TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAYS 1 TO 7 1 TO 31 OCTOBER 2012 PAGES 1 TO 847

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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1st to 31st October 2012

Marikana

Rustenburg

[PROCEEDINGS ON 1 OCTOBER 2012]

[09:35] CHAIRPERSON: Our apologies for beginning late, but we had an important session beforehand with the representatives of the media at which various matters were discussed and had to be discussed before we could begin, and that's the main reason why we're starting late and I apologise to those people who've been kept waiting, arrived at the proper time and thought we would start at 9 o'clock.

I want to begin by making some general remarks, addressed particularly to the families of those who, and the next of kin of those who died in the incidents which form the subject of our inquiry, and I do so out of respect to all those present here who's family members died as a result of these incidents which we are called upon to investigate, and the first thing I must do is to declare this inquiry open.

The members of the Commission who are sitting with me here on the stage are my colleague, Adv Hemraj SC from the Durban Bar, and my colleague, Adv Tokota SC of the Pretoria Bar. I am, as you may know, the chairman. We were appointed by the President in terms of Section 24(2)(f) of the Constitution, read with the Commissions Act of 1947. The Commission's task is outlined in the terms of reference promulgated by the President on the 12th of September, is to establish the facts about what happened in

Marikana when 45 people lost their lives and scores were injured. It is in memory of those who lost their lives during these tragic incidents that the Commission wishes to dedicate this stated moment in this memory at the very start of the inquiry. On behalf of the Commission, parties and all persons who will interact with the Commission, we convey our deepest heartfelt sympathy and condolences to the families and next of kin of the deceased persons. I'm advised that the majority of family members and next of kin are in our midst and those others from Lesotho and Swaziland who are unfortunately unable to be with us today, will join the inquiry later. We acknowledge and thank you for having made time to attend these proceedings. We cannot measure your grief or less, but we believe that as we relive the events that culminated in the events on the 16th of August, that we will do so in the firm belief and conviction that getting to the truth of what, how and why it happened will be part of the healing and restoration process, which is so necessary.

As Commission we will do everything in our power to make sure that your attendance and participation in this inquiry will not add to your grief and trauma. It is for this reason that the Commission has deemed it fit to subscribe to the values of truth, restoration and justice which are adopted in our official logo. It's also important to assure everyone that the members of the Commission are committed to work towards the realisation of the objectives for which the Commission has been established, and we will do so to the best of our ability and we will at all times be conscious of the fact that we are appointed as independent members of the Commission. We will only act in accordance with our consciences and what the evidence led before us leads us to believe are the true facts, and no exterior influences of any kind will be allowed to be brought to bear upon us.

What I'm going to do now is I'm going to request my colleague Adv Thokota to read the names of the deceased in memory of our fallen fathers, uncles, brothers, countrymen and friends whose death will always be in the heart of all South Africans as we commence this difficult task. The deceased we pay tribute to include mineworkers, police officials and a councillor of the Madibeng Local Municipality. I ask family members to stand as the names of the deceased are read. So after each name which Adv Tokota reads he will pause to enable the family members, if they are present, to stand, and thereafter I will ask everyone to stand and we will observe a minute silence in which those who wish to do so may pray for the souls of those who died. The members of the families may, if they wish during the minute's silence, be seated. Our country weeps for this tragic and unnecessary loss of life and we owe it to all concerned to ensure that the Commission works efficiently and expeditiously to ascertain the truth of what happened. Now Adv Tokota, will you please begin reading the names?

MR TOKOTA SC: Thank you, Chair. I will now read the names of the deceased persons. Most of the people here that I recognise are Xhosa speaking, but I recognise that some of the surnames as I understand and know them, are not correctly spelt. So, but I will read them as I know them. The first one, and I will not say first, second, but will just read the names as they appear

1st to 31st October 2012

Marikana Rustenburg

2. Thembelakehi Mati. Hendrik Tsietsie Mohene. Sello Ronnie
3. Lepaaka. Sandi Teyise. Mlanduli Hendry Saba. Pumzile
4. Sokanyile, and the last, but not the least, Pauline
5. Masutle.

CHAIRPERSON: Thank you very much, Adv

Tokota. These proceedings are being transmitted also in
rooms nearby where what is being said is being interpreted
into isiXhosa, Sesotho and Tswana. So many people who'll
be watching this were not in the auditorium at the moment.
I see you've all stood. Let us observe a minute silence in
honour of those whose names have been read out. [One
minute silence] Thank you very much. May their souls rest
in peace.

I've already introduced the Commission, members
of the Commission to you. I now invite the evidence
leaders to introduce themselves and put themselves on
record, after which I will invite the parties, the
representatives of the parties to do the same. I've been
asked by those responsible for recording the proceedings to
see to it, to ask those who stand up and speak to give
their names for the benefit of those called upon ultimately
to transcribe these proceedings. You don't have to
necessarily do it every time, but initially there's a
specific request that you do so. Mr Mbuyiseli, you are the
senior member of the team of evidence leaders.

MR MADLANGA SC: Thank you, Chair,
members of the Commission. For the evidence leaders the
list is as follows, and I will spell some of the names
because of one's experience in what one sometimes sees in
the transcripts. My name is Mbuyiseli, that's M-B-U-Y-I-S-
Geoffrey, spelt G-E-O-F-F-R-E-Y, not J-E, Budlender, and
Matthew Chaskalson, Charles Wesley, Kameshni Pillay,
Matthews Mojapelo, and Mojapelo is M-O-J-A-P-E-L-O.
Perhaps I should have spelt Kameshni as well, that's K-A-M-
P-U-W-A-N-A. That is the lot of us, Commissioners. Thank
you.

CHAIRPERSON: Before I call upon the
parties and their representatives, I've been asked to
indicate, to give a brief outline of the mandate of the
Commission. The terms of reference are fully set out in
the proclamation to which I referred earlier. Broadly
speaking, there are four themes which will form the subject
of our investigations. The first concerns the events over
the period from about the 9th of August to the 16th of
August, although it may be that events which took place
before those dates or after will be relevant in as much as
they may throw light on what actually happened during the
period to which I've referred.

The second theme concerns the employer, Lonmin,
whether its policies and practices, conduct and so forth,
contributed to what ultimately happened.

The third theme deals with the trade unions who
were involved, and also the actions of each trade union,
the relations [inaudible 16:35] between the trade unions
and also the actions of the non-unionised members, miners
who were not members of the trade unions.

Then finally we're asked to investigate the
conduct, the actions and omissions of certain government
departments – Police, Mineral Resources and Labour. It may
be that the actions and so forth of the police may be
covered under the first theme, but if there's anything over
we will look at it together with the actions and omissions
of the other departments as well.

What we've decided to do is to deal firstly with
what I've called the first theme, and so for the first
period we will hear evidence and later submissions in
regard to the events from, over the period to which I've
referred, and after that we propose giving a report on our
conclusions in relation to that theme. After that we will
deal with the other themes. That is the way we propose
doing things. It may be that it will be necessary for
witnesses who've testified in relation to the first
theme to come back and testify in relation to some of the
other themes as well, but these are matters which we will
deal with as we go along.

It seems to us to be very important that in
relation to the first theme we should proceed to
investigate that with the greatest expedition. It's very
important that the truth insofar as what happened over that
period should become clear as soon as possible. We have to
balance the need to deal with the matter with expedition
with the need to be thorough, and we certainly want to give
everyone concerned the assurance that we will do our best
to ensure that the matter is dealt with thoroughly and as
exhaustively as is appropriate in the circumstances. I now
want to call upon the representatives of the parties to
place themselves on record. When you speak please turn
your microphone on so that I can see the red light, and
thereafter when you're finished speaking turn it off. I
take it the first representative I must call upon is the
representative for Lonmin.

MR BHAM SC: Thank you Mr Chair,
Commissioners. I appear for Lonmin. My name is Azhar
Bham. I'm an advocate practising at the Johannesburg bar.
Appearing together with me for Lonmin are Advocates Mike
Van As, Horace Shozi and Terry Motau, who's also senior
counsel. We are instructed by Attorneys Cliffe, Dekker,
Hofmeyr. Sitting to my right is Fiona Leppan, who is from our instructing attorneys. Adv Schalk Burger will also be part of the team. He'll join us later in the week.

MR BIZOS SC: Thank you very much. Mr Bizos, I see you. Would you like to place yourself on record, tell us for whom you appear and who's appearing with you?

MR BIZOS SC: Thank you –

CHAIRPERSON: Thank you very much. Mr Bizos, I see you. Would you like to place yourself on record, tell us for whom you appear and who's appearing with you?

