1 2	
	they should be disarmed elsewhere was because you did not		have, because as I've indicated, dispersing the protesters,
2	they should be disarmed elsewhere was because you did not want another Tatane incident, correct?	2	have, because as I've indicated, dispersing the protesters, it was a last resort.
2 3	they should be disarmed elsewhere was because you did not want another Tatane incident, correct? MAJOR-GENERAL MPEMBE: Yes, Chairperson,	2 3	have, because as I've indicated, dispersing the protesters, it was a last resort. MR MPOFU: Yes. General, I'm prepared to
2 3 4	they should be disarmed elsewhere was because you did not want another Tatane incident, correct? MAJOR-GENERAL MPEMBE: Yes, Chairperson, that's meaning the, I didn't want there should be more	2 3 4	have, because as I've indicated, dispersing the protesters, it was a last resort. MR MPOFU: Yes. General, I'm prepared to grant you that. In the six-kilometre distance between
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1	to disarm them en route to the koppie that day. He's not	1	correct?
2	saying that, as I understand him.	2	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
3	MR MPOFU: Oh, good.	3	MR MPOFU: Good. So ja, now I'm –
4	CHAIRPERSON: Am I understanding you	4	CHAIRPERSON: Adv Hemraj says for the
5	correctly, or is Mr Mpofu understanding you correctly?	5	sake of completeness I must just add one thing which you've
6	MAJOR-GENERAL MPEMBE: It's the	6	told us already, but just to get the whole position on the
7	Chairperson who understands me perfectly correctly.	7	table at one time. As far as you were concerned first
8	MR MPOFU: Oh, thank you. Then that's	8	prize was they would listen to your request to lay down
9	even better. That's even better, because then there were	9	their arms voluntarily and for that you gave them the
10	two options then. You could either disarm them where they	10	opportunity by counting. That to you was first prize. To
11	were sitting, or after the koppie, as the Chairperson says.	11	you second prize was letting them go to the koppie,
12	So those were the two options, correct?	12	protecting them on the way, preventing them from getting up
13	CHAIRPERSON: I think by "after the	13	to mischief on the way, and after they've arrived at the
14	koppie" he means after they'd arrived at the koppie.	14	koppie, deal with the situation in various ways. That was
15	MR MPOFU: Yes.	15	your approach. Is that right?
16	CHAIRPERSON: Whether on that day –	16	MAJOR-GENERAL MPEMBE: Correct,
17	MR MPOFU: Or at the koppie.	17	Chairperson.
18	CHAIRPERSON: - or the following day or	18	CHAIRPERSON: Merafe had another
19	the day after, or even possibly on the Friday morning, but	19	alternative, and that is that if they don't voluntarily lay
20	that's something he may get to later.	20	down their arms near the railway line, you'll take them
21	MAJOR-GENERAL MPEMBE: Thanks,	21	from them by force and you'll disarm them, which you will
22	Chairperson, to understand the "after the koppie," to	22	disperse them, which would include, as you've explained,
23	explain the "after the koppie" to me.	23	arresting them. Right?
24	MR MPOFU: Yes, in other words, if you	24	MAJOR-GENERAL MPEMBE: Yes, I mean
25	agree with the Chairperson, my interim solution is kicked	25	arrested –
1	Page 16264 out of the window. The only options were to disarm them	1	Page 16266 [10:35] CHAIRPERSON: You didn't consider that to
2	then and there, or at the koppie or thereafter. Agreed?	2	be an appropriate response to the situation because you
3	General, I'm asking you a question.	3	thought that that would lead to a Tatane situation and
4	CHAIRPERSON: I put it on a different	4	bloodshed, and that's something you didn't want to happen.
5	basis which I think, with my customary humility, I think	5	Is that correct?
6	it's more accurate, and that is that what the options were,	6	MAJOR-GENERAL MPEMBE: Correct,
7	either to do what Merafe wanted you to do, to try to disarm	7	Chairperson.
8	them and disperse them near the railway line, which would	8	CHAIRPERSON: Is that your evidence?
9	have involved the use of force, I take it. Right? That	9	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
10	was what Merafe wanted you to do if they wouldn't agree to	10	MR MPOFU: Thank you. And you also did
11	lay down their arms voluntarily. The alternative was what	11	not tell the strikers at any stage that they were not to go
12	you had in mind, and that's to take steps to disarm them	12	towards or past – I don't know what the real thing was –
13	and disperse them after they got to the koppie, right? In	13	the informal settlement, correct?
14	other words you're going to let them go to the koppie,	14	MAJOR-GENERAL MPEMBE: I've already
15	you're going to escort them to the koppie, make sure they	15	testified, yes, Chairperson.
16	didn't get up to mischief while they were on the way to the	16	MR MPOFU: Well, can you testify again?
17	koppie, and protect them insofar as they needed protection	17	Okay.
18	on the way, and once they were there, you were then going	18	CHAIRPERSON: He said yes again. Will
19	to deal with the situation as it arose with them there at	19	that be alright?
20	the koppie. Am I understanding you correctly?	20	MR MPOFU: Ja, thanks. Alright, now at
21	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	21	this point when these people started to leave, they were
22	CHAIRPERSON: That would have involved,	22	proceeding peacefully, correct?
23	or potentially would have involved a number of actions	23	MAJOR-GENERAL MPEMBE: Chairperson, maybe
24	which might ultimately have culminated in action on the	24	the video will be a very objective evidence because I might
	Friday, but we're not there yet at the moment. Is that	25	say it's peaceful, but the way in which I saw it and the
A	RCHIVE FOR JUSTICE		

	Page 16267		Page 16269
1	way in which they acted, it was not peaceful.	1	MR MPOFU: No –
2	MR MPOFU: Okay.	2	CHAIRPERSON: I'm sure that that's
3	MAJOR-GENERAL MPEMBE: But the video is	3	visible on the video, you know. But at any rate, you were
4	at the disposal of the Commission maybe to - once, why I'm	4	there and you got the Nyalas in place to stop them going to
5	saying so, it was not peaceful, they knew that I wanted	5	the informal settlement, as you've told us. That's right,
6	they should drop their weapons. Secondly, we did not even	6	isn't it?
7	have a chance of talking to each other.	7	MAJOR-GENERAL MPEMBE: Correct,
8	MR MPOFU: Yes, but according to Vermaak	8	Chairperson.
9	they were "vreedsaam" at the stage that they left that	9	CHAIRPERSON: To block them from going to
10	place, correct?	10	the informal settlement if they wanted them.
11	MAJOR-GENERAL MPEMBE: No, Chairperson, I	11	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
12	need to put it on record, Colonel Vermaak was in the	12	MR MPOFU: General Mpembe, I'm not
13	chopper. He might see it from the chopper. He was not on	13	talking about the – we're going to have a lot of discussion
14	the scene. For him there on top maybe it could have been	14	about that. I'm not talking about the disputed thing about
15	"vreedsaam," but to those that were next to the protesters	15	the teargas and whether they were veering off to the
16	it could have been something else, as I explain now.	16	informal settlement. I'm far from there. I'm saying the
17	MR MPOFU: Ja. No, it's not maybe. I'm	17	first 300 to 400 metres before we go to that point, that's
18	telling you from where he was they were "vreedsaam." It's	18	where we are. Do you agree?
19	fair for you to say he was in the chopper and what have	19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
20	you, but I'm telling you that from where he was they were	20	MR MPOFU: The point I'm talking about
21	peaceful, correct?	21	is, if you remember when you and I were at the inspection
22	MAJOR-GENERAL MPEMBE: Chairperson, in my	22	in loco, you agreed with Mr Zuza and Mr Booi - there was a
23	case, no.	23	slight difference as to whether this tree or that tree, and
24	CHAIRPERSON: Mr Mpofu, I don't think you	24	so on, but at that point you agreed about the route until
25	can take it much further. Colonel Vermaak has given his	25	after the dam. Do you agree? You remember that?
			after the dam. Do you agree: Tou remember that:
1	Page 16268		Page 16270
1	Page 16268 impressions in his statement.	1	Page 16270 MAJOR-GENERAL MPEMBE: Correct,
2	Page 16268 impressions in his statement. MR MPOFU: That's all I –	1 2	Page 16270 MAJOR-GENERAL MPEMBE: Correct, Chairperson.
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	Page 16271		Page 16273
1	distance from the police.	1	that they were moving to the direction of the koppie.
2	CHAIRPERSON: And tell me, were the	2	MR MPOFU: No –
3	police all behind them as they walked towards, and were	3	MAJOR-GENERAL MPEMBE: But maybe I might
4	they walking in the general direction of the koppie when	4	see that one.
5	they walked away, in the general direction of the koppie?	5	CHAIRPERSON: No, the suggestion, the
6	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	6	added fact that Mr Mpofu has added to his question, and
7	we can also be saying that they were walking in the	7	that is that in respect of a couple of policemen there was
8	direction of the koppie, because we knew that they are	8	a distance as they walked past in the way you've described,
9	going to the koppie.	9	or agreed with the description, they were about a metre
10	CHAIRPERSON: And were the police at that	10	away from them. That's the extra point he wants you to
11	stage behind them?	11	comment on. Is that correct?
12	MAJOR-GENERAL MPEMBE: They were behind	12	MAJOR-GENERAL MPEMBE: Correct,
13	them, but I did indicate that they were some sort of a	13	Chairperson.
14	curving circle.	14	CHAIRPERSON: It's now quarter to 11. I
15	CHAIRPERSON: Yes, yes, you did	15	was proposing to take tea round about this time. If you
16	indicate –	16	have still got some questions you want to ask on this point
17	MAJOR-GENERAL MPEMBE: But behind and	17	before we take tea, you may proceed, and if so, would you
18	also, yes, Chairperson.	18	please let me know when it will be a convenient time to
19	CHAIRPERSON: And did any of them at any	19	take the - in other words, applying a principle of
20	point look in the direction of the police as they were	20	appropriateness to the decision as to when we'll take the
21	walking, or did they just walk away, all facing the	21	tea adjournment.
22	direction of the koppie? What I'm reminded is at some	22	MR MPOFU: Situational appropriateness,
23	point in the evidence, page 11168, it was said that the	23	Chairperson, yes. Yes, Chairperson, what I'll endeavour to
24	distance was about 30 paces and – sorry, 15 to 20 paces,	24	do is just to finish this segment before what I call the
25	and he's not with us today, but he was there at the time,	25	trouble started, and I'm close to that.
	Page 16272		Page 16274
1	Mr Pretorius, the attorney, actually paced it out. So	1	CHAIRPERSON: Do you want the trouble to
2	Mr Pretorius, the attorney, actually paced it out. So these are 15 to 20 Pretorius paces, if you know what I	2	CHAIRPERSON: Do you want the trouble to start after tea?
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	Dogo 1/275		Dogo 1/077
1	Page 16275 singing the song, they were on the crouching position.	1	Page 16277 just to understand because –
2	MR MPOFU: Yes.	2	MR MPOFU: They were now walking.
3	MAJOR-GENERAL MPEMBE: Correct,	3	MAJOR-GENERAL MPEMBE: At that time they
4	Chairperson.	4	were not crouching, they only crouch when they move to,
5	CHAIRPERSON: Walking in a crouching	5	from the side, and then as the Chairperson asked they were
6	position, presumably leaning forward, so not standing	6	only now moving.
7	upright, but leaning forward and walking in that fashion,	7	MR MPOFU: Yes.
8	that's the -1 would like to think that in the rich	8	CHAIRPERSON: Anyway, these are matters
9	resources of the English language there's a single verb	9	that we can get the answers to from the video actually.
10	that covers that, but I haven't been able to find it yet	10	You don't need to rely on what the witness –
11	and Mr Mpofu hasn't either, but we will persevere, hey Mr	11	MR MPOFU: Ja, and that's not even the
12	Mpofu. Carry on.	12	gist of the question, ja. That's got nothing to do with
13	MR CHASKALSON SC: Mr Chairperson,	13	the question, quite frankly. The point I was asking is
14	shuffling. Shuffling, Mr Chairperson.	14	that as they were doing whatever, moving forward, the
15	MR MPOFU: Yes.	15	Nyalas and some of the policemen kept guard on the right,
16	CHAIRPERSON: Shuffling relates to what	16	on their right between them and the informal settlement,
17	you do with your feet, it doesn't relate to what you do	17	correct?
18	with the upper part of your body. We'll have to try	18	MAJOR-GENERAL MPEMBE: It was not
19	harder. Carry on, Mr Mpofu.	19	between, but it was in front of the informal settlement.
20	MR MPOFU: Okay, for now we'll stick with	20	MR MPOFU: Yes.
21	crouch walking, until we find a better –	21	MAJOR-GENERAL MPEMBE: Yes.
22	MAJOR-GENERAL MPEMBE: Sorry,	22	MR MPOFU: And do you accept the
23	Chairperson, I just want to add, crouching position and	23	following, which is where I'm going to start after tea,
24	while they were pass those stones, they were ululating.	24	that – and this is based on what we saw at the inspection
25	MR MPOFU: Yes, thank you, and this is	25	and if you dispute it, we'll find other ways of showing it.
	Page 16276		Page 16278
1	the period that we've all agreed, there was no sign of	1	Do you accept that given the direction that they were
2	aggression, correct?	2	taking, and postulating that they were going to go straight
3	CHAIRPERSON: [Microphone off, inaudible]	3	to the koppie, that at some stage they had to pass a
4	the answer to that already. Do you want to undo it?	4	residential area? There was no way of getting to the
5	You've got the answer already. Do you want to undo it?	5	koppie without passing a residential area. In other words,
6	MR MPOFU: Oh, you got it, Chairperson.	6	if you drew a straight line in the direction that they were
7	That's fine. It's just as good.	7	moving, there was always going to be some housing that they
8	CHAIRPERSON: No, a good cross-examiner	8	were going to pass. Or don't you know?
9	doesn't undo things that have been achieved –	9	MAJOR-GENERAL MPEMBE: Chairperson, I
10	MR MPOFU: Well, then I'm a bad cross-	10	cannot dispute that, unless maybe if I'm shown, but the
11	examiner, Chairperson.	11	informal settlement I could understand that we had to pass it as far as limitation is concerned, but not to go inside
12 13	CHAIRPERSON: No, no, no, you're learning, Mr Mpofu. Carry on.	12 13	the informal settlement, as they did.
13 14	MR MPOFU: Thanks. Now as Mr Madlanga,	14	MR MPOFU: Well, General, that can't be
14	and I think the Chairperson as well, asked you questions	14	correct. Surely these people were at least a hundred to
16	about mainly what was happening on the right flank.	16	200 metres from the informal settlement when the trouble
17	Remember that's where the first informal settlement was,	17	started. When the teargas was thrown, they were still in
18	correct? The right flank of the crouch walking protesters.	18	the veld. They hadn't even reached the road, let alone the
19	Do you remember that?	19	informal settlement, correct?
20	MAJOR-GENERAL MPEMBE: Chairperson, maybe	20	MAJOR-GENERAL MPEMBE: No, Chairperson,
21	the explanation, at that time they were no more crouching,	21	others were seen in the direction of the informal
22	because now I hear the question is that crouch walking,	22	settlement.