[09:55] MR BIZOS SC: I have a fear that I become tongue-tied when I'm seated, Mr Chairman, it may be that you - if I may seek your indulgence to make available an interpreter's stool for me to use, but thank you for the -.

Mr Chairman and members of the commission, I appear on behalf of the Legal Resources Centre together with my learned friends Mr Thembeke Ngokai Thobe, Adv Jason Brickhill and Michelle Bishop. We have a number of attorneys assisting us – Mr Sheldon Magadi, he is the director of the Cape Town office of the Legal Resources Centre, Mr Steve Canowitz from the same area, Mr Bongamusa Sibiya, the attorney in Johannesburg and a valuable member of our team, candidate attorney Mr Michael Power who may also be an important witness in this case and more particularly even today because he visited the scene and made notes and took photographs of what he found shortly after the event.

We are asked who our clients are, Mr Chairman, and unashamedly I say that we consider our primary client, the Constitution which guarantees the right to life and because of our respect of that fundamental right, we took steps early on to become involved and because our Constitution says that we are a client-based organisation we have – we did approach the families of Ledingoane, I hope I do justice to the pronunciation – the family Mabiya, the family Mdizeni and Shakakaza, not one of the deceased persons.

We took action early on because of our experience that, to quote the late Jonathan Gluckman, the foremost authorities in our country, sometimes a corpse is a better witness than a living person – and we obtained the services of pathologists. With the co-operation of some of the doctors that had already started doing the post-mortems, they attended on post-mortems and they had discussions with the district surgeons that were doing the post-mortems. They have filed a provisional report but have reserved their right to express definitive opinions once they had access to the reports that were drawn up by the medical practitioners on bodies that came, examined, too late for them to examine and also they would very much want, before expressing a final opinion, the nature of the wounds of the persons who were injured but who survived because they consider that information fundamental to their conclusions.

We have been under pressure by certain other parties to make those available. We have not done it and I would like, for the purposes of the commission and the public at large, very briefly to say that we did not want these documents to become public before they were in their final form and that the first recipient of those documents should be you, Mr Chairman, and the members of the commission and we are glad to see that our nous in relation to this matter was confirmed by regulation 14, recently published, which says that the documents intended for the commission should not be aired in public before they have been handed to the commission. We had the nous to actually forecast that particular provision.

Mr Chairman, even today if needs be, or the next few days, we have Mr Power who visited the scene. If a witness is needed, he is available and ready with the possible exception of needing time to copy the photographs that he took shortly after the event in order to be distributed to the commission.

What we are here for is because of our protection of the rights of the people of South Africa in terms of the Constitution. I will lead the team in relation to the conduct of the police. In relation to the other matter, the socio-economic conditions and others, my learned friend sitting immediately to my right will address the commission and examine the witnesses. We have already consulted with experts who have not given us final reports but we are here, not to take part or do any favours to any of the other parties, we are here to help the commission to come to a just conclusion in relation to this very serious matter.

And what I want to say finally, Mr Chairman, is this, that you see that we have a large team, we have others as well if they are needed either by the evidence leaders or by the commission whose resources, we are told publicly, are limited – to assist in the spirit of co-operation, any assistance that may be required of us. It will be done in good faith and without fear or favour. Thank you for the opportunity, for asking me to put ourselves on record, Mr Chairman.

CHAIRPERSON: Thank you very much, Mr Bizos. Thank you for the assurances -

MR BIZOS SC: I am reminded, Mr Chairman, that I - because I don't look at my notes, I have been reminded that we also act on behalf of the Benchmarks Foundation, an NGO which is concerned about the advancement of human rights. I'm sorry I didn't do it.


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1st to 31st October 2012

Marikana Rustenburg

Commission by two baby juniors, Nicole Lewis and Tulwane Mutwenya. We are instructed by the Socio-Economic Rights Institute Law Clinic. My attorney assisted by a candidate attorney is Osmond Mngomezulu and the candidate attorney is Jonathan Koga. Those are who we represent. Mr Chairman, you will have you will have noticed that none of the people we represent are here, and I believe Item number 6 of your agenda, being only that at this stage, we should introduce the parties and their representatives. I will possibly say more about why they are not here at item number 8 of your agenda because I intend to bring an appropriate application at that stage to yourselves.

CHAIRPERSON: Thank you, Mr Bruinders.

MR BRUINDERS SC: Good morning, members of the Commission, my name is Tim Bruinders, from the Johannesburg Bar. Heidi Barnes, Stewart Wilson and Irene de Vos, all advocates at the Johannesburg Bar, and I appear for the Association of Mineworkers and Construction Union, AMCU. We are instructed by an attorney Teboho Mosikili from SERI, which is the same organisation that instructs Mr Ntsebeza.

CHAIRPERSON: Thank you, Mr Bruinders.

Whose is next to put or herself on record? Is anybody here from - oh, sorry.

MR CILLIERS SC: Would he like to come forward and put himself on record or has he merely got what is known in legal circles, as a watching brief?

CHAIRPERSON: That appears to conclude item 6 on the agenda, the introduction of the parties and their representatives. We move on now to item 7, where I am asked to give guidance on the process and procedures regarding the in loco inspection. In a few minutes we will proceed to Marikana to see the places where various things took place. We will look at - we don't propose going down the shaft or actually entering the shaft at this stage, we merely go past, to see where various shafts are so when they are mentioned in evidence, we will know what's being talked about. If there's an application later for us to actually inspect the shafts that's a matter we will deal with as and when it arises. We will proceed to Wonderkop, where we will see the koppie and the flat area next to the koppie where we understand some of the dead bodies were found, after the shootings. We will also see an informal settlement which immediately abuts on that area. We will also see what has been described to us as the Klein Koppie, which is another koppie behind the first koppie at Wonderkop, where it is alleged that certain other things happened, and where there were marks placed on rocks, which, some of which have since been defaced, but we understand that there are photographs of the markings as they were before the defacement took place. We will also go to a spot on the way the Karee, K-A-R-E-E, Shaft where we understand an incident took place on Monday, the 13th of August, where two miners were killed and one miner was injured, I understand, and two policemen were killed and one policeman was injured.

We will also inspect the living conditions of the miners. We will look at the hostels, we will go to the informal settlements, where many of them lived, and we were asked by Lonmin to include the, what was described as the formal housing, which is also - were available to some of the miners. We also invite members of the - or representatives of various parties, to point other spots out to us as we go along, which they consider to be of importance, and it will helpful if they were identified as being places where particular things happened, or particular witnesses were standing, or saw things happen. I understand that some of the parties are this stage not able for various reasons to point out spots to us, this is the fact that they haven't got instructions on these points yet but nevertheless we expect them to do the inspection. It may be that some of the spots that they will later learn about will have been pointed out already. If there are other spots which is necessary for us to look at, which cannot be adequately depicted on plans or maps then we may have to go back and have another inspection, but whether that will happen, is a matter that can be decided upon later.

I also want to say that we were told by the
representatives of Lonmin, who wish to point out various
things to us, that they anticipate that the inspection will
not completed today, and will have to resume tomorrow, and
we’ve made provision for that in our planning, and the idea
is that we will, after we’ve adjourned here in the
auditorium at the Civic Centre in a few minutes, we will
resume here at nine o’clock on Wednesday morning when the
parties have been invited, those who are able to do so, to
put their versions of what happened before the Commission,
and then there will be some, we will begin with the hearing
of oral evidence, and documentary evidence will also be
made available to us. I think that disposes of Item 7.

We now move to Item 8, which is a response or
brief overview by parties who would participate in the in
locos inspection. I must give the interpreter an
opportunity to interpret what I said, and then perhaps it
would be best to begin with Mr Bham, because your leader Mr
Burger had something to say about the inspection. It’s
also been dealt with in correspondence, that the Commission
has received from Lonmin, and then I will give the other
parties’ representatives a chance to say what they wish to
say on this point. Mr Bham?

MR BHAM SC: Thank you, Mr Chairman. Mr
Chairman, when Adv Burger has communicated with the
Commission and when we had addressed correspondence, it
wasn’t clear to us at that stage yet, which areas would be
the subject of the inspection in loco on the first and
possibly the second day. We consequently alerted to the
Commission to the fact that there may be certain areas
where people might want to conduct an inspection which have
this difficulty, that they fall under the mine safety
regulations ambit, and so they would need an induction
programme and that would take a bit of time. It does seem
from the areas that you’ve referred to now, Mr Chairperson,
those areas are not going to be covered in the initial
inspection, so that problem falls away. In addition to the
areas that you had mentioned, we have been requested by the
evidence leaders to point out the spot during the
inspection in loco where two Lonmin employees who were
employed in the security department, were killed, and we
will do so at the appropriate time, so that we don’t go out
of sequence whilst we are visiting these areas. Other
suggestions we have made, have found their way into what
we’ve been told about the inspection in loco itself, so I
need not repeat that, save for one additional suggestion
and that comes out of my discussion with some of my
colleagues earlier today, that perhaps we should have
somebody appointed to do a sketch just in relation to the
different areas we visited, and how they exist in relation
to each other, so that we have a clear idea of what we are
talking about when we, when the evidence is led.

CHAIRPERSON: Proceedings are going to be
filmed, the inspection is going to be filmed so we will
have a record of what’s pointed out but it may well be that
a sketch will make things easier to follow and that’s a
matter we can take up with the evidence leaders in due
course.

MR BHAM SC: Yes, it’s over and above the
audio visual recording, it’s just so that we’ve all got a
mind map of the areas we have visited, and where they exist
in relation to each other.

CHAIRPERSON: I understand that Mr
Budlender has paid a visit to the Surveyor-General’s office
and has obtained a number of scale maps of the area, which
will be made available to all the parties, which should be
of assistance, I would think, and possibly someone can be
deputed to mark on one of those maps the points that you
are concerned about. Before I ask the other parties to
tell us what they propose doing at the inspection in loco,
if anything, I should call upon Mr Madlanga, the leader of
the evidence leading team, to tell us what his team
proposes pointing out. I understand Bishop Siyoka will be
there, is that correct?

MR MADLANGA SC: That is so, Chairperson.

CHAIRPERSON: Tell us further about what
you have in mind.

MR MADLANGA SC: Chairperson, in fact
where we propose pointing out sites are places that you
have already referred to. It will be what in evidence will
be referred to as Scene 1 at Wonderkop, close to the bigger
koppie, and Scene 2, which is close to the smaller koppie,
all of that being adjacent to the informal settlement. And
thereafter, the scene of the earlier killings where the two
policemen and some civilians had been killed. And may I
ask at this stage, Chairperson, Commissioners, to hand up a
Google map of the smaller koppie, with a key or index
thereto. We will give copies to our colleagues. I seem Mr
Ntsebeza glaring at me. Thank you, Chairman. And
Chairperson, in the vicinity of the koppie, we will also
point out the spot or site where Mr Isaac Twala of NUM was
killed. Thank you, Chair.

CHAIRPERSON: Any representatives of the
parties, I see – you are not quite a representative of a
party, but you are an honorary party, Mr Bizos, would you –
is there anything you want to say about the inspection in
loco?

[10:35] MR BIZOS SC: Yes, Mr Chairman, Mr Parr
that I have mentioned as one of our team, has visited the
area on a number of occasions from early on, but he has
started measuring the distances from certain other places
which may be relevant during the course of evidence to have
is available, if the members of the Commission or any of
the parties want to know the distance, he’s prepared to
point out at the inspection what he saw and he’ll give the
measurements that we consider of some importance in
relation to the results of the happenings.

CHAIRPERSON: Thank you, Mr Bizos. Do
any other representative of any of the parties wish to say
something at this stage?

MR NTSEBEZA SC: Thank you, Mr Chairman
and members of the Commission. For the record, Dumisa
Ntsebeza for the family. Chairman, we are really in a
dilemma, and may I request your indulgence to explain why
we are in a dilemma, relevant also to the inspection. My
attorneys, Mr Mnqomozulu and candidate attorney Jonty Xhosa
came back last night from the Eastern Cape. They had been
to Mqanduli, Idutshwa, Elliotdale, Lebude, Mbizana,
Lusikisiki, Xala, where I was born and bred, Mzeso, Djudja
Ndabangulu. Now anyone who has got a fair sense of the
geography of that area will realise that those are far-
flung areas, one from each other, and they took
instructions from the families who are instructing us.
Firstly they were confronted with families who had not been
advised that there is a Commission of Inquiry that is
taking place that is going to inquire into the deaths of
their loved ones. So they do not know that this is
happening. Secondly, they told their attorneys that they
are keen and they would like to be present at the
proceedings. Particularly they would like to be able to
have the sense of where those who fell, fell, and if the
inspection is going to be assisting in that regard for
closure and for everything else, it is their wish that this
should be so. Not having known that the Commission of
Inquiry would be sitting and would be for their benefit as
well, and not having the wherewithal – I would like to make
this submission without being facetious, Chairman, I cannot overemphasise it.

It seems to us therefore that guided as I am by –
and I was encouraged in being guided by what you said, Mr
Chairman, that we should try and balance the demands of
expedition. You have got your orders to make so that this
matter is dealt with, with expedition, and the families and
those who instruct me are as keen as everybody else that we
gain as quickly to the truth as we can. But you said
that the balance must also be for being as accurate as one can
be who’s gathering evidence, especially with all these
lawyers involved. We would really want to assist you
there, but we have got unfortunately a bigger
dilemma, and may I request your indulgence to explain why
we are in a dilemma, relevant also to the inspection. My
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advised that there is a Commission of Inquiry that is
taking place that is going to inquire into the deaths of
Now it's going to be a long haul. This Commission has been given a four-month period. Even the best of us cannot survive in those circumstances if we are not able to be assisted. I think I've made the point. The point therefore of this is to make an application - I know it was a litigation, which unfortunately it is not, we should get, all the parties should get in a state of readiness - state of readiness. We have made several requests to the Commission. We have asked for information in the following way - a complete list of all SAPS personnel who were deployed at or near Wonderkop between the 9th and the 18th, and it's critical for us to get those names so that when an inspection is taking place we know who is who because we have already been given a list and we asked for that list of SAPS personnel between the dates of the 9th and the 18th of August and we wanted that list to be arranged by date, and including officers deployed from the regular Police Force, from the Tactical Response Unit and the Special Task Force. We asked for the name of the officer in charge of the operation on the 16th of August. We ask for the identity of the officer or officers who decided to deploy the Tactical Response Unit and the Special Task Force. We asked for the identity of any officers responsible for the decisions to use bullets, teargas, live ammunition and thunder flares on the 16th of August. We ask for the identity of the officer or officers who authorised the use of razor wire. We ask for the identity of the officer or officers in charge on the ground.

The way we intend to approach, Mr Chairman, even an inspection is where we have been able on the basis of what we have to consult those who are living who may be eyewitnesses, because it's all very well for us to get to the scene and be told hopefully by the members of the SAPS it is where the razor wire was and all of that, it is where so-and-so died, this is where your client died, this is where your client died. That is a version that will be by the SAPS, and I'm not even going into the merits of whether that version is a correct version. I'm simply saying we will not be able to have a version. We need the time. We need to be able to compare what we have and what we get told. The first time ever for me to be able to come to Marikana was yesterday, because I was instructed only the other week, and even then I have to collate the versions of those who are eyewitnesses, who have not been able to commit themselves to us to whether they will give us statements, and therefore we have a great deal of problem, even taking into account what you said, Mr Chairman - and we thank you for that - that if there is an application at a later date, that application will be dealt with on its own merits at that time. There may well have to be a second inspection. The only thing that we are putting up to you as far as that is concerned is that we have got families who say if there is something like this that happens, they said so at this weekend, we would have loved to have come, and we tie this to the request that we have made that the families must be assisted not only to be present here - that's why you didn't see anyone of them here, family of the 20 that we represent. They are not here. They are in the rural areas. They were being consulted by Mgomezulu and Jonty Xhosa in the rural areas. They were not told by the Commission or by anybody else that this Commission would be sitting, and we have very clear instructions from them - we would like to be there when it happens. Those are our submissions.

CHAIRPERSON: You said you were going to bring an application. You haven't told us what the prayer is, what the relief is that you seek in your application. It would help us if you told us.

MR NTSEBEZA SC: Thank you, Mr Chairman. It's because I'm rather reluctant to make the application, because I don't want to incur your ire and -

CHAIRPERSON: I shall be as patient as I can. You tell me what the prayer is, the relief that you seek.

MR NTSEBEZA SC: No.

CHAIRPERSON: The remarks you made relating to the list of SAP personnel deployed, the officer in charge, those who took decision to deploy the Tactical Response Unit, that's information that of course we haven't got, which Mr Semenya may be able to help us with. So perhaps I could call on him to respond to that part of what you said and also tell us the attitude of his clients in regard to the application you've made for a postponement for a fortnight, and then I’ll ask the other advocates to do the same. After Mr Semenya has spoken I’ll ask Mr Madlanga and then the other representatives here if they wish to deal also with the application you made. Mr Semenya?