22	In I I Frank I I - L V	23	MR MPOFU: Yes, I dispute that, but
22	because -	20	
	MR MPOFU: Okay, fine, walking.	24	that's not the point I'm making now. I'm saying in the
23			· · · · · · · · · · · · · · · · · · ·

Page 16279 1 I'm saying to you is that they had not reached any informal	1	Page 16281 Is that correct?
	2	
2 settlement, in fact they had not even reached the road, let 3 settlement the informal settlement serregt?		
3 alone the informal settlement, correct?	3	Chairperson.
4 MAJOR-GENERAL MPEMBE: Correct,	4	CHAIRPERSON: Ja, that shows us, if you
5 Chairperson.	5	ignore the yellow line, that shows us the scene which
6 MR MPOFU: Thank you.	6	presumably Mr Mpofu will deal with after tea. Is that
7 CHAIRPERSON: Before we take the tea	7	right, Mr Mpofu?
8 adjournment, Adv Hemraj wants to correct something, but	8	MR MPOFU: Yes, Chairperson, if I can
9 before she does that, I want to point out that in exhibit	9	just ask one question arising from this?
10 HHH59, the third page, we have a photograph which – now	10	CHAIRPERSON: Yes, yes, alright.
11 this is Ms Barnes's exhibit which apparently is going to be	11	MR MPOFU: Yes, now the point I was
12 the subject of maybe agreement between AMCU and the police,	12	simply making to you, if you use that picture, is that
13 but I'm not concerned about the yellow arrows on the	13	where one, two, the second yellow arrow. Can you see that?
14 picture, but that indicates, does it not, firstly, do you	14	[10:54] MAJOR-GENERAL MPEMBE: No, Chairperson, I
15 have it in front of you? Or I'll pass my one to you if you	15	don't understand the second because there are so many
16 haven't got it.	16	yellow lines these.
17 MAJOR-GENERAL MPEMBE: No, Chairperson, I	17	MR MPOFU: There are three. There are
18 don't have it.	18	three lines –
19 CHAIRPERSON: Alright, well I'll give it	19	CHAIRPERSON: Well –
20 to you in a moment then you can just look at it. What it	20	MR MPOFU: There are three arrows. An
21 shows is a blue circle, which I think is the koppie. It	21	arrow is the one that has –
shows a red circle – oh, there it is, it's on the screen, I	22	CHAIRPERSON: Sorry, there's a yellow line which
23 see – blue circle, which is the koppie, a red circle where	23	runs from the place near the railway line.
the, what one can call the hostilities took place, where	24	MR MPOFU: Ja.
25 there was fighting. The yellow – this is a photograph of	25	CHAIRPERSON: To the beginning of the red circle
Page 16280		Page 16282
1 the scene. Now we are told that the blue circle is the	1	and then the line continues but presumably that's more an
2 koppie. Would you agree with that?	2	imaginary line but the line continues to a point just
3 MAJOR-GENERAL MPEMBE: Yes, Chairperson,	3	beyond what looks like a track or a road to the left, as we
4 I would agree in terms of the direction.	4	look at the picture, what the witness concedes is the
5 CHAIRPERSON: Yes, yes, we're also told	5	informal settlement.
6 that the red circle is where the fighting took place. Is	6	MR MPOFU: Yes.
7 that correct? Or can't you say?	7	CHAIRPERSON: And then that's where the second
8 MAJOR-GENERAL MPEMBE: Chairperson, I	8	arrowhead is and then it moves to the right at I suppose
9 will agree also if I look in terms of the scenes.	9	something like 45 degrees towards the blue circle which is
10 CHAIRPERSON: Yes, yes.	10	the koppie.
11 MAJOR-GENERAL MPEMBE: But I don't	11	MR MPOFU: That's correct. That's
12 dispute it at the moment.	12	correct, Chairperson.
13 CHAIRPERSON: Okay, and there's a, it	13	CHAIRPERSON: So there are not three yellow lines
14 looks like a lozenge-shape, yellow shape, that we are told	14	but there are there, as it were, arrows if one has regard
15 – again the question is can you confirm this or not – that	15	to the arrowheads.
16 that is where the confrontation took place near the railway	16	MR MPOFU: That's exactly what I –
17 line.	17	CHAIRPERSON: Alright, okay. Ask your question -
18 MAJOR-GENERAL MPEMBE: Yes, probably,	18	MR MPOFU: - three yellow lines.
19 Chairperson, it's where the, I spoke with them.	19	CHAIRPERSON: Okay. Ask your question now in a
20 CHAIRPERSON: Ja, ja, ja.	20	way that I can, that's simple enough for me to understand
21 MAJOR-GENERAL MPEMBE: Okay.	21	it and then carry on.
22 CHAIRPERSON: And then the last thing, as	22	MR MPOFU: General, you agree, when I was
23 I say I'm not talking about the yellow arrows, that's not	23	saying three arrows I was talking about one, two, three.
24 part of what I'm concerned with. Then there's an orange	24	Are we together now?
25 semi-circle and we are told that's the informal settlement.	25	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
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1 2 arrow			
	Page 16283		Page 16285
2 arrow	MR MPOFU: Yes. Now, where the second	1	that you're looking for, Mr Mpofu?
	v, as the Chairperson puts it, crosses the road, do you	2	MR MPOFU: Chair, yes. Did you know,
3 see th	hat point?	3	before you allowed the people to proceed had you ever been
4	MAJOR-GENERAL MPEMBE: I see,	4	between those houses?
5 Chair	person, from the point -	5	MAJOR-GENERAL MPEMBE: No, Chairperson.
6	CHAIRPERSON: It crosses two roads, you see.	6	MR MPOFU: So – okay.
7	MR MPOFU: Yes.	7	CHAIRPERSON: These sound like post-tea questions
8	CHAIRPERSON: Are you talking about the road which	8	but –
9 is in l	line with the top of the yellow semi-circle, the	9	MR MPOFU: Yes –
10 orang	ge semi-circle, in other words the informal settlement	10	CHAIRPERSON: Applying the doctrine of appropriate
11 or are	e you talking about the road which is immediately	11	-
12 above	e the red circle? You see there are two roads.	12	MR MPOFU: Yes, going that way,
13	MR MPOFU: No – ja. Okay, where I'm	13	Chairperson. It would be appropriate, Chair.
14 point	which is where the arrow crosses the, not the main	14	CHAIRPERSON: Before we take the tea adjournment
15 grave	el road but the smaller walking road, can you see that	15	Adv Hemraj wants to correct something.
16 point	?	16	COMMISSIONER HEMRAJ: Yes, I incorrectly
17	MAJOR-GENERAL MPEMBE: I could see that	17	placed on record that the 15 to 20 metres paced by attorney
18 arrow	v, yes.	18	Mr Pretorius was the distance of the police line behind the
19	MR MPOFU: Yes. Now from, either from	19	strikers. That's incorrect, it's actually the distance
20 your	knowledge or from when we did the inspection or you	20	between the General and Warrant Officer Koen in the police
21 can ta	ake it from me because I have been there many times,	21	line. I just wanted to correct that.
22 that p	point is part of the informal settlement where that	22	CHAIRPERSON: So that's been sorted out. On that
23 arrow	v crosses that second road, or rather let me just say	23	note we will take the tea adjournment. There was something
24 it's be	etween houses. Do you remember? If you don't	24	we wanted the witness to look at and that was how many,
25 reme	mber, you don't, but - if you can dispute it you can,	25	what, how many members of the service were there on the 13th
	Page 16284		Page 16286
1 if you	ı can't, you can't.	1	at the time he went with his men to the railway line.
2	CHAIRPERSON: The simple question is, where that	2	That's correct, is it?
3 yellov	v line, yellow arrow crosses the smaller, the narrower	3	
	in line with the top of the orange semi-circle, what		MR MPOFU: Sorry, Chairperson, I thought
4 road i	· •	4	that was sorted out when we went to slide 42 because the
	sel wants to know, does it pass between houses which	4 5	
5 couns	sel wants to know, does it pass between houses which part of the informal settlement? Is that the		that was sorted out when we went to slide 42 because the
5 couns	part of the informal settlement? Is that the	5	that was sorted out when we went to slide 42 because the NUM's were put.
5 couns 6 form	part of the informal settlement? Is that the	5 6	that was sorted out when we went to slide 42 because the NUM's were put. CHAIRPERSON: Oh yes, 126 I think it was.
5 couns 6 form 7 quest	part of the informal settlement? Is that the ion?	5 6 7	that was sorted out when we went to slide 42 because the NUM's were put. CHAIRPERSON: Oh yes, 126 I think it was. MR MPOFU: 121.
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	Page 16287		Page 16289
1	of the 13th is going to be, one, that what I – I put to you	1	CHAIRPERSON: We can get evidence on that but - so
2	that there was nowhere, no way of going back to the koppie	2	it would seem, would it not, that the line that's been
3	without passing a residential area and I know you don't	3	drawn here, the orange, the yellow line you know, the
4	live there, you might not know the terrain so if you can't	4	arrows, does look as if it's a sensible route to follow if
5	dispute it I'll understand, but can you comment on that?	5	you want to go from the place near the railway line to the
6	COMMISSIONER HEMRAJ: Passing through?	6	koppie, is that correct?
7	MR MPOFU: Passing through, yes, a	7	MAJOR-GENERAL MPEMBE: Correct,
8	residential area. Well ja, let's start with through.	8	Chairperson.
9	CHAIRPERSON: He's said that already. He said the	9	CHAIRPERSON: Right, so now that I've tried to cut
10	way they were going, I suppose they could have deviated but	10	some of the bush away and clear a path for you, are you
11	he said the route that was indicated here which is the sort	11	going to put your version or what are you going to do?
12	of straight line, the shortest distance between two points,	12	MAJOR-GENERAL MPEMBE: Yes, that's all I
13	went between houses which he said were not part of the sort	13	was doing, Chairperson, at the risk of being called a bad
14	of denser informal settlement but it was between houses.	14	cross-examiner. I'm just simply saying, I'm saying to you,
15	So you've already got that on record. I told you before,	15	Chair – I have to do this, by the way – that also the
16	good cross-examiners don't undo they work they've done	16	version of the people who were there will be that when you
17	already but bear that in mind please, but it is correct	17	intercepted them, this was on the return trip. Were you
18	5	17	aware of that?
19	what he puts to you, is it not – MAJOR-GENERAL MPEMBE: Correct,	10	MAJOR-GENERAL MPEMBE: I was aware when I
20		20	
20	Chairperson.	20	was communicating with them, Chairperson. MR MPOFU: No. Okay and in any event one
	CHAIRPERSON: - that assuming that they were going	21	5 5
22	what was effectively the shortest route, more or less,		of the implications of that is that when they had gone on
23	between the two points, they would have to pass through an	23	the first leg of the return trip, so to speak, they had
24 25	area where there were homes. That's right, isn't it?	24	gone past through those residential areas without even a
25	MAJOR-GENERAL MPEMBE: Correct,	25	police escort, do you accept that?
	Page 16288		Page 16290
1	Page 16288 Chairperson, with an exception that the police could still	1	Page 16290 MAJOR-GENERAL MPEMBE: Chairperson, I
1 2	5	1 2	
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		I	
	Page 16291		Page 16293
1	those houses on the first leg of the trip they did not harm	1	argument that you're putting to him. I suppose –
2	anybody, would you accept that, or at least that you know	2	MR MPOFU: Ja, I thought by now he will
3	of?	3	say he disagrees with me or – I just have to put it to him.
4	CHAIRPERSON: You received no report to the effect	4	CHAIRPERSON: You've heard what Mr Mpofu says, do
5	that there had been any trouble when they were on the way	5	you want to argue with him on that?
6	from the koppie to the Karee Mine. That's correct, isn't	6	MAJOR-GENERAL MPEMBE: Chairperson, I
7	it?	7	just want to qualify it, is that yes, I agree that for them
8	MAJOR-GENERAL MPEMBE: That's correct,	8	going to the Karee and nothing happened but the reports
9	Chairperson, except the earlier reports on Monday when the	9	when I arrived there and what has happened, there were
10	people were reporting on duty but for them going from the	10	people that were killed. There was a person that was
11	koppie to the Karee, no reports except that on Monday when	11	killed and the others that were maimed and the dockets were
12	people went to work there were people that were - another	12	opened and I did also testify on that – by the people who
13	one was killed, another one was seriously maimed.	13	were having dangerous weapons.
14	MR MPOFU: Ja, I'm talking about this	14	MR MPOFU: Yes.
15	particular group of about 100 people or so.	15	MAJOR-GENERAL MPEMBE: And I did also
16	CHAIRPERSON: According to the police logbook,	16	testify that I did not know whether were they the same
17	occurrence book, there were incidents on the Sunday night I	17	group, but also I want to add is the fact that that group,
18	think, that vehicles were damaged, two people were killed.	18	as senior police official I spoke to them not to carry
19	That appears from the police occurrence book but that was	19	dangerous weapons, my fear was not unfounded.
20	in the middle of the night as far as I can recall. What Mr	20	MR MPOFU: Yes, but we now know that your
21	Mpofu is concerned about is this group who appear to have	21	intention was to disarm them at the koppie or, as they had
22	gone in the daytime, then as far as I can see there don't	22	suggested.
23	appear to be any reports, unless I've missed them, in the	23	CHAIRPERSON: His original intention –
24 25	occurrence book to the effect that this lot got up to any	24 25	MR MPOFU: Well, his latest intention.
25	mischief while they were going from the koppie to Karee.	25	CHAIRPERSON: - was to get possession of their
	Page 16202		Page 1629/
1	Page 16292 That seems to be correct, isn't it?	1	Page 16294 weapons near the railway line but he has already told us
1 2		1 2	-
	That seems to be correct, isn't it?		weapons near the railway line but he has already told us
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1	Page 16295 MR MPOFU: Yes, and in fact I would like	1	Page 16297 MAJOR-GENERAL MPEMBE: Chairperson, as I
2	to show you a video. Chairperson, this video was not on my	2	said earlier on, the behaviour of the clicking and I said
3	list but I've cleared that with Mr Mathibedi. It's just a	2	they moved in a crouching position but the difference with
	-	4	me, it was one that they did not want to give me the
4	reference, a reference point really.		