MR SEMENYA SC: Chairperson, members of the Commission, thank you. Might I address the first point first, and that is what it is that the South Africa Police...
1st to 31st October 2012

Marikana

Rustenburg

1 and their numbers, but I have not been able to identify
2 that objective evidence with the account that we have been
3 given by our consultations.
4    CHAIRPERSON: Yes, I see. Anything
5 further you want to say?
6    MR SEMENYA SC: That'll be all, Chair.
7    CHAIRPERSON: Yes.
8    MR MPOFU SC: Thank you, Chair. Chair
9    CHAIRPERSON: Is it necessary for all
10 this to be interpreted?
11    MR MPOFU SC: No. Mr Chair, yes I
12 would suggest just summarise very briefly what was said.
13    CHAIRPERSON: Who wishes to address us
14 now on the application?
15    MR MPOFU: Chair, it's Dan Mpfou. Chair,
16 I just want to, firstly to make common cause with what
17 Advocate Ntsebeza said and I will maybe just shift the
18 emphasis from the issue of the postponement which I'll
19 address later. To the first issue that he raised which is
20 the issue of resources. Maybe, Chair, without wasting our
21 time, just to paint the picture broadly. On that fateful
day at that koppie there were about 3 000 people. Of
22 those, 34, which is about 1% of those died and that's Mr
23 Ntsebeza's, some of Mr Ntsebeza's clients whom I think are
24 the particular body that was found in that area and the
25 post-mortem reports would've been able to assist us in
1 identifying which member fired which firearm and be
2 objective evidence against which we can measure the counts
3 that we are receiving through our consultations.

4    CHAIRPERSON: We thank you. What is your
5 attitude to the application for a postponement for a
6 fortnight? I take it you've got your people in position,
7 have you, at Wonderkop as we speak?
8    MR SEMENYA SC: Yes, Chair. We would not
9 appose the application, we could benefit from some measure
10 of time that will assist our preparation.
11    CHAIRPERSON: I take you've got people at
12 the scene at the moment, today?
13    MR SEMENYA SC: We do.
14    CHAIRPERSON: J'a. Everyone would be in a
15 better position to move forward once the inspection has
16 been held and the spots have been pointed out.
17    MR SEMENYA SC: Indeed. There would be
18 witnesses that are ready except as we point out, our
19 consultations have not been assisted by objective evidence
20 on the ground. I'm now looking at a Google map that
21 identified the ballistics that were there. I haven't
22 received the reports of those ballistics. I have not
23 received the post-mortem reports. I can see various bodies
24 of effort also try and show us how the movement of the
25 people on the day was on the 16th.

10:55] They would be able to tell us where was the water
11 cannon stationed, what motor vehicle triggered the razor
12 wire first and on his instruction that happened. The
13 points are too numerous just to mention for the record, but
14 I can assure the commission that there will be every
15 attempt at identifying all the relevant information that
16 will pertain to this inquiry. As regards the list, we are
17 able to give Advocate Dumisa Ntsebeza the list of all the
18 people who had deployed from the 10th up to the 16th and
19 what shifts they did at various dates. So that information
20 we can collate and forward. We do mention on the record
21 though that our effort has not been greatly assisted or
22 would have otherwise been greatly assisted if we had had
23 the benefit of the post-mortem reports. They would be able
24 to help us put the cartridges that are found where the
25 members who had been using the ammunition on that day and

2 the Department of Justice which has announced that there
3 would suggest just summarise very briefly what was said.
4 The other truth is that Mr Ntsebeza and I and maybe one or
5 two other parties do represent what one could call the
6 victims as opposed to maybe the state parties, to use
7 neutral terms. Now I want to put it more pointedly than
8 maybe Mr Ntsebeza and say the prayer, so to speak that I
9 would ask for, Mr Chairman, is twofold. One, that the
10 commission should do whatever it is in its power and we
11 know that its powers are not unlimited, to influence the
12 powers that be that the poor people that we represent, the
13 victims should not be disadvantaged merely because of their
14 economic station in life and that such assistance,
15 financial and otherwise, that has been extended to this
16 commission should also cover those people. In particular,
17 Mr Chairman, I would like if they are representatives of
18 the Department of Justice which has announced that there
19 was a budget of about R25 million for this commission, that
20 clarity be given whether that amount is only reserved for the
21 state parties or whether it is also accessible for the
1st to 31st October 2012

Marikana

Rustenburg

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<th>Page 37</th>
<th>Page 39</th>
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<td>1 victims. Because otherwise, Mr Chairman, should that not be the case then the search for truth, reconciliation and justice that we talk about here cannot happen in the skewed situation where some of the parties, or group of parties, have access to those tens of millions and the rest of the parties who are crucial to the search for that truth have to be scraping around and giving each other lifts just to get here, Mr Chairman. And so we would really like to make that point very strongly that whatever can be done within the limited power should be done to clarify that, either on the part of the government who appointed the commission or the commission itself. That then, Mr Chairman, leads us to the second point which is related to Mr Ntsebeza’s application for a postponement. Obviously parties like us who have had to struggle even to be able to consult, you can appreciate, Mr Chairman, that consulting with 270 people, you know, can take quite a long time and we would like therefore, if there is time, extra time it will be welcomed on our part in order to be able to consult thoroughly but time on its own is not going to be of assistance. We’d like to couple the request, the support for the application for postponement with a stronger support rather application for material support. Thank you, Chair.</td>
<td>1 couldn’t have the inspection followed by a session of the commission where formal evidence is presented, such as the post-mortem reports, evidence from the police forensic people who went to the scenes, indicating what they found. Possibly thereafter, after the inspection has been held and after formal evidence of the kind I’ve mentioned has been presented, the question of a postponement could then possibly be revisited or dealt with if it is still necessary. How would you respond to that?</td>
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<td>CHAIRPERSON: Thank you. I see it’s</td>
<td>MR TIP SC: We have no difficulty with that and that would have formed part of the submissions that I was going to make.</td>
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<th>Page 38</th>
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<td>1 already almost ten past 11, perhaps it’s appropriate for us to take the tea adjournment at this stage. I see Mr Badenhorst and Mr Tip both indicated they wish to say something, but would you like to say it after tea?</td>
<td>1 inspection, but that the commission as a whole can continue and should continue.</td>
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1 The one is that this is not a commission of inquiry which
2 is taking place with the benefit of a considerable time
3 since the event and between the event and the inquiry
4 itself and the volatility in the community and around the
5 community is still high. Happily, it is our impression
6 that it is subsiding but it is still difficult to consult
7 in the manner that one would wish to consult and we have
8 reason to believe from the discussions that we've had with
9 other parties, that that is a common experience. People
10 are, I'm afraid, at this stage uneasy about coming forward
11 with evidence, they're uneasy about the prospect of giving
12 oral evidence, no matter what assurances might be given.
13 That is the one difficulty.
14 The other difficulty is that with the best will
15 in the world, given the traumatic nature of the events,
16 when one relies solely on recollection in respect of what
17 witnesses say, it can often be unreliable and so one has a
18 situation where an important event is identified by one
19 witness as having taking place on the 14th of August, and
20 other witnesses say no, I think that was the 15th of August.
21 If that sort of difference is not screened from the
22 presentation to the commission, I feel that the commission
23 will embroil itself in a variety of disputes that can be
24 avoided and they can be avoided if we are given, all of us,
25 as much objective photographic and documentary material as

Page 44

1 CHAIRPERSON: Thank you. Mr Bizos? Give
2 the interpreter a chance, sorry. Mr Bizos, you wanted to
3 give us your reaction to -
4 MR BIZOS SC: To the application.
5 CHAIRPERSON: The appearance – well, you
6 said you wanted to say something, I understood, about the
7 CCMA's appearance.
8 MR BIZOS SC: No, no, I was only a
9 messenger for them to record their presence.
10 CHAIRPERSON: Oh, I see. You want to say
11 something about the application?
12 MR BIZOS SC: I don't represent them, Mr
13 Chairman. What I want to say, Mr Chairman, is that we of
14 the Legal Resources Centre know of the plight of poor
15 people, it's part of our existence to help them. We
16 therefore associate ourselves with the remarks of our
17 colleagues acting for the victims that they require
18 assistance, but I would appeal to them and submit to the
19 commission that there are other doors to be knocked in
20 relation to finance and in relation to assistance, travel
21 assistance for the people to be present. Although the
22 commission may support that they are entitled, saying that
23 they are entitled to be here and confirming it, our learned
24 friends must go and knock on the correct doors in order to
25 get their assistance. It's not for me to suggest to them
which are the correct doors, I think that they are
sufficiently informed about the system that prevails in
South Africa and they should make use of it.

Having said that, Mr Chairman, what I want to say
is that a postponement for a period of 10 days will impede
the function of this commission and the waste of the amount
of money that is going to be spent – because we in the
Legal Resources Centre get a salary, we don’t get fees but
my learned friends do and the amount of money that will be
wasted by the time that the matter is postponed, is to be
taken into consideration in refusing an application to
postpone.

The suggestion that we wish to make is this, Mr
Chairman, having the inspection in loco postponed will
serve very little purpose. Arrangements can be made, as
you have said, you mentioned the appropriate body and
possibly with religious leaders - which is the background
of one of our clients – in order to bring them up at an
appropriate time –

CHAIRPERSON: I’ve got you, Mr Bizos. I
did indicate that I understand the Department of Social
Development is already in the process of making
arrangements to bring them up.

MR BIZOS SC: Well, then –

CHAIRPERSON: So that point appears to be
in the process of being dealt with. You take it further,
if they don’t do it, somebody else –

MR BIZOS SC: I go further, of the damage
will be done by any delays that may be, may come about.
South Africa as a whole is anxiously awaiting a speedy
result to be pronounced upon by your commission, Mr
Chairman, and I would appeal to everyone concerned to find
ways and means which would not prejudice their cause, but
there are ways. By way of example, we can have the
inspection. We, together with Mr Ntsebeza, have made
certain demands from the police – ours are more
table than his but be that as it may, what I want
to draw to the commission’s attention is that the police
ought to be preparing for this day since the 16th of August
so that they must be put under pressure to respond to the
requests, if not fully, in the particularly important
matter of the identity of who was in command and who did
what – that those matters should be deposed to and if
perchance any one of us is not ready to cross-examine them
in part or in whole, they can apply to you for the matter
to stand down. Actually not having a postponement and
putting pressure on the police who, unlike many of us, have
ways and means, to find ways and means – they have the
information, they should have been working on it and let
the pressure be put on them by the commission and by the

So let us have the inspection, let us have any
evidence which the evidence givers have of a quasi-formal
nature, for the rest of the week, if necessary, nobody to
the prejudice – nobody will be prejudiced by it because if
they say we don’t know whether to object to this document
or not, an opportunity will be given to you. This
commission, with the greatest respect, must not be a
commission at which, the unfortunate sporting expression,
kicking the ball to touch. None of us should seek to kick
for touch, we must get on with this job that has been
assigned to the commission and although I am sympathetic to
my colleagues and I don’t whether I unduly influenced my
learned friend Mr Ntsebeza with our discussion yesterday
when he asked me whether we would support the application
for postponement or not, I don’t know if it has any
influence on his reluctance to make it, but our attitude is
clear. Yes, let’s get on with it but we can trust the
Chairman, that nobody is going to be prejudiced with a
speedy way forward.

CHAIRPERSON: I think, Mr Bruinders, you
raised your hand and I think Mr Badenhorst raised his hand.
I’m not sure if anyone else – and Mr Bham wants to talk
also, right. In the order I’ve mentioned, Mr Bruinders?

MR BRUINDERS SC: Thank you,
if it raises issues of great dispute, would it?

MR BRUINDERS SC: Nothing would surprise me in this, if that does happen, Mr Chair, but can I just raise this lastly, and that is that any postponement would in fact be of no use unless we get the materials we had requested. Now, there has to be a timeline for when those materials will come to us because unless we have them, we simply can't prepare. We've taken numerous statements from people, in fact in excess of 25, but without the objective materials, it becomes very difficult to prepare properly, so that even if Mr Bizos has his way and people are put into the box and they testify, it wouldn't help if we hadn't seen documents beforehand that would enable us to prepare for our cross-examination.

CHAIRPERSON: Mr Badenhorst, you are next.

MR BADENHORST SC: Yes, Chairman, I want to be brief because I support generally the indication given from the Commission as to let's get on with things, but may I perhaps add this perspective to the debate that is going on. It is perhaps inappropriate to be talking of applications for a postponement. What this Commission is, with the greatest of respect, is a commission of inquiry with certain terms of reference. It will operate on the basis of an inquisitorial process, it seem to me, not a court of law, and it is inappropriate to suggest that the Commission be postponed. The Commission will carry on with such tasks and functions as it can do, with what is available to it at that particular point. Perhaps our learned friends could reflect on, while we are going on the inspection, and with the assistance of some fresh air, is perhaps what is more appropriate is to work out a programme that perhaps answers some of the concerns expressed. It doesn't help us all to go away and come back in two weeks, and then find that Mr Ntsebeza still has some outstanding issues or some of the parties still need some other report. It seems that where perhaps the communication can be improved is that these parties who have problems or concerns, should communicate them by not later than a specific time, and give the evidence leaders a specific list of issues that they have concerns with, and possibly by some co-operative effort between the teams, one can work out a draft plan, the witness plan for example, that can be tabled to the Commission where everyone concerned knows what will be happening more or less when, as one sees if one consults the one interesting website that the Chairman had very kindly referred us to, the Pike River tragedy inquiry, there the Commission had, I am sure, through consultation between those involved prepared quite a specific programme with people were kept to time limits, which I also fear will probably become a very essential of this Commission's work, because some of us can carry on for a bit, and as lawyers, we are of course for that, and that is why it seems to me that perhaps the time between today and tomorrow can be used by those who have problems to set them out in a systematic way, give them to the evidence dealers team, very capable people, I know most of them, and I am sure they will be very helpful in working out a systematic programme which goes towards achieving the Commission's ultimate objective, and that is to work as expeditiously as possible. In fact, I could mention to you, if one goes onto the website at this minute, the world is already watching what is going on in this very room. There is already flowing reports through as to what the Commission is doing, or I fear not doing, as the case may be. So I would recommend the approach that says, let's get on with it, we've got certain things to do, and in the meantime people can use time to assist the Commission by coming up with constructive proposals. Thank you, Mr Chairman.

CHAIRPERSON: Mr Bham, I think you were the next person to raise a hand, and then after that, I call on Mr Madlanga.

MR BHAM SC: Thank you, Chair, Commissioners, following on the theme of trying to ensure that the Commission uses the time available to it in an effective whilst at the same time ensuring that those who ought to be represented, and who ought to be able to test evidence on matters which most severely affect them, we would like to make a few practical suggestions, in other words, practical suggestions which may take us away from the debate on whether we should postpone or not, but try to practically get the work of the Commission going. We think first of all that the inspection in loco should proceed as planned, with the caveat that to the extent that we need to do it again at some point in the future, because there are parties who are not present, or because something arises during evidence that that should always be open but I have no doubt that that is something that we need not even articulate, it would occur if necessary. The second point we want to make is that upon the conclusion of the inspection in loco and perhaps on Wednesday morning, picking up on a suggestion which had been made by Mr Semenya, acting on behalf of the South African Police Services in correspondence on Friday, we think we should use Friday – I mean, not Friday, Wednesday for a procedural meeting where matters such as the exchange of documents, the question of witness statements, the request that parties have, can be dealt with round table, and we can try to ensure that all those matters are dealt
with, and that the parties are able to get their
information they seek. That once we are through with that,
that would also include a time table of some sort, once we
are through with that, the evidence which is described of
evidence of a formal nature, can be dealt with.

CHAIRPERSON: Why should the formal
evidence not be lead first. I can understand the way
forward, you want to discuss among yourselves ways of
shortening proceedings, exchanging statements and
information, but I would have thought you know, this is a
prima facie view obviously, so that's what will say, I
would have thought that the formal material which is
available, the post mortem reports, the evidence of the
forensic people who came on to the scene as to what they
found, photographs they took, and so forth, and of course
the television material, which I want to say something
about in a moment, I would have thought that could
appropriate be put before the Commission on Wednesday,
would be then available to everybody. What we also said in
the letter that was written to the parties on Friday, was
we would invite the parties so far as they can, to indicate
their version. I understand, for example, that the police
have, what's been described as a power point demonstration.
I would have thought that those parties who complained they
are not properly instructed would be in a better position

to take instructions once that happens. But I put that to
you as a prima facie view, so I can get the benefit of your
reaction.