5	CHAIRPERSON: Is it a video we've seen already or	5	weapons. MR MPOFU: Yes.
6	do I have to give it –	6	
7	MR MPOFU: No, it's a new one,	7	
8	Chairperson.	8	difference, and the way in which they moved out there, they
9	CHAIRPERSON: Alright, well, that will be exhibit,	9	definitely showed some disobedience.
10	it looks like triple – hang on. That will be exhibit	10	MR MPOFU: Yes, no –
11	HHH61. How do I describe it?	11	MAJOR-GENERAL MPEMBE: So I do not have
12	MR MPOFU: Well, let me first say what it	12	any problem with any other conduct except that one.
13	is, Chairperson. It's from the Lonmin hard drive, video	13	MR MPOFU: Yes. No, no –
14	recording of the 13th August 2012 and its video 364.	14	MAJOR-GENERAL MPEMBE: And the difference
15	CHAIRPERSON: Sorry, video 364?	15	between there and here is that the securities did not say
16	MR MPOFU: 364 in the Lonmin hard drive.	16	they should be disarmed.
17	CHAIRPERSON: Yes, I understand. In Lonmin hard	17	MR MPOFU: How do you know that?
18	drive and are you saying the whole video is 364 or only	18	MAJOR-GENERAL MPEMBE: No, what I'm
19	certain portions?	19	saying is that maybe that's where, because the point of
20	MR MPOFU: Yes. Chairperson, yes, for	20	difference that I did not agree with them is when they did
21	now let's say we'll play the whole video but I think –	21	not want to hand me the weapons.
22	CHAIRPERSON: Alright, what I've recorded then is	22	MR MPOFU: General, I accept that in that
23	exhibit HHH61 is a Lonmin video of the 13th of August 2012.	23	you didn't like the fact that they didn't give you the
24	It's video 364 in the Lonmin hard drive.	24	weapons. All I'm saying to you is, when they turned around
25	MR MPOFU: Yes. And I won't spend much	25	after that interaction with the security, that they turned
			1
	Page 16296		Page 16298
1	Page 16296 time on it, it's just as a reference point. Thank you.	1	Page 16298 back and they were singing and they were clicking their
1 2		1 2	0
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2	time on it, it's just as a reference point. Thank you. [VIDEO IS SHOWN]	2	back and they were singing and they were clicking their weapons rhythmically with the song in the same way that
2 3	time on it, it's just as a reference point. Thank you. [VIDEO IS SHOWN] CHAIRPERSON: General Mpembe, are you any wiser	2 3	back and they were singing and they were clicking their weapons rhythmically with the song in the same way that when they were disobeying you they moved, correct?
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	Page 16299		Page 16301
1	followed –	1	back.
2	CHAIRPERSON: There will be evidence	2	MR MPOFU: Correct.
3	dealing with that -	3	CHAIRPERSON: And even if they don't say
4	MR MPOFU: Yes, Chairperson.	4	so in terms of the statement you say their evidence will
5	CHAIRPERSON: Yes, you see I stopped Ms	5	be, as you've no summarised it, regarding the route.
6	Barnes because she wasn't going to lead any evidence	6	MR MPOFU: That's correct.
7	explaining this –	7	CHAIRPERSON: I think that's all right in
8	MR MPOFU: Yes.	8	the circumstances. You can carry on, Mr Mpofu.
9	CHAIRPERSON: - that's why I said we can	9	MR MPOFU: Thank you. The other evidence
10	look at the fixed points as it were, but I wouldn't allow	10	in respect of – while you have that picture there will be
11	her to ask questions about the yellow arrows –	11	that, let's call it the first residential area, the one
12	MR MPOFU: Fair enough.	12	that presumably you were stopping the people to go to, also
13	CHAIRPERSON: - because there would be no	13	constitutes or it's constituted of very sparse shacks. In
14	supporting evidence. But you'll give me the assurance that	14	fact there are no more than nine or ten shacks –
15	there will be from your side.	15	CHAIRPERSON: I'm sorry, Mr Mpofu, you've
16	MR MPOFU: Yes, Chairperson that's why I	16	lost me. It may well be my fault, so I'm not criticising
17	started the question by saying the will be evidence that	17	you, what's this first residential area you're talking
18	even at the point where the third arrow crosses there were	18	about? Is it the one depicted by or marked by the orange
19	shacks.	19	semi-circle or is it not visible on this photograph?
20	CHAIRPERSON: The second arrow, Mr Mpofu.	20	MR MPOFU: It's the one with the orange
21	MR MPOFU: The third, the third one now.	21	semi-circle, Chairperson.
22	That's the point I'm pointing, we've done with the second	22	CHAIRPERSON: Yes, now I follow.
23	one.	23	MR MPOFU: Yes. I'm saying that the
24	CHAIRPERSON: No, no, the first arrow is	24	houses there is even fewer than the houses that they were
25	from the yellow lozenge shaped near the railway line to the	25	going to walk through. There are about nine or ten
1	Page 16300 red circle. The second arrow runs from the red circle to a	1	Page 16302 sparsely situated shacks. Would you agree with that of
1 2		1 2	-
_	red circle. The second arrow runs from the red circle to a		sparsely situated shacks. Would you agree with that of
2	red circle. The second arrow runs from the red circle to a point on the other side of the road and the third arrow as	2	sparsely situated shacks. Would you agree with that of perhaps you can't remember. As I said I know you don't
2 3	red circle. The second arrow runs from the red circle to a point on the other side of the road and the third arrow as I see it runs from there to the koppie.	2 3	sparsely situated shacks. Would you agree with that of perhaps you can't remember. As I said I know you don't come from there, but that's the evidence.
2 3 4	red circle. The second arrow runs from the red circle to a point on the other side of the road and the third arrow as I see it runs from there to the koppie. MR MPOFU: That's the one I'm dealing	2 3 4	sparsely situated shacks. Would you agree with that of perhaps you can't remember. As I said I know you don't come from there, but that's the evidence. MAJOR-GENERAL MPEMBE: Chairperson, I
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1 2	Page 16303 settlement in front of a house. The post mortem report indicates that he was stabbed and I think there was serious	1 2	Page 16305 through these house, these informal or shacks or whatever and I don't also disagree that there could have been
3	haemorrhage in respect of one the stab wounds which appears	3	houses, but there were spaces where we could control them.
4	to have been the cause of death. So exactly how he died we	4	The fact that they moved out here there is a person that
5	don't know, that's a mystery yet. Who killed him, whether	5	the Chairperson is explaining has died. So what I'm saying
6	he died as a result of police action or some other action	6	is that if clearly their intention was not – was surely
7	is still a mystery to us. But he certainly appears to have	7	from the beginning to move there we couldn't have got any
, 8	died in that informal settlement. How he died and the	8	problem. That's what I'm explaining. It could have been
9	circumstances we don't know. So I think you must bear that	9	easy and it could have been confirmed even if from where
10	in mind. Mr Mpofu.	10	they start they have given us their dangerous weapons.
11	MR MPOFU: Yes, actually don't even bear	11	That could have been even more easier for us to handle.
12	it in mind because it doesn't deal with what I'm asking	12	COMMISSIONER HEMRAJ: Why would you not
13	you. I accept that that's where the person died. We are	13	have been able to control them in that area of the
14	talking now about long before anybody dies. I'm saying to	14	settlement that's demarcated by the orange semi-circle?
15	you just as you have testified that you could control the	15	MAJOR-GENERAL MPEMBE: Chairperson, as I
16	strikers among those shacks that are next to the second	16	indicated earlier on is that the people staying here and we
17	arrow, you could similarly control the strikers had they	17	don't know whether they are working at the Lonmin mine and
18	gone to the place with the orange line, correct?	18	maybe – Chairperson, as I indicated earlier on we did not
19	MAJOR-GENERAL MPEMBE: Chairperson, I've	19	know who is staying here were working at the mine. We
20	already said no. Hence I made reference to the death of	20	wanted that they should be in our view so that we can see
21	the person.	21	if they want to do any other thing.
22	MR MPOFU: General, when you were	22	MR MPOFU: Yes, but you also did not know
23	supposedly preventing these people from going to that area	23	who is staying where they were going to pass through and
24	you did not know someone was going to die there an hour	24	whether those people also worked at the mine, correct?
25	later or whenever. Is that correct?	25	MAJOR-GENERAL MPEMBE: Correct,
	Page 16304		Page 16306
1			5
1	MAJOR-GENERAL MPEMBE: Chairperson, our	1	Chairperson, as long as they are in our view and they are
2	objective was to protect as I said earlier on.	2	Chairperson, as long as they are in our view and they are not between houses or shacks. But as long as they are in
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1	Page 16307 MR MPOFU: Thank you and in fact as we	1	Page 16309 weapons and he's the one that – and that was still under
2	can see from the video and we'll play it if you insist, but	2	investigation and is still under investigation.
3	I think Mr Madlanga played it for you. The only way in	3	MR MPOFU: Yes, okay anyway I think let's
4	which the strikers could have gained any access to the	4	just forget this by saying this. I'll take the
5	residential area with the arrow would have been past the	5	Chairperson's word that you have previously stated that
6	road and by that time that road was populated by police	6	there was no need to fire teargas for the reason –
7	vehicles, correct?	7	CHAIRPERSON: You don't have to take my
8	MAJOR-GENERAL MPEMBE: Correct,	8	word for it, it's on the transcript.
9	Chairperson.	9	MR MPOFU: Ja, well you yourself,
10	MR MPOFU: Right, so even if by some	10	Chairperson, said I was not here.
11	miracle they would kind of pass through the line of police	11	CHAIRPERSON: I take it you read the
12	vehicles by the time they got to the residential areas at	12	transcript.
13	least there would be policemen present. At least those	13	MR MPOFU: Well you wouldn't have added
14	policemen were in, in the vehicles. Let's assume they	14	those words that I knew it, you said I wasn't here to help
15	outran the ones –	15	me. Thank you. Now did you accept that statement?
16	CHAIRPERSON: I don't know where your	16	MAJOR-GENERAL MPEMBE: Chairperson, I
17	5	17	said no and I still say no based on the fact that I did not
17	miracle arises. If you've got the Nyalas in place, blocking them from going to the informal settlement they	18	know where the workers are working, where I was staying and
19	couldn't have gone to the informal settlement.	19	I need to take that informal settlement, it was one of our
20	MR MPOFU: Absolutely.	20	key areas.
20	CHAIRPERSON: And that's why the witness	20	MR MPOFU: Yes, okay, no I'm sorry,
22	explained to us earlier when you weren't here that it	22	General, I think the exchange between me and the
22	wasn't necessary for any teargas to be fired which is why	22	Chairperson confused both of us. What I was saying is that
23 24	he didn't give an order. If there had been he might well	23	I'm accepting what the Chairperson has put, namely that you
24 25	have done so, but it wasn't necessary for any teargas to be	24	have said that there was no need to fire teargas. Now
25	have done so, but it wasn't necessary for any teargas to be	20	have said that there was no need to fire tealigus. Now
	Page 16308		Page 16310
1	Page 16308 fired he said because of the dispositions he'd made in	1	Page 16310 following from that is the question which is this, do you
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2	fired he said because of the dispositions he'd made in respect of the Nyalas. MR MPOFU: That's not the point I'm	2	following from that is the question which is this, do you also accept that had the teargas not been fired the, what
2 3	fired he said because of the dispositions he'd made in respect of the Nyalas.	2	following from that is the question which is this, do you also accept that had the teargas not been fired the, what you call that trouble, which resulted in the deaths of five
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1does not give then authority to attack the police. So I1CHAIRPERSON:Yes, certainly.2can't say the wrong thing corrected the other one.2MR MPOFU:Yes. When you said to	Page 16313
2 can't say the wrong thing corrected the other one. 2 MR MPOFU: Yes. When you said to	
	the
3 CHAIRPERSON: There are two issues here 3 Commission that the firing of the tear gas which g	goes
4 aren't there? The first is, the one Mr Mpofu is busy with, 4 together with the stun grenades, was the spark, w	what did
5 is if the teargas hadn't been fired or whatever you do to 5 you seek to convey, was the spark of that incider	nt?
6 teargas, discharge I suppose. And if the stun grenades 6 MAJOR-GENERAL MPEMBE: I need to	to convey,
7 hadn't been fired then I take it what Mr Mpofu is 7 what I needed to convey is that that's what make	e the
8 suggesting to you is that the probabilities are, I don't 8 protesters to attack the police.	
9 know if you can put it any higher than that, the 9 MR MPOFU: Thank you.	
10 probabilities are that the strikers wouldn't have reacted 10 CHAIRPERSON: I think that's the an	iswer
11 the way they did. That to some extent is a speculative 11 you want, Mr Mpofu. Perhaps you can move on,	before you
12 matter on which we have to at the end of the day may well 12 undo anything that you've done.	
13 have to make a finding. I take it he's asking you to 13 MR MPOFU: I will move very quickly	1
14 comment because you were the overall commander and the 14 Chairperson from there, thank you Chairperson.	
15 operational commander there and you might well be in a 15 CHAIRPERSON: It's been suggested	to me
16 position to help us in regard to that issue which we may 16 that it might be appropriate for us to take a five r	minute
17 have to decide. That's the basis of the question. Is that 17 comfort break.	
18 right, Mr Mpofu? 18 MR MPOFU: That will be helpful to r	ne.
19 MR MPOFU: That's the basis, Chairperson. 19 CHAIRPERSON: But I am in your ha	nds, Mr
20 Plus the fact that - 20 Mpofu, if you are in need of comfort I suggest that	at you
21 CHAIRPERSON: But you, of course, make a 21 accept the offer.	
22 further point that that may not necessarily justify the 22 MR MPOFU: I am in need of comfor	t,
23 behaviour of the strikers in reacting, if it was a 23 Chairperson.	
24 reaction, in reacting the way they did. And that may well 24 CHAIRPERSON: Alright, I think we be	better
	ve minute
25 be the subject of some subsequent proceedings in a court, 25 make it ten minutes, because in the past these fill	
25 be the subject of some subsequent proceedings in a court, 25 make it ten minutes, because in the past these five	
Page 16312	Page 16314
Page 16312 1 but Mr Mpofu is not busy with the second half of the issue 1 ones have been too short. We will take a ten minut	Page 16314
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	Page 16315		Page 16317
1	MR MPOFU: Thank you, yes. And their	1	words, we just keep the exchanges, it's about 11 eleven
2	version will be that when the police did intercept them,	2	minutes. Thank you.
3	led by you, they sat down and crouched as a sign of	3	CHAIRPERSON: I take it you don't want to
4	respect, and to show you that they were submitting to your	4	see the whole 11 minutes or I mean, what do you want to
5	authority.	5	see?
6	MAJOR-GENERAL MPEMBE: It might well be	6	MAJOR-GENERAL MPEMBE: Correct,
7	their version, but the song and the clicking of the	7	Chairperson, is just the starting of the song.
8	dangerous weapon could not have suggested what they are	8	CHAIRPERSON: Alright.