MR BHAM SC: In fact the usefulness of an
exchange on procedural matters is that we would be able to
find a way of making sure that the Commission works
efficiently. I think what you've put to me, Mr Chairman,
is a very good idea. If I can then modify what I said to
you, that introduce the type of evidence you refer to, but
we think straight after that, there should be a procedural
meeting of some sort where outstanding queries are dealt
with, and we can chart a way forward which would, amongst
other things, then take into account the concerns raised by
Adv Ntsebeza and Adv Mpofu and Adv Bruinders, so that we
ensure that when we start with the substantive evidence,
queries and information sought and requested by parties
have been furnished, and that they have been in a position
to ensure that they can cross-examine on the days. I think
it would be awkward for the entire commission for example,
if we go into the substantive evidence of what occurred,
let's just say on the 16th, and the very people who are
represented – the victims, as they would describe
themselves, people who were shot, and their families, are
unable to test the versions that are coming through. So
some allowance should be made for that, but they would be

in a better position to prepare the case, and to get a
sense of how much time they need for that, once I think we
go through the formal evidence and a procedural matter to
thrust out the programme that allows us to move forward
with the - that's what we would suggest we do.

CHAIRPERSON: Mr Madlanga?

MR MADLANGA SC: Thank you, Chairman,
Commissioners, Mr Bizos' approach to the question of the
funding of Mr Ntsebeza's team was perhaps more tactful than
our approach. During the lunch adjournment, we made
ourselves busybodies in the sense that we contacted Legal
Aid South Africa.

CHAIRPERSON: I think you mean the tea
adjournment. Did you have lunch during that adjournment as
well?

MR MADLANGA SC: We contacted Legal Aid
South Africa and they have shown an interest to be of
assistance but they indicate that a formal application
should be made to Legal Aid South Africa for that purpose,
and the contact person is Mr Thembela Mthate. We have his
contact details. Apropos what my colleague Mr Ishmael
Semenya said about post mortem reports, we too only
received our copies as the evidence leading team last
night, but we are going to - our instructing attorney is
going to be preparing copies all day today for everybody

else, so we hope that if the formal evidence is to be led,
those copies should be ready for everybody.

Then lastly on the question of the application
for a postponement, we as the evidence-leading team, are in
the Commission's hands. Thank you, Mr Chair.

CHAIRPERSON: Thank you.

MR SEMENYA SC: Chair, members of the
Commission, I -

CHAIRPERSON: I was going to call upon
you, perhaps you should put yourself on record, and then I
will give Mr Ntsebeza chance to reply.

MR SEMENYA SC: Ishmael Semenya.

Chairman, members of the Commission, I have just received a
little distressing note that the information we are
receiving is that the ballistics report will only be ready
end of October.

CHAIRPERSON: You are not suggesting we
should postpone for the end of October, until we get that,
are you?

MR SEMENYA SC: I am making, I am
imploring nothing of the kind, Chair, I am just giving us a
cold data which impacts on what we are doing. If we are
going to deal with the events of the 16th without the
benefit of this ballistic report it might be a little
uncomfortable. If the Commission use its weight, I am told
1. there’s only one individual who was assigned to do the
2. ballistics reports. If we can use the weight of the
3. Commission to have this matter expedited, it would help all
4. of us.

5. CHAIRPERSON: Thank you, Mr Semenya,
6. perhaps at this point already, I can express an appeal to
7. those concerned preparing the ballistics reports, to treat
8. the matter one of extreme urgency, so that this material is
9. available as soon as possible. Of course, I will also
10. though state a note of caution, and that is I am not sure
11. that we are here to have a rehearsal for a possible
12. criminal trial of people who fired and - their firearms
13. were responsible for deaths. I don’t want to close the
14. door completely on that inquiry, but basically our concern
15. is to find out what happened in the broad, as it were.
16. Whether Constable A or Constable B is guilty of murder is a
17. matter which I don’t expect us to be called upon to make a
18. finding, and that would in any event be undesirable
19. presumably if Constable A and Constable B were later
20. charged. But certainly the point you make I’ve adopted and
21. I express an appeal to those responsible to prepare those
22. reports as soon as possible. Mr Ntsebeza, you wanted to
23. reply.
24. MR NTSEBEZA SC: Thank you, Chairman, and
25. members of the Commission. Indeed I wanted to, I want to

Page 58

1. reply. Let me start with the positive response, and that
2. is to the extent that the Commission has indicated that
3. where it would be appropriate and on my instructions, it
4. will be appropriate for another inspection to be held at a
5. time when hopefully members of the families will be present
6. and to the extent that that will be possible, and can be
7. accommodated. On my instructions, we have no opposition to
8. the inspection taking place today as planned. We do so
9. reluctantly, but we are trying to do that which the
10. Chairman indicated and that is trying to balance expediency
11. with expedition. Well, I had said “expedition” earlier on,
12. it reminded me of something, it’s not my mother tongue.
13. But anyway. Very much as been said about whether it is
14. necessary for us to get the postponement for purposes of
15. preparation. I will not repeat the submissions that I made
16. earlier on.
17. [12:11] I think we will benefit from a period during
18. which hopefully we will also receive everything else that
19. we have asked for, requested from the Commission, and that
20. if the Commission grants us the postponement that we are
21. asking for, for the period of time that we are asking it
22. for, we will make good use of that period.
23. My learned friend Mr Badenhorst in opposing the
24. application, indicated that there needs to be a
25. communication between us and the leaders of evidence about

Page 59

1. exactly that, what it is that we want from them that would
2. assist us in getting to as near a good state of readiness
3. as we can be. That has already been done, what I read to
4. the Commission by way of what we have requested is merely a
5. tip of an iceberg. We have sent no less, between the 25th
6. and the 28th, no less than three letters in which we are
7. itemising in great detail what our requirements are, and it
8. will be helpful if those can be exchanged, but the only
9. report that we are now told is going to be available only
10. at the end of October, that would also assist us. We do
11. need to be able to have a battle plan. We do need to be
12. able to be as near to being ready to be able to put
13. meaningful questions to those we are allowed to put
14. questions to, and we cannot do that if we have not
15. consulted even members of the family, given the themes that
16. the Commission is going to have to deal with.
17. I appreciate what my learned friend Mr Bizos said
18. about us having to knock at correct doors. If I didn’t
19. know him and if I had not known for quite a long time, I
20. would take the strong exception for him suggesting that I’m
21. asking for a postponement because I’m kicking for touch.
22. He knows as well as I do, and I’ve known him long enough,
23. that this is not a matter in relation to which I would
24. unnecessarily kick for touch, but I know him and I would
25. hope that he didn’t really mean that that is the purpose

Page 57

1. 1st to 31st October 2012 Marikana Rustenburg
2. 25 communication between us and the leaders of evidence about
3. 24 application, indicated that there needs to be a
4. 23           My learned friend Mr Badenhorst in opposing the
5. 22 for, we will make good use of that period.
6. 21 asking for, for the period of time that we are asking it
7. 20 if the Commission grants us the postponement that we are
8. 19 we have asked for, requested from the Commission, and that
9. 18 which hopefully we will also receive everything else that
10. 17 matters which I don’t expect us to be called upon to make a
11. 16 Whether Constable A or Constable B is guilty of murder is a
17. 15 is to find out what happened in the broad, as it were.
18. 14 necessary for us to get the postponement for purposes of
19. 13 Therefore the Commission has to deal with.
20. 12 whether Constable A or Constable B were later
21. 11 I express an appeal to those responsible to prepare those
22. 10 I express an appeal to those responsible to prepare those
23. 9 I express an appeal to those responsible to prepare those
24. 8 I express an appeal to those responsible to prepare those
25. 7 I express an appeal to those responsible to prepare those
Mr Chairman, I need somebody who is a senior or as close to being a senior as I am. On that very 15th that I’m asking the matter to be postponed to I’ve got a duty to be at the Judicial Services Commission of Inquiry, together with my learned friend Mr Semenya. Mr Madlanga has got an alternate. We don’t have alternatives, being the President’s nominees. Now this is a serious matter for those families whom we represent and it’s not a kind of – without reflecting on the competence of the baby juniors who I am appearing with here, but this is a very serious matter and we take it seriously, and I had hope that this is not a matter that would not have to be dealt with in open sessions like this. That is a matter that we could have taken on the side, but I do not think the solution is that we must make an approach to Legal Aid. Those are our submissions.

Chairperson: I have considered the application for a postponement and have come to the conclusion that it must be rejected. What is proposed is that there be an inspection in loco this afternoon, which in all probability will continue tomorrow. On Wednesday evidence of a formal nature will be led, which will in fact place the legal representatives who are not properly instructed at this stage in a better position to obtain instructions. It also will be necessary I think for us to see the television footage on Wednesday, which will again assist counsel concerned to take instructions on the matter.

With regard to the members of the family, as I’ve already said, the Department of Social Development is making arrangements for them to come here to Rustenburg. The inspection in loco will be filmed. The film can be shown to them and, if necessary, someone can take them to the scene and point out to them the spots that were pointed out by the witnesses. If it becomes necessary at some later stage for us to have another inspection to see other points, that is a matter that can be dealt with as and when it arises.