9	saying.	9	MAJOR-GENERAL MPEMBE: And the clicking
10	MR MPOFU: Yes. Their version on that	10	of that part.
11	particular – on the clicking, will be supported by the	11	CHAIRPERSON: Alright, okay, perhaps we
12	video I showed you this morning, when they were turning at	12	can, it can be shown and when you've seen enough you can
13	the instruction of the security police, and there was no -	13	raise your hand, or say "that's enough," and someone can
14	CHAIRPERSON: Not security police.	14	tell us how far the, we are down, we were into the video at
15	MR MPOFU: I am sorry.	15	that point, and then we can carry on, is that -
16	CHAIRPERSON: Security guards I think.	16	MR MPOFU: Chairperson, may I make a
17	MR MPOFU: At the instruction of the	17	request?
18	security, the mine security and without anyone else in	18	CHAIRPERSON: Yes, of course, what is
19	sight, but they were continuing to click their weapons. So	19	your request?
20	you accept that that's what we saw this morning?	20	MR MPOFU: This is meant to save time,
21	MAJOR-GENERAL MPEMBE: Chairperson, yes,	21	while we are showing that portion, General, I am asking
22	I saw – I heard the song, and I heard the clicking but the	22	you, can you please to raise your hand until the part where
23	clicking and the song on that, where I met them, there is a	23	they pass the policemen just so that we kill two birds with
24	huge difference in terms of the meaning of that.	24	one stone, so to speak.
25	CHAIRPERSON: Expand on that, tell us	25	CHAIRPERSON: That seems a reasonable
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1	Page 16316 what you mean by that?	1	Page 16318
1	what you mean by that?	1	request, doesn't it?
2	what you mean by that? MAJOR-GENERAL MPEMBE: Chairperson, maybe	2	request, doesn't it? MAJOR-GENERAL MPEMBE: Correct,
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Tel: 011 021 6457 Fax: 011 440 9119

1 2 3 4 5 6 7 8 9	MAJOR-GENERAL MPEMBE: Chair – CHAIRPERSON: I am a bit lost, so anyway something must be done to get that right. MR MPOFU: We will fast forward, I just want to confirm through the witness that Mr Nzuza is saying that again, "we are not fighting with anybody, we ask you to please come with us and guard us. CHAIRPERSON: We have seen that already. MR MPOFU: Well, we haven't Chairperson,	1 2 3 4 5 6 7 8 9	Page 16321 all I am saying is that I am trying to save time, if it's suggested that let's play this for the witness and then play it for me later, rather than short-circuiting it, that's fine I am happy with that. CHAIRPERSON: Alright. So let's carry on for the moment, what we are doing. MAJOR-GENERAL MPEMBE: Yes, Chairperson, what I wanted to explain – CHAIRPERSON: Are you happy that the
10 11	not this part, I never have translated Mr Nzuza's statement, at least it was not done by me. He is my	10 11	picture has been stopped, the video has been stopped at a particular point now? Are you happy to talk now?
12	witness.	12	MAJOR-GENERAL MPEMBE: Ja, correct,
13	CHAIRPERSON: I think it's in the	13	Chairperson.
14	transcript. It's in the transcript, we've seen the video	14	CHAIRPERSON: Okay, what is endorsed, Mr
15	before, but anyway, let's come to the part that the witness	15	Mpofu's desire to save time, so I don't want to create the
16	wants to see.	16	impression that I am against him on that, because I am very
17	MAJOR-GENERAL MPEMBE: Chairperson, the	17	much with him on that, but carry on.
18	part that I am requesting the Commission to show is the	18	MAJOR-GENERAL MPEMBE: Correct,
19	part of them singing, is before Mr Nzuza is speaking. Is	19	Chairperson, what I wanted to explain is that the video
20	when I was approaching –	20	that we have seen before, they were walking slowly singing
21	CHAIRPERSON: They are singing the song,	21	the song ululating. What I am trying to explain to this
22	[African Language.	22	one, when they realised me, I am approaching them, they are
23	MAJOR-GENERAL MPEMBE: [African	23 24	clicking, then the clicking started and the song is
24 25	language]. CHAIRPERSON: It's the song in the	24 25	started, so the crouching position and the clicking and the song, to me didn't show any sign of respect. It shows
20		20	song, to me durit show any sign of respect. It shows
	Page 16320		Page 16322
1	transcript –	1	something else.
2	MAJOR-GENERAL MPEMBE: That's at 09:30.	2	CHAIRPERSON: So you want to see any more
		-	• · · · · · · · · · · · · · · · · · · ·
3	CHAIRPERSON: The top of page 4, nine	3	of the video, or is that enough?
4	minutes 29 seconds.	4	MAJOR-GENERAL MPEMBE: Chairperson –
4 5	minutes 29 seconds. MR MPOFU: That's correct.	4 5	MAJOR-GENERAL MPEMBE: Chairperson – CHAIRPERSON: The purpose of the point,
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1	Page 16323 that these people are singing now and clicking their	1	Page 16325 way back, so I am not taking you to task about that, all I
	weapons, is exactly the same song that they were singing	2	am saying is that we now know that the clicking started
	when they were turn back from the security guards, and	3	when they turned from the police, and the only question I
	clicking, which song says [African language].	4	am asking you is once you then indicated that you wanted to
5	MAJOR-GENERAL MPEMBE: Chairperson, I	5	talk or once you started talking, did they continue
	disagree with the song –	6	clicking or did they stop the clicking and listen to you?
7	MR MPOFU: Then let's play it again.	7	MAJOR-GENERAL MPEMBE: They did stop the
8	MAJOR-GENERAL MPEMBE: Because the song	8	clicking.
	that that I am referring to specifically is the one that I	9	MR MPOFU: Thank you. Okay, let's, we
	say it, I didn't want to say it because it's an insulting	10	will continue the video. We've established that they were
	song. [African language].	11	singing the same thing song and clicking away, let's move.
12	MR MPOFU: Okay, no, that's very well,	12	[VIDEO SHOWN]
	but I am saying, do you accept that this song that has been	13	MR MPOFU: Sorry, Chairperson, I just
	sung here, which you've shown to the Commission is exactly	14	want to skip the verbal exchanges to the part where they
	the same song that they were singing, when they were	15	pass the policeman, I think it's 11:50 or something.
	turning away from the security and they were clicking	16	MAJOR-GENERAL MPEMBE: No, Chairperson,
	exactly in the same way. The song is (African language].	17	the song that I referred to is not yet sung, so the singing
	If you don't believe it, we can just rewind a few seconds,	18	of that song and the clicking is totally different and
	and you will listen to it properly.	19	then, that's what I wanted the commission should see again.
20	MAJOR-GENERAL MPEMBE: Chairperson, I say	20	MR MPOFU: No, thank you, Chairperson.
21	I don't deny, but the song that I am referring to and the	21	No, I am actually trying to help you, General, because if
	clicking is the one that I am repeatedly saying it maybe it	22	your song, the one you were talking about was sung, it
	could be played until that song is being sung.	23	would have been at the point at which they were supposedly
24	MR MPOFU: So at this point, you did not	24	defying you, so which is after the speeches, which is round
25	sense any aggression towards you?	25	about now. Ja, okay, can we now play on?
	Page 16324		Page 16326
1	MAJOR-GENERAL MPEMBE: I have already	1	CHAIRPERSON: I think that those who are
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1	Page 16327	1	Page 16329
1	lunch, that can be shown. That will save time, so the	1	General shows us his part, yes.
2	point you want will be shown and will be seen, and this is	2	CHAIRPERSON: Okay.
3	the moment that cross-examination belongs to Mr Mpofu, and		[13:01] MR MPOFU: Thank you, Chairperson. Right
4	he's going to show us what he wants us to see. But your	4	now the version, I was still putting the version to you,
5	bit show us immediately after lunch, okay? Yes, carry on,	5	will be that at this point they continued, as they had
6	Mr Mpofu	6	continued before the police even showed up with the, as I
7	MR MPOFU: Thank you, Chairperson.	7	say, singing the same song, clicking their weapons
8	General, yes that's correct, we will get to your part but	8	rhythmically as a form of clapping, as Mr Magidiwana
9	on the part, do you agree that when they pass that stone,	9	explained.
10	it's quite close to the road, correct? That big stone.	10	MAJOR-GENERAL MPEMBE: Chairperson, I've
11	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	11	answered this, and I'm still repeating, I don't dispute
12	MR MPOFU: And so when they were singing	12	anything that they are saying, except that they did not
13	this very same song, that they have been singing now, we	13	adhere to my request of voluntarily handing over the
14	don't know for how long, it is at the point at which they	14	dangerous weapons, which I told them that they are
15	are leaving the road and getting into the veld, passed that	15	illegally possessing it. There is no law in any country
16	big stone which we also, when we went for the inspection,	16	that allows people to be so heavily armed.
17	correct?	17	MR MPOFU: Yes, and so they were defiant,
18	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	18	but the point I'm making to you is that they were not
19	MR MPOFU: And the – despite the fact	19	showing aggression, or any extra aggression, in quotes,
20	that it may have been interrupted by another song or	20	than they did when they were turning back from the security
21	whatever you saw at lunch time, but o what we've seen now	21	guards.
22	they are singing for the third time, the same song that	22	CHAIRPERSON: [Microphone off, inaudible]
23	they sang when they were being turned back, when you first	23	respond to that proposition.
24 25	confronted them, and now, correct? MAJOR-GENERAL MPEMBE: Yes, Chairperson,	24 25	MAJOR-GENERAL MPEMBE: I don't understand
20	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	25	actually the proposition, except what I said, Chairperson,
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1	I hear they are singing the song, but I am not quite sure	1	is that for me for not having voluntarily handed over their
2	about the song, what the words of the song.	2	weapons to me, that was legally incorrect and it was
3	MR MPOFU: Okay, I'll help you and we	3	actually an unlawful action, and the fact that as a senior
4	will listen to this –	4	police official requesting such adults to understand that
5	MAJOR-GENERAL MPEMBE: But I don't	5	for them to possess these dangerous weapons is dangerous,
6	dispute, Chairperson, that they are singing that song.	6	it was really incomprehensible.
7	MR MPOFU: The one that says [African	7	MR MPOFU: Yes.
8	language]?	8	MAJOR-GENERAL MPEMBE: But any other
9	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	9	action of whether they were now slow or fast, to me
10	because even in the translations maybe I've never seen it,	10	couldn't much - and I don't dispute it, but the fact that
11	but I am not disputing that they are singing that song.	11	they refused totally, that to me was a serious problem.
12	CHAIRPERSON: Mr Mpofu, can you tell us	12	MR MPOFU: Yes. No, we were together on
13	what page it is on the transcript?	13	that. In fact you're quite right that it would be unlawful
14	MR MPOFU: That would be Q2.	14	to defy a policeman's clear instruction, but all I'm saying
15	CHAIRPERSON: This is, the transcript is	15	is that that's a different thing. Not everything that's
16	QQ2.	16	unlawful is a sign of aggression. If I steal bread from
17	MR MPOFU: Thank you, Chairperson.	17	Pick 'n Pay I'm not fighting with anybody, but it's still
18	CHAIRPERSON: Mr Tokota has been looking	18	unlawful. You accept that?
19	for it, and he can't find it, so perhaps you can help us.	19	MAJOR-GENERAL MPEMBE: Chairperson, no, I
20	Well, perhaps we can do that after lunch as well, you are	20	don't accept it, in the sense that there were already
21	justifiably concerned we should use every available minute.	21	people that were murdered and killed through dangerous
22	MR MPOFU: Yes.	22	weapons, so the circumstances that I find myself in, it was
23	CHAIRPERSON: So these things can be	23	of necessity that they could, they themselves, seeing a
24	looked for during the lunch hour.	24	senior police official talking their own language and
25	MR MPOFU: We will tidy up when the	25	telling them precisely that we are not there to arrest
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1	them, but we are concerned about them possessing dangerous	1	railway line.
2	weapons, it could have been easily comprehensible by even a	2	MAJOR-GENERAL MPEMBE: Correct,
3	child that here is a policeman approaching us in a very	3	Chairperson. What I would like to elucidate to this one is
4	humble way, but the manner in which they did not comply	4	that immediately when they sing the song and the clacking
5	with that humble request actually in my seeing that that	5	was not as slow as when they sing other songs. It shows
6	actually caused the most problems since from the 13th,	6	aggressiveness in that.
7	because if they handed over their weapons on that day, and	7	CHAIRPERSON: That's the point you want
8	as I've said to Adv Madlanga, there could not have been the	8	to show us.
9	killing on that day.	9	MAJOR-GENERAL MPEMBE: That's the point –
10	MR MPOFU: Yes, okay, we'll leave it –	10	CHAIRPERSON: Now you want to show us the
11	CHAIRPERSON: I think this is a point at	11	other video. You indicate the point from which you want it
12	which we can take the lunch adjournment. I think the	12	shown, so can we now see that, please? Unless you want to
13	General has made his standpoint on this issue clear –	13	say something first before we do?
14	MR MPOFU: Let's leave it for argument,	14	MAJOR-GENERAL MPEMBE: No, thanks,
15	Chairperson.	15	Chairperson, we can go to that one.
16	CHAIRPERSON: - and you've put your case	16	[VIDEO SHOWN]
17	to him as well.	17	Thanks, Chairperson. That's what I want to
18	MR MPOFU: Thank you, Chairperson.	18	illustrate the aggressiveness of the singing of the
19	CHAIRPERSON: So let's take the lunch	19	different songs and that could give me an interpretation
20	adjournment. I think we'll start at 2 o'clock, or try to	20	that when I wanted, when I was approaching them, they show
21	start at 2 o'clock. In the meanwhile I hope that the	21	that they are aggressive and also the singing of that song.
22	relevant section in the video clip will be identified and I	22	CHAIRPERSON: Right, well we've seen
23	think the section also where this particular song is sung	23	that, and presumably that may be the subject of comment
24	is identified in the transcript, and then we'll be able to	24	later in argument, but I imagine, unless you want to ask
25	proceed further.	25	something about it now, maybe you want to save your powder
	Page 16332		Page 16334
1	MR MPOFU: Thanks, Chairperson.	1	for, shot for argument later, but I'm in your hands, Mr
2	MR MPOFU: Thanks, Chairperson. [COMMISSION ADJOURNS COMMISSION RESUMES]	2	for, shot for argument later, but I'm in your hands, Mr Mpofu.
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	Page 16335		Page 16337
1	impression, but the situation why when I approach them they	1	MAJOR-GENERAL MPEMBE: - and the
2	choose the song that I, or all of us we should tighten up	2	situation from the beginning it was not the same when the
3	something? And the clicking was very aggressive. That to	3	police approached them, and yet we are community policing
4	me it was intimidatory, and seeing such a lot of people	4	officers, we spoke with them and it's known to the
5	singing such a song and me, I'm not here, as I told them I	5	Commission why I took a decision to lead the team.