So I’m not satisfied that anyone would be prejudiced if we were to proceed in the way that I’ve suggested. I’m fortified in this view by the submissions made by certain of the counsels who appeared, who opposed the postponement or insofar as there was to be a postponement, qualified their support by saying that the inspection should need to take place first and formal evidence should be led first. It may well be that after the formal evidence that I’ve outlined has been led on Wednesday, that it might be considered appropriate for a postponement of some kind to take place so that counsel can get together and work out, as had been suggested I think particularly by Mr Badenhorst, a programme on the way forward.

I would also hope that counsel in the course of such a meeting could apply their minds to the question of what can be done to shorten the proceedings by way of summaries and agreed facts and things of that kind. It’s also possible that some of the witnesses might be able to give evidence-in-chief simply by confirming a statement prepared previously and then being cross-examined thereafter. I’m not sure that that’s an appropriate way of proceeding. In the case of certain witnesses, possibly the
1st to 31st October 2012

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| Page | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
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| 1    | 1st to 31st October 2012 | Marikana | Rustenburg |
| 2    | 1st to 31st October 2012 | Marikana | Rustenburg |
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| 7    | 1st to 31st October 2012 | Marikana | Rustenburg |
| 8    | 1st to 31st October 2012 | Marikana | Rustenburg |
| 9    | 1st to 31st October 2012 | Marikana | Rustenburg |
| 10   | 1st to 31st October 2012 | Marikana | Rustenburg |
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| 13   | 1st to 31st October 2012 | Marikana | Rustenburg |
| 14   | 1st to 31st October 2012 | Marikana | Rustenburg |
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| 16   | 1st to 31st October 2012 | Marikana | Rustenburg |
| 17   | 1st to 31st October 2012 | Marikana | Rustenburg |
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| 23   | 1st to 31st October 2012 | Marikana | Rustenburg |
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Now, let me tell you what happened, Mr Chairman, what I want to submit.
don't want to make a fine point of it but that is – that is
people who are affected, it is critically important
the people who are affected – Mr Mpofu will speak for himself,
I seek to persuade you, Mr Chairman, that the
sense in what I'm saying?
Am I kicking for touch, as one of my colleagues submitted
days, these people are here. Am I being obstructionist?
Am I kicking for touch, as one of my colleagues submitted
to you? Do I look like I'm kicking for touch? Is there no
I seek to persuade you, Mr Chairman, that the
people who are affected – Mr Mpofu will speak for himself,
but the people who are affected, it is critically important
that they should be present in proceedings about those – I
don't want to make a fine point of it but that is – that is
what I want to submit.
Now, let me tell you what happened, Mr Chairman,
because I think it is my duty to advise you. You were
advised - and I mean to impute no dishonesty to those who
advise you – you were advised on Monday that the Department
of Social Development is arranging for the families to be
present and indeed my learned friend Mr Madlanga brought
two social workers to us and my attorney and the two social
workers got into an interaction and this is the situation.
The Department - those two social workers made it very
clear that they have no mandate or any instructions to
provide any transportation of any of those families from
wherever they are to this venue. Now, that's what they
said. They said they have only a mandate to provide
services of a counselling nature when they are here. In
fact, when they came to the attorney they said, where are
these people, so that we can do our job. And they had to
be told the expectation from us is that the government
through your Department is going to do three things, in the
main. One, it is going to locate all the families,
wherever they are, make arrangements for their
transportation to this venue – and that can only be what
anyone should expect reasonably, because you cannot assume
that because you have had this conversation then they must
come from wherever. By definition, they are poor people.
Now, that is what my attorney actually expressed
himself very clearly to the social workers. We expect – or
1. brief you all the way from Cape Town to come and apply for the release of this person, don’t tell me about what life provides – and you did it and in one case you were successful, in spite of those laws.

2. I am instructed to come and persuade you with the same passion that this is a moment when this Commission should redeem itself. We cannot, with a clear conscience, proceed without those who are affected. Make sure, Mr Chairman, that your Commission is enabled by those who instituted it, to deal with all the participants here on the basis that they are cared for, on the basis that everything is done to provide for them that is reasonable and within the mandate of this Commission.

3. So what is our request? It will not be proper for anyone to give a version – I mean even if they were not eye witnesses, if Mr Semenya is going to give a version on behalf of his clients, they are not here, they are not here to react, like they were not here yesterday to know that this is where Mamboes died, this is where one person died. I saw him personally yesterday, a body was found, a body was found here, a body was found there. If they say we don’t have the courage to go round and make those inspections, let it be their choice.

4. That is done now, that’s over. May I just plead that before we contemplate proceeding, we must take into account that we have an obligation, all of us here – all of us, even those who represent the Constitution, all of us here have an obligation to help these people. I want to be able to, now and again when a version has been given, to go to my people there and say, you have seen that there, is there anything that you want to say about it? They are not here. Something about that, Mr Chairman, members of the Commission, darkens - and I implore you. We can use the day fruitfully, as far as I understood. I think the day, there was a process or as procedure thing where we could exchange, that day can be fruitfully used. I am not obstructionist, in fact I resent any indication that I’m raising these issues because I’m just being obstructionist. I do so because I feel for those people. I do so, if you allow me, because there was a commission not unlike this one, in which I served, in which we put the interests of the victims first. Those are my submissions, Chair.

5. CHAIRPERSON: Is there anything that you wish to say in response to this, Mr Madlanga or those appearing with you? And when you have finished, if you propose saying something, I’ll then give the

6. for the sake of completeness -
7. MR MADLANGA SC: And may I say of course by saying that I am by no means suggesting that Mr Ntsebeza was suggesting otherwise.
8. MR NTSEBEZA SC: Not at all.
10. MR NTSEBEZA SC: Mr Chairman, just by way of completeness, I’ve since been advised that in fact after we had had this communication from the social workers, my attorneys yesterday were sitting on the Department of Social Development and this is the latest. The latest is that they have now come to an accord in terms whereof they undertake that they will make sure that the families – I’m sorry about this device -
11. [09:24] They make sure that the families are here at the latest, Monday the 8th. Now to that extent – but I would really like it to be pursued. They will be here, they will be kept in reasonable accommodation. They will be fed. They will be transferred from wherever their venue is to this Commission and all of those things. But that’s detail. But as at the end of the day yesterday, because there was constant pressure being put by my attorney, that is where we are at this stage.

12. CHAIRPERSON: Mr Madlanga suggested that...
1 I call upon the representatives of the parties to respond,
2 if they wish to do so, to the submission that Mr Ntsebeza
3 has made. Is there anybody among the representatives of
4 the parties wish to address the Commission on this aspect.
5 I see you are raising your hand, Mr Bizos.
6 MR BIZOS SC: Sympathetic to the appeal
7 made by Mr Ntsebeza, and it may well be that the showing of
8 the film which is vital to the families to witness, perhaps
9 it should not be shown, because they have to use my learned
10 friend’s word, been deprived of their presence whilst the
11 pointing out were done.
12 CHAIRPERSON: There is nothing to prevent
13 the film being shown to them later. I haven’t made up my
14 mind in relation to what
15 MR BIZOS SC: Yes.
16 CHAIRPERSON: - Mr Ntsebeza said, but as
17 far as the film is concerned, it could be shown now, and
18 could be shown subsequently to them privately, possibly
19 with appropriate arrangements for counselling at some later
20 stage. Sorry, I am interrupting you.
21 MR BIZOS SC: Be that as it may in
22 relation to the film, Mr Chairman, we are trying our best
23 to prepare our work without knowing what the police version
24 is. I believe, with respect to my learned friend that
25 viewing or hearing what the police version is going to be

1 will be very, very helpful if it happens today. It will
2 enable us, Mr Ntsebeza and his team, and everyone else
3 concerned, to use the time between now and Monday to
4 prepare. So don’t let us waste the day. It cannot
5 prejudice the families if their team conveys to them, if we
6 hear it today what the police version is. There will be no
7 comfort in it but may be to their benefit that
8 we actually hear what the police have to say so that we can
9 prepare to deal with their version, and this is why I
10 believe that we should not miss that opportunity today.
11 CHAIRPERSON: Thank you, Mr Bizos. My
12 colleague, Adv Tokota, wishes to ask you a question, Mr
13 Bizos.
14 MR TOKOTA SC: Thank you, Mr Chair. If I
15 understood you correctly initially, you indicated that it
16 is important that they should be here when the video
17 footage -
18 MR BIZOS SC: Yes, I have no doubt. I
19 have no doubt.
20 MR TOKOTA SC: Is it not also important
21 that when the evidence is being led, they should be present
22 to hear what has to be said -
23 MR BIZOS SC: I agree.
24 MR TOKOTA SC: - by the policemen.