6	was not there to arrest them, I was just there to tell them	6	MR MPOFU: Okay, so if they had –
7	that what you are doing, it's unlawful.	7	CHAIRPERSON: Can I ask a question first
8	MR MPOFU: You accept that the songs that	8	before you ask one?
9	they were singing were not designed for a certain General	9	MR MPOFU: Yes, Chairperson, of course.
10	Mpembe, but they were singing songs that they were singing?	10	CHAIRPERSON: According to the
			5
11	That will be the evidence, by the way, that there was no	11	transcript, exhibit QQ2 on page 1, line 10, there is rather
12	song that was directed at you personally, or even at the	12	words of a song, "siya yisi benzela," (phonetic) and the
13	police.	13	rest of the words are given, and the translation is "We
14	MAJOR-GENERAL MPEMBE: Chairperson, I do	14	work for my money, we work for it underground," and then
15	agree with what has been said, but to me choosing of the	15	later on, on page 3 there's a second song, "Amalungelo"
16	song went with the situation and they did want to achieve	16	(phonetic) other words are given, "Our rights, we are
17	certain intentions.	17	fighting for our rights." Now this other song that we're
18	MR MPOFU: Okay, well accept –	18	busy with, the song about the boy, what the boy must do, is
19	MAJOR-GENERAL MPEMBE: Because –	19	that a third song?
20	MR MPOFU: Sorry, sorry, General.	20	MAJOR-GENERAL MPEMBE: Correct,
21	MAJOR-GENERAL MPEMBE: Because what I'm	21	Chairperson.
22	saying is why couldn't they sing the song when they started	22	CHAIRPERSON: So is your point that
23	when they see us? Why they choose of "ncini samasende"	23	there's no reason why they couldn't have sung the first
24	(phonetic) when they see us? And that's the point that I	24	song or the second song when they saw the police? The fact
25	wanted to bring along.	25	that they chose to sing the third song conveyed to you
	Page 16336		Page 16338
1	CHAIRPERSON: That's the point that the	1	something which you've endeavoured to explain to us. Is
1 2	CHAIRPERSON: That's the point that the song was changed when – it will also be your argument, I	1 2	something which you've endeavoured to explain to us. Is that a summary of what you say?
	CHAIRPERSON: That's the point that the		something which you've endeavoured to explain to us. Is
2	CHAIRPERSON: That's the point that the song was changed when – it will also be your argument, I	2	something which you've endeavoured to explain to us. Is that a summary of what you say?
2 3	CHAIRPERSON: That's the point that the song was changed when – it will also be your argument, I take it, when they saw that the police had arrived on the	2 3	something which you've endeavoured to explain to us. Is that a summary of what you say? MAJOR-GENERAL MPEMBE: Exactly correct,
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1			
	Page 16339 MAJOR-GENERAL MPEMBE: - from the	1	Page 16341 MAJOR-GENERAL MPEMBE: Yes, as I was told
2	beginning, and it had intentions and the people who can	2	I did not know who is that person.
3	only interpret their intention and to be aggressive is the	3	MR MPOFU: Yes. Ja, neither do I. I'm
4	strikers, Chairperson.	4	just saying people, because under ordinary circumstances
5	MR MPOFU: Thank you. So now we accept	5	you would not be ordered or removed by somebody who's your
6	then that the song that you prefer, "Ingoyami sekaya"	6	junior, correct?
7	(phonetic) is the song that they actually were singing when	7	MAJOR-GENERAL MPEMBE: It could have
8	they left and passing the stone, correct?	, 8	happened if that somebody or junior knows that your life is
	5	8 9	
9	MAJOR-GENERAL MPEMBE: Chairperson, I		in danger. MR MPOFU: Yes, that's exactly the point
10	said I did not know, but I didn't, because I didn't hear	10	· 5 1
11	the words well, but I don't dispute that.	11	I'm making. Under normal circumstances, which means when
12	MR MPOFU: Ja.	12	your life was not in danger, under normal circumstances you
13	MAJOR-GENERAL MPEMBE: And that is not	13	would not be removed by a person who's junior to you, or
14	what I'm speaking, Chairperson, but what I'm saying is the	14	ordered around by your junior, correct?
15	choosing of the song went with the situations.	15	MAJOR-GENERAL MPEMBE: No, Chairperson,
16	MR MPOFU: Yes, thank you very much. In	16	not necessarily a junior; any person.
17	other words your evidence is now that at the important time	17	MR MPOFU: You'll forgive me, because
18	when Vermaak was saying that they were "vreedsaam" they	18	once again I might take you to the area of speculation, but
19	were actually singing the nice song?	19	you are aware that – or rather, did you observe the
20	MAJOR-GENERAL MPEMBE: No, Chairperson, I	20	seriousness of the injuries on Lieutenant Baloyi? Or were
21	don't know at what stage Colonel Vermaak indicate it was	21	they serious?
22	"vreedsaam." I will be speculating. He's the only one to	22	MAJOR-GENERAL MPEMBE: Chairperson, I, to
23	say when were they "vreedsaam."	23	know about the real injuries it was later, because as it,
24	MR MPOFU: Okay, forget about Colonel	24	as I have testified already I entered into the Nyala and
25	Vermaak. At the point at which they were passing the	25	while they attended to him, so on that scene on that day I
	Dorr. 1/240		Dam: 1/242
1	Page 16340 stone, and we'll play the video if you like, they were	1	Page 16342 didn't see him and, but I know that he was taken to the
2	singing the nice song, not the bad song, correct?	-	
3	3, 3, 4, 4, 5, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7,	2	hospital.
3	MAJOR-GENERAL MPEMBE: Yes, they were	2 3	hospital. MR MPOFU: Yes, fair enough, but you know
3 4	MAJOR-GENERAL MPEMBE: Yes, they were singing another song.		MR MPOFU: Yes, fair enough, but you know
4	singing another song.	3	MR MPOFU: Yes, fair enough, but you know now that he was seriously injured?
4 5	singing another song. MR MPOFU: Thank you very much.	3 4	MR MPOFU: Yes, fair enough, but you know now that he was seriously injured? MAJOR-GENERAL MPEMBE: Yes, Chairperson.
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4 5 6 7	singing another song. MR MPOFU: Thank you very much. MAJOR-GENERAL MPEMBE: But what I indicated there, Chairperson, I need to add, is that they	3 4 5 6 7	MR MPOFU: Yes, fair enough, but you know now that he was seriously injured? MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR MPOFU: And you also know that he was airlifted immediately after he sustained his injuries? Or
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1	Page 16343 airlifted and that may or may not have saved his life, do	1	Page 16345 CHAIRPERSON: Yes, whatever the reason
2	you have any comment about the fact that on the 16th when	2	was for what happened or didn't happen, that's something
3	other people were injured, some of them riddled with	2	you can't help us on.
4	bullets, they were not immediately airlifted but were left	4	MAJOR-GENERAL MPEMBE: Correct,
4 5	there for about an hour?	4 5	
			Chairperson. CHAIRPERSON: If you had been aware of
6		6	5
7	not in a position to comment because I was not there.	7	the fact that there were seriously injured people lying
8	MR MPOFU: Ja.	8	there who were in a position to receive medical attention
9	MAJOR-GENERAL MPEMBE: On the, all the	9	and for some reason were not getting it, what would you
10	things that I could say, it's the hearsay evidence, but I	10	have done? If you had been aware of it at the time, what
11	thought that it was on the 13th, but now that it's on the	11	would you have done?
12	16th, I was not on the scene.	12	MAJOR-GENERAL MPEMBE: Chairperson,
13	CHAIRPERSON: I would have thought it's a	13	surely we could have communicated to those on the ground to
14	matter of comment for the Commission to make if it's	14	make that to be attended because on the 13th that was not
15	appropriate. I'm not sure what the witness would say if he	15	the case, because also on the 13th we did provide medical
16	were directly commenting on it, but I'm not sure his	16	assistance like in the 16th.
17	comment will take it any further from the comments we would	17	CHAIRPERSON: On a similar theme, I
18	make when we've heard argument from the various parties,	18	understand that two of the strikers were killed, well three
19	and it might be advisable to leave it as a matter to be	19	were killed; one was killed I think more or less at the
20	raised during the argument stage, and obviously if you	20	field where the fighting took place. One was killed some
21	raise the point in argument you have my assurance we will	21	distance away on the other side of the river, and one as
22	deal with it in the report. Either we will accept your	22	we've heard was killed in circumstances we're not sure
23	comments or not, and if we don't, we will say why.	23	about yet, in the informal settlement but I think some were
24	MR MPOFU: No, thank you, Chairperson, I	24	injured as well, is that right, some of the strikers on the
25	won't belabour the point. I was only raising it with him	25	13th?
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1			Dama 1/0//
1	Page 16344 because he was overall responsible for everything.	1	Page 16346 [14:30] MAJOR-GENERAL MPEMBE: Chairperson, on
1	because he was overall responsible for everything,	1 2	[14:30] MAJOR-GENERAL MPEMBE: Chairperson, on
2	because he was overall responsible for everything, including medical assistance which may or may not be	1 2 3	[14:30] MAJOR-GENERAL MPEMBE: Chairperson, on the scene - maybe they ran away also – on the scene I did
2 3	because he was overall responsible for everything, including medical assistance which may or may not be provided. But I'll –	2	[14:30] MAJOR-GENERAL MPEMBE: Chairperson, on the scene - maybe they ran away also – on the scene I did not see the others that were injured but what I do know is
2 3 4	because he was overall responsible for everything, including medical assistance which may or may not be provided. But I'll – CHAIRPERSON: You may technically be	2 3	[14:30] MAJOR-GENERAL MPEMBE: Chairperson, on the scene - maybe they ran away also – on the scene I did not see the others that were injured but what I do know is that there was one who died on the scene, like Warrant
2 3 4 5	because he was overall responsible for everything, including medical assistance which may or may not be provided. But I'll – CHAIRPERSON: You may technically be responsible for everything that happened on the 16th at, in	2 3 4	[14:30] MAJOR-GENERAL MPEMBE: Chairperson, on the scene - maybe they ran away also – on the scene I did not see the others that were injured but what I do know is that there was one who died on the scene, like Warrant Officer Monene and there was also Warrant Officer Lepaaku
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1	don't understand who was at fault, where and so on.	1	are on that point, you promised, I think it was the 31st of
2	MR MPOFU: On the 13th.	2	August or somewhere there, that when you've finished your
3	MAJOR-GENERAL MPEMBE: Chairperson, I	3	evidence you are going to take those steps against Warrant
4	don't understand the question.	4	Officer Kuhn. Have you taken those steps now seeing that
5	MR MPOFU: Which part don't you, is it	5	it's now November?
6	the fault or you –	6	MAJOR-GENERAL MPEMBE: Chairperson,
7	CHAIRPERSON: Give us the question again.	7	Warrant Officer Kuhn is in Gauteng province. Normally what
8	MR MPOFU: - which words don't you	8	we do, we write the letters to another province, so then in
9	understand?	9	terms of the disciplinary proceedings the commander, on
10	CHAIRPERSON: Sorry, Mr Mpofu, Mr Mathibedi I	10	receipting of the letter, then he is the one that
11	think wants to object but I'm not quite sure what the	11	institutes that to investigate the misconduct. Then I am
12	question was. Would you rephrase, would you repeat the	12	supposed to submit the statement and I believe the
13	question please?	13	investigation is still taking place but I cannot say
14	MR MPOFU: Yes.	14	because I have not yet been called to the what, to the
15	CHAIRPERSON: And then if the objection is	15	hearing.
16	persisted in, we'll have to consider it.	16	CHAIRPERSON: Is it correct to say -
17	MR MPOFU: At the time or subsequently,	17	MAJOR-GENERAL MPEMBE: But the
18	did you know whether it was the police or the strikers who	18	investigation is being initiated.
19	were at fault in respect of the incident of the 15th – of	19	CHAIRPERSON: Yes, so you wrote the letter, you
20	the 13th, sorry.	20	wrote the letter to the commander in Gauteng, is that
21	MAJOR-GENERAL MPEMBE: Chairperson –	21	right?
22	CHAIRPERSON: What is the objection?	22	MAJOR-GENERAL MPEMBE: Chairperson,
23	MR MATHIBEDI SC: Mr Chairman, I think	23	normally what we do is that the deputy responsible for
24	this is an issue or aspect which the Commission is called	24	disciplinary is the one that I speak to her and then she
25	upon to make a finding on.	25	will write that letter.
20	aport to make a maing on.	20	
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1	CHAIRPERSON: Well, perhaps – [microphone off,	1	CHAIRPERSON: Has that been done?
2	inaudible]. Sorry, were you aware subsequently of any	2	MAJOR-GENERAL MPEMBE: I'm not sure,
3	facts which would be relevant to decide and would indicate	3	Chairperson, I can find out –
4	that whether one or other of the parties, i.e. the police	4	CHAIRPERSON: No, sorry, did you speak to her?
5	or the strikers were responsible for what happened on the	5	MAJOR-GENERAL MPEMBE: I did speak to
6	13th?	6	her.
7	MAJOR-GENERAL MPEMBE: No, Chairperson,	7	CHAIRPERSON: So as far as you're concerned you
8	except to state what I have already said, to say the	8	have done what you had to do up to this stage to get
9	strikers refused vehemently to hand over weapons to me -	9	disciplinary proceedings under way against Warrant Officer
10	CHAIRPERSON: Yes, you've told us that.	10	Kuhn. You spoke to the deputy commissioner responsible for
11	MAJOR-GENERAL MPEMBE: And secondly –	11	disciplinary matters, is that right?
12	CHAIRPERSON: And you've also told us that that -	12	MAJOR-GENERAL MPEMBE: Correct,
13	yes, sorry, carry on.	13	Chairperson.
14	MAJOR-GENERAL MPEMBE: - is that I did	14	CHAIRPERSON: What she did, you can't tell us.
15	also say that for the strikers to attack the police I said	15	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
16	sparked off the teargas and the stun grenade.	16	CHAIRPERSON: What has been happening across the
17	CHAIRPERSON: You also added that subsequently in	17	border in Gauteng, across the boundary in Gauteng, you also
18	your evidence, in your re-examination, that you had	18	can't tell us?
19	reconsidered your decision not to take steps against	19	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
20	Warrant Officer Kuhn; you decided to institute disciplinary	20	except that if I am not called or I'm not asked to give a
21	proceedings. I think that was your evidence in re-	20	statement then I can enquire why, but I believe that there
21	examination, is that correct?	21	will be a time where I can be requested to give a statement
22	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	22	and thereafter I can be called to the departmental hearing.
20			
24		.)/	
24	I said I will do so by that time, yes.	24 25	MR MPOFU: When did you speak, when did
25	MR MPOFU: Okay. By the way, while we	24 25	you lay the complaint, if that's the correct term?

Marikana Commission of Inquiry

		1	
1	Page 16351	1	Page 16353
1	MAJOR-GENERAL MPEMBE: Chairperson,	1	we shall do so.
_	isely the date I'm not sure but it was immediately	2	MR MPOFU: Thank you. General, sorry,
	r my cross-examination and when I left the Commission	3	that was just a follow-up on the issue of the complaint but
	time.	4	the question really I was asking you was about the - should
5	MR MPOFU: And who is, what is the name	5	I read from your answer that if it is true that people,
	ne person to whom you or with whom you communicated?	6	injured people were left lying there for about an hour,
7 The	name of the person?	7	that would have been a deviation from the plan that you
8	MAJOR-GENERAL MPEMBE: Are you saying the	8	approved?
9 depu	uty or the name –	9	MAJOR-GENERAL MPEMBE: Chairperson, I
10	MR MPOFU: Yes, I'm saying the deputy –	10	just wanted to find out whether is it on the 13th or on the
11	CHAIRPERSON: You talked about the deputy	11	16th?
12 com	missioner responsible for disciplinary matters to whom	12	MR MPOFU: 16th. Well, on any day.
13 you	made the complaint, as it were. What is her name?	13	CHAIRPERSON: The question relates to the 16th.
14	MAJOR-GENERAL MPEMBE: It's Major-General	14	You told us that you had in your plan, in the plan that you
15 Mole	efi.	15	were involved in, provided for paramedics and ambulances
16	CHAIRPERSON: Thank you.	16	and so on to be available at the forward holding area so
17	MR MPOFU: And what did you say to Major-	17	that if people were injured, steps could be taken to give
18 Gene	eral Molefi?	18	us medical assistance as soon as possible. I think that's
19	CHAIRPERSON: Mr Mpofu, I don't know that that's	19	the evidence you gave, is that correct?
20 goin	g to help us at this stage. He's told us he laid a	20	MAJOR-GENERAL MPEMBE: Correct,
-	plaint. He said he thought that disciplinary	21	Chairperson, to say to provide medical assistance –
	eedings should be brought against Warrant Officer Kuhn	22	CHAIRPERSON: Yes.
	reported that to Major-General Molefi. Do we need more	23	MAJOR-GENERAL MPEMBE: - the plan and to
	il than that at this stage?	24	be nearer.
24 uctu 25	MR MPOFU: Well –	24	CHAIRPERSON: Yes.
	Page 16352		Page 16354
1	CHAIRPERSON: Unless you're going to suggest	1	MAJOR-GENERAL MPEMBE: It's exactly for
2	MR MPOFU: If the Commission doesn't – it	2	the purpose that we were, that they should attend to them.
3 was	the Commission that was promised the thing, so I don't	3	CHAIRPERSON: Now it's about that that Mr
4 care	whether, what he says. I just thought if he promised	4	Mpofu is going to question you, going to ask you a
5 that	he would do something, if the Commission is not	5	question.
6 inter	ested then neither am I.	6	MAJOR-GENERAL MPEMBE: Okay, Chairperson.
7	CHAIRPERSON: No – no, Mr Mpofu, that's not right.	7	MR MPOFU: Thank you. I'll repeat the
8 Of co	ourse we're interested but I'm not sure if Warrant	8	question, in fairness, General, now that we know we're both
9 Offic	er Kuhn is going to give evidence, which he may, but	9	talking about the 16th. I'm saying if it is true that
10 certa	ainly we would want to know what the position is before	10	injured people, severely injured people were left lying
11 we s	tart writing our report. So you can be assured that we	11	there for about an hour without being attended to, that
	t to know.	12	would have been a deviation from what, from the plan that
13	MR MPOFU: Look, General –	13	you had approved. Correct?
14	CHAIRPERSON: Sorry, may I interrupt you, Mr	14	MR MATHIBEDI SC: Sorry, Mr Chairman. Is
	fu. Adv Hemraj makes a suggestion which may save time.	15	this question being based on the premise that all the
	lathibedi, can you please make enquiries, take	16	people that were injured on that day were, you know,
	uctions on the matter, perhaps if necessary we want	17	attended after –
	full ambit of the enquiries you make. You can speak to	18	CHAIRPERSON: What was put –
	Ipofu afterwards and endeavour to get up-to-date	19	MR MPOFU: Yes.
	mation on the point about which Mr Mpofu is asking	20	CHAIRPERSON: What was put earlier was that
	13 12 54 1	20	according to information given to us by Mr Chaskalson based
21 ques	MR MPOFU: Thank you.	21	on the time line and the narrative of the videos, it
22	la la primer de la calle	22	appeared that some, I'm not quite sure how many but some
			anneader that should fill only only suite for many out some
23	CHAIRPERSON: And then it can be placed before us		
23 24 and	of course given to Mr Mpofu.	24	people only received medical attention, began receiving
23 24 and 25			

		-	
	Page 16355		Page 1635
1	which caused the injuries were fired. I think that's the	1	MR MPOFU: That's correct, yes. Now I'm
2	basis of it, is that right, Mr Mpofu?	2	moving -
3	MR MPOFU: That's correct. Well, it's	3	CHAIRPERSON: Now ask your question about that.
4	stronger than that, not that some people – that no-one	4	MR MPOFU: Yes. First question is,
5	received any attention until 59 –	5	according to you, do you agree or disagree, according to
6	CHAIRPERSON: Well, anyway, okay. Well, that	6	you, until that point of the 13th when those members were
7	answers the question that was put to you. What's your	7	killed you had regarded the situation as a normal – well,
8	answer to that? You were asked whether, if that's so and	8	maybe not normal but you regarded it as a crowd management
9	insofar as that is so, would that be a deviation from the	9	operation, correct?
10	plan that you approved and expected to be implemented?	10	MAJOR-GENERAL MPEMBE: Chairperson, my
11	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	11	testimony and also my statement is very clear, that by the
12	but those that were on the ground, they could explain if	12	time on Monday when I arrived there, I could realise that
13	there was any deviation, why the deviation will take place	13	that could be a combination, taking into account that the
14	but at this moment I cannot say there was a deviation. If	14	people were possessing dangerous weapons.
15	it was, yes, it could be a deviation from the plan but	15	MR MPOFU: General, can you please answer
16	those on the ground they could give an explanation why.	16	my question? You can disagree or agree with me. Is it
17	CHAIRPERSON: Yes. Basically it sounds – I'm	17	correct or is it not correct that until that incident where
18	changing your answer slightly – it sounds as if there would	18	the policemen were killed you regarded the Marikana
19	have been a deviation but whether there was a satisfactory	19	situation as a crowd management operation.
20	explanation for the deviation is something you can't help	20	MAJOR-GENERAL MPEMBE: No, Chairperson.
21	us on. The people concerned would be the only ones who	21	MR MPOFU: Or to put it even stronger,
22	could give the answer to that. Is that effectively what	22	you regarded it as a normal crowd management situation.
23	you're saying?	23	MAJOR-GENERAL MPEMBE: No, Chairperson.
24	MAJOR-GENERAL MPEMBE: Correct,	24	MR MPOFU: Then can you go to paragraph
25	Chairperson.	25	22 of your statement? Sorry, the original –
			Deve 1/25
1	Page 16356 MR MPOFU: Thank you very much,	1	Page 16358 CHAIRPERSON: Which statement? We've got three
2	Chairperson. Now, I was saying that I was now going to	2	statements by him.
3	deal with the events of the 13th at a broader level insofar	3	MR MPOFU: Yes.
4	as I said to you this morning we're going to argue that	4	CHAIRPERSON: Which one are you referring to, the
5	they constituted a major turning point. Remember that		
0		- n	supplementary one or the main one?
6		5	supplementary one or the main one?
6 7	explanation I gave in the morning, right?	6	MR MPOFU: The main one, Chairperson.
7	explanation I gave in the morning, right? MAJOR-GENERAL MPEMBE: Chairperson, there	6 7	MR MPOFU: The main one, Chairperson. I'm sorry, I just forgot the exhibit number.
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	explanation I gave in the morning, right? MAJOR-GENERAL MPEMBE: Chairperson, there were many explanations. Maybe if it, I'm asking that it could be specific as they were specified in the morning. MR MPOFU: Yes, okay. I said in the morning to you one of the turning points at least that we're going to argue, or game changers in this whole saga, was the fact that policemen were killed on the 13th. You remember that? MAJOR-GENERAL MPEMBE: Yes, Chairperson, I remember the incidents on the 13th – MR MPOFU: It doesn't mean you agree with me. CHAIRPERSON: I don't think you're answering the question. Mr Mpofu has suggested there were certain, what he called game changers, events which changed the complexion, looking forward, of what happened over the	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR MPOFU: The main one, Chairperson. I'm sorry, I just forgot the exhibit number. CHAIRPERSON: I think you're referring to GGG12. MR MPOFU: Triple – that's correct. It's GGG. GGG12, if you can go to paragraph 22 thereof, can read it out to you? CHAIRPERSON: What paragraph, number 22? MR MPOFU: 22, Chairperson. CHAIRPERSON: Okay, thank you. I see it's on the screen. MR MPOFU: Yes. You say there, "Following the attack on the police I formed the view that this was not a crowd management situation." Is that correct? MAJOR-GENERAL MPEMBE: It's correct, Chairperson. MR MPOFU: So somebody reading that would

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1	Page 16359 MAJOR-GENERAL MPEMBE: Chairperson, I	1	Page 16361 it is always in support of POP where we consider that the
2	will say yes, with an explanation. It is my evidence	2	POP will need that support.
3	before this Commission that I took a decision personally to	3	CHAIRPERSON: Yes, so I see you did say
4	have two caps on Monday and that could also show that that	4	in the statement and Mr Mpofu is quite right to draw
5	was not normal and the reasons I explained very clear,	5	attention to it, you did say in your statement that you
6	following what has happened before, but yes, on Monday when	6	formed the view after the attack on the police that this
7	I arrived there what I said is when I saw the people were	7	was not a normal crowd management situation. But looking
8	injured but taking into account what has happened on the	8	back, for instance to whether it was a normal crowd
9	weekend, I could not have just decided that I personally	9	management situation after for example the deaths of the
10	take charge of the situation on the ground as a general.	10	two security personnel and the burning of their cars. And
11	CHAIRPERSON: I'm not sure whether you took that	11	the killing of the two mineworkers on the Sunday night and
12	view but we know that on the Sunday two security personnel	12	the damaging of the cars and the events of incidents of
13	were killed, we know that two cars were burnt, we know that	13	intimidation and so forth. Clearly it tends to enforce an
14	that evening there was an incident at Karee, I think, where	14	unprotected strike. Would you regard – in other words
15	– K4 actually – where four, seven vehicles were burnt and	15	putting the clock back to say noon on Monday, 8 o'clock in
16	one pedestrian was stabbed and another miner who was	16	the morning, on Monday morning was it even at that stage to
17	employed at K4 was taken to hospital where he died. So it	17	be described as a normal crowd management situation?
18	looks as if two people were killed that night, mineworkers	18	MAJOR-GENERAL MPEMBE: No, Chairperson,
19	at Karee, vehicles were burnt, early in the day on the	19	and I want also to add that there's a reason why I
20	Sunday two security personnel were killed and two vehicles	20	personally intercepted. And Q2 can also explain when I say
21	were burnt. There were other incidents as appears from the	21	to the crowd managers, to the strikers to say we are the
22	occurrence book of Lonmin and of the police. There were	22	police. We are here and concerned of what was happening.
23	incidents of intimidation, not - so was it really just an	23	COMMISSIONER TOKOTA: Sorry, did you at
24	ordinary crowd management situation that was existing at	24	any stage prior to the 13th form a view that this was a
25	Marikana? Before, I'm talking about before the police were	25	normal crowd management situation?
1	Page 16360 killed.	1	Page 16362 MAJOR-GENERAL MPEMBE: No, Chairperson,
1 2		1 2	•
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	Page 16363	1	Page 16365
1	Chairperson, I'm saying it came out later on that those	1	instructions from the Provincial Commissioner at 12:45 and
2	that I intercepted on the 13th they were actually at the	2	before you set out to the area next to the railway line.
3	koppie and it came out later that those could have been the	3	You knew they'd come from the koppie and knew they'd gone
4	leaders because later on, Chairperson, in the evidence	4	towards Karee mine and knew they'd come back and were going
5	before this Commission they formed what we call the five	5	back towards the koppie. Is that right?
6	brave Madoda.	6	MAJOR-GENERAL MPEMBE: Correct,
7	CHAIRPERSON: - we're busy with that I	7	Chairperson.
8	want to draw your attention to a passage in your affidavit,	8	MR MPOFU: But when I asked you the same
9	GGG12. It's paragraph 5, it deals with something that	9	question this morning you said you heard it from the
10	happened shortly after 10am. on the morning of the 13th of	10	strikers. Correct?
11	August. After you'd been briefed about certain things had	11	MAJOR-GENERAL MPEMBE: Chairperson, I was
12	happened at Marikana by people from Lonmin. Paragraph 5	12	saying I heard it from the strikers who were actually
13	reads as follows, "Shortly thereafter Brigadier Calitz who	13	confirming what I was told. It was just a hear evidence by
14	was monitoring the Lonmin CCTV footage in the JOC informed	14	them.
15	us there were about 2000 to 3000 people at the Wonderkop	15	MR MPOFU: Okay, the record will speak
16	koppie, the koppie. Later some of these protesters left	16	for itself on that one.
17	the koppie and were seen headed in the direction of the	17	CHAIRPERSON: The record may speak for
18	Karee mine. They then marched back from the Karee mine	18	itself on that.
19	towards the koppie." And then it goes on about how you	19	MR MPOFU: That I thought was different,
20	received instructions to deal with those who were marching	20	ja. Anyway the point I'm dealing is that all these tragic
21	illegally from the Karee mine. So it does appear from that	21	things that the Chairperson has enumerated to you do not
22	passage in your statement that in fact you knew already,	22	seem to have featured in your mind. What you have put in
23	before you set out for the area next to the railway line	23	paragraph 22 of the turning point if I may use my own
24	that the people whom you were going to confront had been at	24	phrase, is that following the attack on the police, okay,
25	the koppie earlier that day, were part of a group of about	25	you formed the view that this was not a normal crowd
	Page 16364		Page 16366
1	2 to 3000 people. But they, the group that left the koppie	1	management situation or it was more abnormal, or whatever.
2	had gone in the direction of the Karee mine and then for	2	But it was a turning point.
3	some reason turned back and come back towards the koppie.	3	MAJOR-GENERAL MPEMBE: Chairperson, I
4	Now that was according to what you say in Para 5 was	4	said no for the main reason is that – the main reason is
5	something you knew already before you received the	5	that that's one of the reasons also I went personally to do
6	instructions which you set out in paragraph 6 from the	6	the interception.
7	Provincial Commissioner. Is that Para 5 wrong or can we	7	MR MPOFU: General, I'm prepared to
8	accept that it's in accordance with your recollection?	8	accept that the situation described by the Chairperson is
9	MAJOR-GENERAL MPEMBE: Chairperson, as I	9	not normal, okay. There were already four people who had
10	said -	10	died. As the Chairperson said there were seven cars or
11	CHAIRPERSON: Sorry, your answer?	11	whatever that had been burnt down. All I'm saying to you
12	MAJOR-GENERAL MPEMBE: Chairperson, as I	12	is that the killing of the police, if that was on a scale,
13	said I also earlier on in my testimony that he was not	13	abnormal 4, the killing of the police was a turning point
14	monitoring, I corrected the monitoring to say he only	14	which made it abnormal 10. Correct?
15	showed me on the Lonmin CCTV, then he said he was also	15	MAJOR-GENERAL MPEMBE: No, Chairperson, I
16	informed then he informed. It was actually confirmed by	16	am on record to this Commission that things, after the
17	the protesters themselves when I was there.	17	incidents of the weekend, the operation was rated 3.
18	CHAIRPERSON: Yes, yes.	18	MR MPOFU: All right. Now then the
19	MAJOR-GENERAL MPEMBE: He said, General,	19	orders stated in paragraph 22 doesn't make sense. If
20	these are the people but I'm also informed. So he was not	20	things were the same before and after the killing of the
20	sure, but here I was saying what I was told by Brigadier -	20	police as far as your views were concerned, correct?
21	CHAIRPERSON: Yes, yes, I'm sorry. I had	21	MAJOR-GENERAL MPEMBE: I said,
22	forgotten, I'm glad you reminded me of the correction that	22	Chairperson, that if the protesters gave me the dangerous
23	you gave us in respect of Para 5. But the point is you had	23 24	weapons we could have been speaking currently even today a
24	you gave us in respect of Fara 5. But the point is you had	24	
25	that knowledge albeit boarsay before you received the	ንፍ	different story. But that was the confirmation of the view
	that knowledge albeit hearsay before you received the	25	different story. But that was the confirmation of the view

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	Page 16367		Page 16369
1	that I had and I put it on record again, if I didn't form	1	MAJOR-GENERAL MPEMBE: Ja, yes,
2	up any view I could not have been personally, as a general,	2	Chairperson.
3	responsible for operations in the province, have gone there	3	CHAIRPERSON: So it was at the top level.
4	personally.	4	So presumably if they even grade the seriousness in the top
5	MR MPOFU: Yes, in other words what you	5	level, it was already in the top level before you got
6	are now telling the Commission is that the killing of those	6	there.
7	policemen did not change your view as to how bad things	7	MAJOR-GENERAL MPEMBE: Correct,
8	were. It was just another day in the office.	8	Chairperson.
9			•
		9	
10	that's not what I am saying.	10	official levels, did you regard it and did the SAPS
11	CHAIRPERSON: Well -	11	generally regard it as even more serious once this incident
12	MAJOR-GENERAL MPEMBE: What I'm saying	12	took place in which the police were killed?
13	is, Chairperson, I repeat and I'll keep on repeating it, if	13	MAJOR-GENERAL MPEMBE: Correct,
14	the protesters themselves gave me the dangerous weapons we	14	Chairperson.
15	might not have been speaking about the killing of the	15	CHAIRPERSON: All right that sounds like
16	police officers.	16	a suitable note upon which –
17	MR MPOFU: General, that is mightily	17	MR MPOFU: I am so indebted to the
18	irrelevant to the question I'm asking you. Do you	18	Chairperson, we can have tea now, Chairperson, thank you.
19	understand that? I'm saying to you, forget about if the	19	CHAIRPERSON: All right, I'm so grateful
20	strikers, what have you, you've been saying that all	20	for you to acknowledge your indebtedness. We'll take the
21	morning, all I'm saying to you is this, you are telling	21	tea adjournment, thank you.
22	this Commission that the issue of the killing, of the	22	[COMMISSION ADJOURNS COMMISSION RESUMES]
23	policemen had no bearing whatsoever on your assessment of	23	[15:21] CHAIRPERSON: Major-General, you're still
24	the situation. Is that what you are telling the	24	under oath.
25	Commission?	25	WILLIAM MPEMBE: Yes, Chairperson.
	Page 16368		Page 16370
1	Page 16368 MAJOR-GENERAL MPEMBE: Chairperson,	1	Page 16370 CHAIRPERSON: Mr Mpofu.
1 2		1 2	-
	MAJOR-GENERAL MPEMBE: Chairperson,		CHAIRPERSON: Mr Mpofu.
2	MAJOR-GENERAL MPEMBE: Chairperson, that's not what I'm saying.	2	CHAIRPERSON: Mr Mpofu. CROSS-EXAMINATION BY MR MPOFU (CONTD.):
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	Page 16371		Page 16373
1	decision of calling the STF was not taken by me and that	1	been there available, he was not available, and I didn't
2	makes it more difficult to answer the question because the	2	have any problem with Major-General Annandale to call
3	one who called the STF would, might be in a better position	3	Duncan Scott.
4	to explain this.	4	MR MPOFU: Yes, but we've already agreed
5	CHAIRPERSON: And who was that? Who was	5	that Annandale would not even have been there to call
6	that?	6	Scott, but that's not the point. I'll refer you to
7	MAJOR-GENERAL MPEMBE: Chairperson, what	7	Scott's, FFF18 –
8	I know is that Major-General Naidoo was the acting and the	8	CHAIRPERSON: Sorry, what paragraph?
9	PC arrived, some, between –	9	What does it say?
10	CHAIRPERSON: I see. So it's either the	10	MR MPOFU: 2. 2, Chairperson.
11	acting PC, that's Major-General Naidoo, or the PC herself,	11	CHAIRPERSON: What does it say?
12	Lieutenant-General Mbombo. They will be able to answer the	12	MR MPOFU: "On 13 August 2012 at about 6
13 14	question. Is that correct? MAJOR-GENERAL MPEMBE: Correct,	13	I was phoned by Brigadier Fritz, the section head of the
		14 15	Special Task Force, and instructed to report Lonmin Mine in
15 16	Chairperson, because I don't know even when was, when were they –	15 16	Marikana to assist in planning an operation to apprehend a crowd of protesters who had reportedly killed two police
17	CHAIRPERSON: No, no, I understand. You	17	officials and critically wounded a third earlier in the
17	don't know exactly when the decision was taken. I take it	17	day."
19	the follow-up question would be before the events of the	19	CHAIRPERSON: Yes, now what the witness
20	Monday afternoon when you were at meetings earlier in that	20	says is that he was quite happy that Lieutenant-Colonel
21	day, was there any mention of the STF being called up?	21	Scott should come because his planner wasn't available.
22	MAJOR-GENERAL MPEMBE: No, Chairperson.	22	MR MPOFU: Yes.
23	CHAIRPERSON: We know the TRT had come,	23	CHAIRPERSON: He was happy with General
24	but the NIU weren't there yet and the STF weren't there.	24	Annandale getting him. Brigadier Fritz I think served
25	Was there any mention of them possibly being called up or	25	directly under General Annandale, didn't he?
1	Page 16372	1	Page 16374
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2	not, that you heard? MAJOR-GENERAL MPEMBE: No, Chairperson,	2	MR MPOFU: No, that's correct, Chair. I'm not making that point. I'm making the point that the,
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		1	
	Page 16375		Page 16377
1	was still the CJOC, and as I have explained and I also put	1	committee as to how the operation was to take place was
2	my evidence is that Major-General Annandale was my deputy	2	done by Colonel Scott. Now I think Mr Mpofu is suggesting
3	and he was always at the JOC.	3	that these facts that I've summarised to you are indicative
4	CHAIRPERSON: I think you said you	4	of, or rather are support for his allegation that you were
5	actually appointed him to be the chairman of the JOCCOM.	5	sidelined, you were no longer really the overall commander.
6	MAJOR-GENERAL MPEMBE: Correct,	6	Is that correct, Mr Mpofu?
7	Chairperson, I also gave reasons why.	7	MR MPOFU: Yes, but –
8	CHAIRPERSON: Yes, the reason was that	8	CHAIRPERSON: Are there any other factors
9	you wouldn't be there all the time because you had a lot of	9	that you would rely on in this regard which you can put to
10	other matters to deal with, including dealing with Lonmin	10	him so that he can comment on them?
11	and dealing with the trade unions and so on. Is that	11	MR MPOFU: Yes, Chairperson, but that's
12	right?	12	not even the proposition I'm putting to him now. I put
13	MAJOR-GENERAL MPEMBE: Correct,	13	that proposition in the morning, the one that the
14	Chairperson.	14	Chairperson is putting. What I'm putting now is that this
15	MR MPOFU: Yes, in fact one of the	15	is the turning point issue; I'm saying that installation,
16	reasons you gave for asking him to chair is that sometimes	16	if you like, of Annandale as the effective CJOC happened
17	you would be dealing with the unions and management,	17	after the disastrous handling allegedly, at least according
18	correct?	18	to some view that the alleged disastrous handling of the
19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	19	incident of the 13th by the General; not that I agree with
20	MR MPOFU: But we know that when the	20	those people who were criticising him, but I'm just saying
21	decisive meeting of taking the operation that killed 34	21	that there was that criticism. There were threats of death
22	people, that he was chairing and you were there, you were	22	and then Annandale was installed. That's basically what –
23	not speaking to management, correct?	23	CHAIRPERSON: You've got his answer. He
24	MAJOR-GENERAL MPEMBE: He was chairing,	24	doesn't agree with you. So that's again a matter for
25	Chairperson.	25	argument, I would have thought.
	Dama 1/27/		Dama 1/370
1	Page 16376 MR MPOFU: And you were there.	1	Page 16378 MR MPOFU: Yes, No, I was just answering
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		1	
1	Page 16379 has got any comment. The suggestion is that depending on	1	Page 16381 CHAIRPERSON: Yes, the short point of
2	the day of the week that Major-General Annandale had	2	course, Major-General Annandale only arrived on the scene
3	another title, was wearing another hat. Do you agree with	3	in the evening after the incident in the afternoon.
4	that?	4	MR MPOFU: Exactly.
5	MAJOR-GENERAL MPEMBE: No, Chairperson, I	5	CHAIRPERSON: And you took a decision to
6	do not agree. I think I need just to explain the word	6	appoint the permanent SAPS JOC and then presumably
7	"chief of staff," it's actually the relatively word that	7	thereafter at some stage you filled in the various
8	came to the police after 20 – I think after 2010 whereby it	8	positions that you summarise in para 7. Is that right?
9	describes the person that actually is managing the forces	9	MAJOR-GENERAL MPEMBE: Correct,
10	in the JOC permanently, and as the Chairperson could see	10	Chairperson. It's actually after the incident, and I would
11	that there is no peremptory policy that says that the CJOC	11	say –
12	can stay in the JOC, but the chief of staff is that person	12	CHAIRPERSON: Well, you couldn't have
13	does the most, ensures that the most administrative	13	appointed Annandale before the incident –
14	instructions in the absence, and even when the chief, the	14	MAJOR-GENERAL MPEMBE: - because he was
15	CJOC is there, and he's always there, and being a	15	not – I'm sorry, Chairperson.
16	chairperson of the JOC, of the JOCCOM, is that normally he	16	CHAIRPERSON: Ja, you didn't know he was
17	was the one that was chairing the JOCCOM every day and thus	17	coming. Sorry, you and I are talking over each other.
18	he was also referred as, but not as the days of the week	18	It's my fault, but you didn't even know he was coming, I
19	changes.	19	take it, till after the incident. Is that right?
20	CHAIRPERSON: Chief of staff is really a	20	MAJOR-GENERAL MPEMBE: Correct,
21	military term. During the war all the major commanders had	21	Chairperson.
22	chiefs of staff who played the kind of role that you've	22	MR MPOFU: And not only after the killing
23	described, but you wouldn't necessarily know that. Mr	23	of the policeman, not only was there a deluge, as I said
24	Mpofu, the next question?	24	earlier, of personnel, another 600 or so added, but also
25	MR MPOFU: Yes, well, as far as this war	25	the amount and type of arms that were brought, which
	Page 16380		Page 16382
1	of Marikana was concerned you did not - or rather let me	1	bordered on being weapons of war, increased significantly.
2	of Marikana was concerned you did not – or rather let me put it this way. The suggestion in your statement is that	2	bordered on being weapons of war, increased significantly. What do you have to say about that? That's probably why
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2 3 4	of Marikana was concerned you did not – or rather let me put it this way. The suggestion in your statement is that you appointed Major-General Annandale as a chairperson of the JOCCOM even before the incident of the 13th, and I must	2 3 4	bordered on being weapons of war, increased significantly. What do you have to say about that? That's probably why you needed a chief of staff. MR MATHIBEDI SC: Which weapons of war is
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1	Page 16383 MAJOR-GENERAL MPEMBE: Thanks,	1	Page 16385 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
2	Chairperson.	2	I did call her, but I need to explain. Chairperson, it's
3	CHAIRPERSON: Now you're dealing with the	3	not only when police are being killed, but you need to
4	weapons of war.	4	appraise the Provincial Commissioner with any developments
5	MR MPOFU: Yes.	5	or any event that has taken place.
		6	MR MPOFU: Ja, but your evidence is not
6	2	7	that you said Commissioner, two policemen have been killed
7	raised that the expression "weapons of war" is not		and two strikers and another one, and so on. You called
8	sufficiently precise, so perhaps you could reformulate the	8 9	her to tell her that members had been killed, irrespective
9	question so that your learned friend will not be able to		
10	persist in his objection.	10	of the other, the fact that other lives were lost. What
11	MR MPOFU: We're going to assist my	11	was more important to you was the lives of the police, not
12	learned friend very shortly, but at this stage let me just	12	of the other human beings. That's what I'm suggesting to
13	clarify something. Before the killing of the police you	13	YOU.
14	did not see any need for a chief of staff, correct? Which	14	MAJOR-GENERAL MPEMBE: No, Chairperson.
15	according to the Chairperson is used in war.	15	MR MPOFU: Then why did you say at page
16	CHAIRPERSON: Inter alia in war. Inter	16	12788, Chairperson, this is what you said when you were
17	alia in war, possibly used in peace as well. MR MPOFU: Correct. You didn't have a	17 18	being cross-examined by Ms Le Roux, you say, "I could not
18			establish whether stun grenades were utilised under the
19	chief of staff – on a serious note, you didn't have a chief	19	circumstances. I informed her," talking about the
20	of staff before the killing of the police, correct?	20	Provincial Commissioner, "I informed her telephonically
21	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	21 22	while I was still on the scene, and that there are members
22	but also I need just to give the qualification. It's my	22	who have been killed. The other one was killed already on
23	testimony to this Commission that on the same day, on	23 24	the scene, and the other member, I also said that he should
24 25	Monday, it was my first day from leave. I couldn't have any opportunity of sitting and planning with the people.	24 25	be taken to hospital and he later passed on, and the other one I informed the Provincial Commissioner is that it's
20	any opportunity of sitting and planning with the people.	25	
	Page 16384		Page 16386
1	Page 16384 It is also my evidence to this Commission that by that time	1	Page 16386 Lieutenant Baloyi who has been critically injured and so
1 2		1 2	•
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2 3	It is also my evidence to this Commission that by that time one could not, it's true that one could not even think about a chief of staff, but that does not necessarily mean	2 3	Lieutenant Baloyi who has been critically injured and so he's also been airlifted on that day," and then it was discovered that Baloyi utilised the stun grenade, and so
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1	Page 16387	1	Page 16389
1	CHAIRPERSON: My recollection is it was	-	statement.
2	in one of the pocketbooks or one of the IPID statements, I	2	CHAIRPERSON: Well Mr Mpofu, let's not
3	can't remember which –	3	waste time on it at the moment.
4	MR MPOFU: Yes.	4	MR MPOFU: Yes. In fact, Chairperson, I
5	CHAIRPERSON: But I think it's a fair	5	will give you the reference. All I wanted, because –
6	request.	6	CHAIRPERSON: You've identified it; you
7	MR MPOFU: It is, Chair, but	7	can give it to us later.
8	unfortunately I can't accede to it right now. I will in	8	MR MPOFU: Correct.
9	due course provide –	9	CHAIRPERSON: Carry on.
10	CHAIRPERSON: Otherwise we can cut it	10	MR MPOFU: Yes, Mr Mathibedi wanted the
11	short. You've heard it's being suggested in other a	11	name, that was the name; K-I-D-D, but I'll give the
12	pocketbook or an IPID statement or both, that that was what	12	reference, thanks. Were you aware that – and I'm
13	was said as part of the briefings of the ordinary members	13	paraphrasing now – Colonel Scott, that after the killing of
14	on the 16th before the operation in the afternoon. Now if	14	the policemen "tensions were high on both sides," so high
15	you have never heard of that before, you didn't know about	15	that Colonel Scott thought it might not be advisable to
16	it, then it's pointless even giving you the reference.	16	launch an operation?
17	Does it ring a bell with you? You obviously weren't there.	17	MAJOR-GENERAL MPEMBE: I don't
18	You don't know what briefing - from your own knowledge at	18	understand, Chairperson, when was it –
19	the time, what briefings were given. Were you aware that	19	CHAIRPERSON: Colonel Scott said that on
20	such points, or such a point was made in any of the	20	the Monday evening, going on into early Tuesday morning, he
21	briefings given to the ordinary members that afternoon by	21	was working out the plans for what operation should be
22	one of the commanders?	22	launched, and he said that one of the thoughts that
23	MAJOR-GENERAL MPEMBE: No, Chairperson.	23	occurred to him was that it might be inappropriate to
24	CHAIRPERSON: Doesn't that take -	24	launch an operation on the Tuesday morning, so soon after
25	MR MPOFU: It does.	25	the events of the Monday afternoon, it might be
	Page 16388		Page 16390
1	CHAIRPERSON: - dispose of the point?	1	misinterpreted by the, as some kind of retaliation by the
2	MR MPOFU: Yes. Were you aware that	~	police, and he said, in support of his views on the matter
		2	police, and he said, in support of his views of the matter
3	after the killing of the policemen, to quote Lieutenant-	2 3	he said this was because - the phrase that was put to you
3 4	after the killing of the policemen, to quote Lieutenant- Colonel Scott –		
		3	he said this was because - the phrase that was put to you
4	Colonel Scott -	3 4	he said this was because - the phrase that was put to you by Mr Mpofu – tensions were high on both sides. Now that
4 5	Colonel Scott – CHAIRPERSON: Sorry, before you go	3 4 5	he said this was because - the phrase that was put to you by Mr Mpofu – tensions were high on both sides. Now that was presumably based on information he had received, but
4 5 6	Colonel Scott – CHAIRPERSON: Sorry, before you go there –	3 4 5 6	he said this was because - the phrase that was put to you by Mr Mpofu – tensions were high on both sides. Now that was presumably based on information he had received, but are you able to throw any light on that? Would you – yes,
4 5 6 7	Colonel Scott – CHAIRPERSON: Sorry, before you go there – MR MPOFU: I'm sorry, Chairperson –	3 4 5 6 7	he said this was because - the phrase that was put to you by Mr Mpofu – tensions were high on both sides. Now that was presumably based on information he had received, but are you able to throw any light on that? Would you – yes, I think he said emotions, I think he said emotions were
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4 5 6 7 8 9	Colonel Scott – CHAIRPERSON: Sorry, before you go there – MR MPOFU: I'm sorry, Chairperson – CHAIRPERSON: My recollection of course may be faulty that that was in fact said at that occasion,	3 4 5 6 7 8 9	he said this was because - the phrase that was put to you by Mr Mpofu – tensions were high on both sides. Now that was presumably based on information he had received, but are you able to throw any light on that? Would you – yes, I think he said emotions, I think he said emotions were high on both sides and the situation was very tense and so on. Anyway, that's just a summary, paraphrase of what he
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1	CHAIRPERSON: No, what's being referred	1	this one that we now see were firearms. The one was
2	to is that that evening when the people who had come from	2	protruding from the windscreen of the vehicle. The other
3	elsewhere were being told what had happened, I think the	3	one was a machinegun, I think, on the back of the vehicle.
4	National Commissioner and the Provincial Commissioner and	4	MR MPOFU: I want the other one, the
5	Provincial Commissioner Petros and various other people,	5	third one. I think it's the one –
6	and Colonel Scott and General Annandale, when they were	6	CHAIRPERSON: Mr Mathibedi put on record
7	told by Lieutenant-Colonel Merafe what happened, he'd given	7	that not one of these vehicles actually – sorry, one of
8	his version or his account of what happened, he appeared to	8	these firearms was in fact loaded at the time. They were
9	Lieutenant-Colonel Scott to be very emotional. I think	9	there more for show, as part of the show of force. That's
10	that's a correct summary, isn't that, Mr Mpofu?	10	what was put on record then. Mr Tokota says he seems to
11	MR MPOFU: [Microphone off, inaudible]	11	remember that we were told they weren't genuine
12	CHAIRPERSON: Now the question is were	12	machineguns, but Mr Mathibedi can tell us what he said. My
13	you present when Lieutenant-Colonel Merafe gave his account	13	recollection, he either said they weren't working or they
14	to the visitors, the people who'd come that evening? Were	14	weren't loaded.
15	you?	15	MR MPOFU: Sorry, Chair –
16	MAJOR-GENERAL MPEMBE: No, Chairperson,	16	MR MATHIBEDI SC: [Microphone off,
17	I'm not aware when he was giving the version and showing some emotions.	17	inaudible] not working, Mr Chairman. CHAIRPERSON: Not working, ja.
18		18	
19 20	CHAIRPERSON: So did you have much to do with him that evening back at the JOC, Lieutenant-Colonel	19 20	MR MPOFU: Not working. CHAIRPERSON: Alright, anyway, Mr Mpofu
20 21	Merafe? Did you talk to him, see him? Can you tell us	20 21	CHAIRPERSON: Alright, anyway, Mr Mpofu wants to ask you a question. This particular one we're
21	what his mental state, or emotional state was at that time?	21	looking at, is this one of the ones we saw on Friday?
22	MAJOR-GENERAL MPEMBE: Chairperson, at	22	think it was.
23	that time I know that there was a time where we called even	24	MR MPOFU: It must be one of them.
25	the people for doing, for the debriefing, and the last time	25	CHAIRPERSON: Okay, now ask your question
			5. 5 1
	Page 16392		Page 16394
1	that I saw Colonel Merafe, it was when he was tasked by	1	and then let's give the witness a chance to answer. What
2	Brigadier Calitz, that was also after the incident, to work	2	do you want to know about this, or what do you want him to
3	with Colonel Scott.	3	tell us about it?
4	CHAIRPERSON: But you can't help us as to	4	MR MPOFU: Well, I want to tell him.
5	whether he was in an emotional state?	5	When I was referring to weapons of war, this is one of
6	MAJOR-GENERAL MPEMBE: Correct,	6	them. If it's necessary, in fact a member of the public
7	Chairperson. I think he will be in a better position to	7	has written me about this picture and if it's necessary,
8	say he was or not.	8	he'll be called, or asked to give evidence, or rather
9	MR MPOFU: If you can just bear with me;	9	affidavit evidence that this calibre of a weapon is so
10	I'm not sure if the picture I want to show has been loaded	10	strong that it could flatten a building or a house. Do you
11 12	yet. CHAIRPERSON: Mr Mpofu, is this the	11	know anything about – CHAIRPERSON: If it was in working order,
	·	12 13	CHAIRPERSON: If it was in working order, I take it. But do you know anything about these weapons
13 14	stage – MR MPOFU: Oh, I'm told –	13	that –
14	CHAIRPERSON: Is this a picture in	14	MR MPOFU: Well, it was there.
			CHAIRPERSON: No, but if it wasn't in
	· ·	16	
16	respect of which I must issue a warning?	16 17	
16 17	respect of which I must issue a warning? MR MPOFU: No, Chairperson, certainly	17	working order all the buildings were safe. But let the
16 17 18	respect of which I must issue a warning? MR MPOFU: No, Chairperson, certainly not. I'm told it's in HHH55.	17 18	working order all the buildings were safe. But let the witness tell us. Do you know anything about these weapons,
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	Page 16395		Page 16397
1	testified on Friday that I know that all the equipment of	1	witness very fairly concedes that these weapons were
2	the Scorpions, like - of the STF, like the Scorpion	2	brought there to frighten the daylights out of various
3	vehicles were going to be part of the show of force and I	3	people, and whether they achieved that effect, purpose, is
4	further testified that I did not know that they were	4	another matter.
5	loading machineguns.	5	MR MPOFU: Do you, General, think that in
6	CHAIRPERSON: Yes, I don't quite know	6	a democratic South Africa it's appropriate –
7	where this point is going, because the evidence is of	7	CHAIRPERSON: I'm not sure that his
8	course that the STF didn't fire a single shot on the 16th,	8	opinion on the matter is something that I want to hear.
9	but anyway, I'm just asking you where this point is going	9	It's a matter you can argue at the end. You may well be
10	because -	10	able to persuade us –
11	MR MPOFU: Sorry, Chairperson. Sorry.	11	MR MPOFU: I want to put it to him first,
12	CHAIRPERSON: Okay, no alright. I'm just	12	Chairperson.
13	asking you where this point is going to take us.	13	CHAIRPERSON: But how is his answer going
14	MR MPOFU: Well, can you see the bullets	14	to help us? It is value judgment that we would have to
15	hanging from that weapon that I've just described? Yes?	15	make. If you were right we will make the value judgment.
16	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	16	If you raise the point in argument we will have to deal
17	I can see it.	17	with it. If you're right, we will uphold you. If you're
18	MR MPOFU: And would you agree that from	18	wrong, we disagree with you, we will say so and give
19	the point of view of the civilians who did not know whether	19	reasons. Can you take it further than that with this
20	the – or let me put it this way. Would you agree that the	20	witness?
21	posture that is even assumed by those people holding that	21	MR MPOFU: Yes. Did you, General Mpembe,
22	weapon is intended to give the impression that it can be	22	approve the so-called show of force which included the
23	fired at any time, with bullets hanging all over?	23	display of a gun that can flatten a building?
24	MAJOR-GENERAL MPEMBE: Chairperson, as I	24	MAJOR-GENERAL MPEMBE: Chairperson, I
25	said earlier on that I knew about the Scorpions going to be	25	said I did not know –
	1 5 5		
	Page 16396		Page 16398
1	Page 16396 part and show of force. Maybe the person who let the	1	Page 16398 CHAIRPERSON: Well, we don't know it can
1 2		1 2	-
	part and show of force. Maybe the person who let the		CHAIRPERSON: Well, we don't know it can
2	part and show of force. Maybe the person who let the hanging of bullets there could explain that, because –	2	CHAIRPERSON: Well, we don't know it can flatten a building –
2 3	part and show of force. Maybe the person who let the hanging of bullets there could explain that, because – CHAIRPERSON: If they are real bullets,	2 3	CHAIRPERSON: Well, we don't know it can flatten a building – MR MPOFU: According to the witness, I've
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1	MR MPEMBE: Chairperson, I said no, I	1	because to know the name of the gun is not going to assist
2	knew about the scorpion vehicles but I did not know that	2	me as to whether you wanted to intimidate the public or
3	they were having, they were loaded with the machine guns.	3	not.
4	MR MPOFU: General, did you approve a	4	CHAIRPERSON: Yes, yes I understand that
5	plan that included a show of force such as the one we are	5	but endeavour to put procedure in motion which will give
6	seeing in that picture, where bullets are hanging from a	6	you the information you, give you and us the information.
7	big gun like that, yes or no?	7	MR MPEMBE: Thank you, Chairperson.
8	CHAIRPERSON: It appeared to be bullets	8	COMMISSIONER HEMRAJ: Mr Mpofu, the point
9	of course.	9	is the make of the firearm will determine its capacity and
10	MR MPOFU: No, they are bullets.	10	that will affect one of the questions you put. That's why
11	CHAIRPERSON: Well anyway, this will be	11	I put it to Mr Mathibedi.
12	the last question for the day, but let's get the answer.	12	MR MPEMBE: I am just saying that was the
13	MR MPEMBE: I said the approval of the	13	only reason I was putting the question.
14	plan was the vehicles, the scorpions of the STF, without	14	CHAIRPERSON: Anyway you have now got on
15	and I didn't mention the machine guns. But I did not know	15	to the events of the 16th which is a helpful sign and we
16	that even the machine guns were on that vehicle.	16	will carry on, on Thursday morning at 9 o'clock.
17	CHAIRPERSON: You did not specifically	17	MR MPEMBE: That's correct, thank you
18	approve the use of these machine guns? You didn't	18	very much, Chairperson.
19	specifically approve it but you knew that the scorpions	19	[COMMISSION ADJOURNED]
20	would be there and they would be used as part of the show	20	
20	of force?	20	
22	MR MPEMBE: Correct, Chairperson.	21	
22	CHAIRPERSON: And presumable there would	22	
		23 24	
24 25	be weapons on them but you didn't know the details of them,		
25	is that the summary?	25	
	Page 16400		
1	Page 16400 MR MPEMBE: Correct, Chairperson.		
1 2	-		
	MR MPEMBE: Correct, Chairperson.		
2	MR MPEMBE:Correct, Chairperson.CHAIRPERSON:I think on that note we can		
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