1 have to face so that we can prepare.
2 MR TOKOTA SC: Is it possible that that
3 can be done through say, call it a pre-trial conference
4 between the representatives of the parties without -
5 MR BIZOS SC: I would have no objection
6 to it, provided it is recorded, I would not object to that,
7 it would serve our purposes, if we have the representatives
8 of the police officers to say, this is going to be the
9 Police case, and it is recorded in the presence of all of
10 us, it needn’t necessarily be a sitting of the Commission
11 but the time, the two days left, it is two days or three,
12 will be usefully utilised in order to progress.
13 MR TOKOTA SC: Usefully utilised without
14 having to proceed with the proceedings.
15 MR BIZOS SC: Let us assume that the
16 Commission adjourns, so that there is no evidence, but it’s
17 like a pre-trial conference, so to speak, which can be
18 substituted for the hearing of evidence. Provided that
19 takes place, we would have no objection in adopting that
20 procedure. We are interested in getting on. We don’t want
21 to deprive the families of any of their fundamental rights.
22 CHAIRPERSON: I think the appropriate
23 thing to do is to ask Mr Semenya whether he is going to
24 respond to the invitation at this stage, or was preparing
25 to do so, to give a statement to us, what the version of
MR MATHIBEDI: Good morning, it is T F Mathibedi, on behalf of the South African Police Services.

It has never been our intention, and at this stage, we are not yet ready to present a version of the account of the Police.

CHAIRPERSON: So that point then falls away. I did understand that it was proposed to hand on from the Bar, without evidence at this stage, the post mortem reports on the, in respect of the people who were shot. It seems to me that that would be very helpful. I can't understand any prejudice being suffered by anybody if that was to take place. It would enable the parties to prepare. There may be technical reasons why it's desirable that they should be handed in rather than just handed over outside the Commission, but I invite Mr Madlanga to address us on this point.

MR MADLANGA: Chair, members of the Commission, well let me directly, initially you invited me to respond to Mr Ntsebeza's application. May I touch on something that Mr Bizos, my learned friend across has touched on, whilst debating with Commissioner Tokota.

Quite early on, as soon as he can come on board, my colleague, Mr Semenya, did propose a pre-hearing conference so the point I too was going to make is that the day would be part of, or to be a part of. So to me, not even that, it would not be in order to view even that as this stage. Then back to your last question, Mr Chair, we are ready to hand up the post mortem reports from the Bar, but my learned friend Mr Chaskalson has been tasked to attend to that part of our duties. I am not even sure that we have enough copies. The photocopying facilities that we have been given, packed up yesterday, but he is in a better position to speak to all of that, Mr Chair, thank you.

CHAIRPERSON: Thank you, Mr Madlanga. Mr Chaskalson.

MR CHASKALSON SC: Mr Chair, firstly just to correct what may be a misunderstanding that I don't want to cause any, well suspicions later. The time of six hours is not something that I've personally witnesses. We have seen a power point presentation without viewing the video clips that are built into the power point presentation. So what we saw didn't run for two hours, it ran for considerably less because we were just being scrolled through slides. The figure of six hours is what was communicated to me as a very rough estimate of what it might take to present that presentation in Commission. So if it turns out that it is a lot shorter people shouldn't be concerned that we saw something of six hours and the Commission sees something that is shorter. We have just seen slides. We haven't seen the videos and as I understand it, the Police are really estimating what the total time would be.

In relation to the post mortem reports, we have logistical problems. In fact my master copy is currently at a print shop in Rustenburg, being copied, to generate copies for the legal team. We do have three files which we are in a position to hand up to the Commission. They are not an exhaustive set of post mortem reports, and if I might briefly describe what they comprise. In relation to the 34 victims of the 16th, we have 31 post mortem reports which we are satisfied to hand up at present. There is one post mortem that is still outstanding in the sense that the doctor is making last minute finalisations to the draft, or is settling the draft. We expect to get that report within, if not today, then within the next couple of days.

There are two post mortem reports which we have, which have been furnished to us which are final, but we are not yet satisfied of proof of identity because there is no, in the post mortem bundles that have been furnished to us, there is no proof of identity of the body satisfactory for us to hand it up as a post mortem report of one of the victims. That accounts for the 34 victims of the day.

Of the victims in the week leading up to the day, at present, we have three post mortem reports, three of the...
<table>
<thead>
<tr>
<th>Page 85</th>
<th>Page 87</th>
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<td>1. The three that we have, are the three that relate to investigations that were conducted by IPID because they were investigations in respect of which it was, there was a suspicion that the Police may have been involved in the killings. The remaining post mortem reports, we are still to locate. We’ve had technical difficulties which needn’t detain the Commission, but the hard, an external hard drive that we have received from the Police, we have been unable to open but we will be opening it today, and we are hoping that we might find those post mortem reports there. But at present, what I would propose then, Mr Chair, with your leave, is for us to hand up to the Commission the files that contain the 31 post mortem reports that we can verify of victims of the 16th. The two additional post mortem reports that we have reason to believe are also victims of the 16th, but have as yet not been identified, and the three post mortem reports relating to victims of the week before the 16th. And we will, we are unfortunately not in a position to give these files to our colleagues but in the course of the day, we will be in a position to do so.</td>
<td>1. having all the 270 people here. However, Chair having said that it is important to note that these people are back at work, even now are being requested to make letters so that they can prove to their employers that they were here. [09:44] And it’s an arrangement that I’m hoping, maybe if we do have a pre-trial, we will be able to reach with Lonmin, in particular, so that when the representatives of the committee come here they can rotate or any other practical arrangement that we can come to, but the most important thing, Chair, is that we would like those people to always be represented here. We can’t – it would be extreme if we say they must all be here, because, as I say, it would not be practical, but one way or the other, we would like them to always be represented. The third instance that we represent, Chair, is the family of the deceased councillor, Pauline Masutle, and to that extent we represent one of the deceased persons provisionally, and I’ll explain why we say provisionally just now, but to the extent that she is a victim and a deceased victim, then obviously we are in the same boat as Mr Ntsebeza. I can mention, Chair, that the funeral of that particular victim is taking place this Saturday, and the family – one, the sister, joined us and I introduced her to you, Chair, at the inspection yesterday, and they are leaving for the funeral which will take place a month later, and therefore they cannot be sitting here for the next few days.</td>
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<td>Page 89</td>
<td>Page 91</td>
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<td>1 South Africa. And I did say yesterday, Chair, that this is a matter I wish to place on record today. I’m doing that, but I’m also going to contextualise it within what Mr Ntsebeza and the other colleagues have been discussing, if I get the indulgence to do so. The letter we wrote, Chair, is dated 21st September 2012 and, with your permission, I’ll read it into the record. “Dear Honourable President, representations for the extension of the terms of reference of the Farlam Commission of Inquiry. 1. We act for the family of Ms Pauline Masutle, who died on Wednesday, 19th September 2012, as a result of injuries sustained at Marikana during last weekend’s raids by the security forces of South Africa. The deceased suffered injuries from a bullet fired by the said security forces. Ms Masutle was a municipal councillor. 2. The family is not satisfied with both the circumstances surrounding the shooting, nor his mysterious death in hospital after she showed signs of recovering. 3. we have learnt in the media that the government contemplates an investigation into her death. 4. We have been instructed to make the request, as we hereby do, that we have received the response from the president, as we had suggested, which we would have wanted to receive before the Monday, the commencement of the commission. And our instructions from the family are to leave no stone unturned to ensure that this death is included in this commission. I’m not at liberty at this stage to indicate what steps we may take should this request be refused, but we will leave no stone unturned. Now, Chair, coming back to the issue at hand, my impression, Chair, I may be wrong, is that no party sitting here is ready to proceed with this matter. For, after the interventions of Mr Madlanga and Mr Mathibedi, it would seem that, at least about that, there’s no dispute. The second issue is that, Chair, the haste – the issue of the credibility of the commission is quite important. There’s already a public discourse about this issue of the victims</td>
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<td>1 this request. We await your urgent response.” My attorney sent the letter and it was acknowledged – receipt was acknowledged by the Office of the President, dated 21st September 2012, and acknowledged by the Minister of Justice, dated 25th, just after the long weekend. I raise this issue, as I said, Chair, for two reasons: one, to place it one the record, but also to find common cause with the issue of the presence of that family here. I might also place on record that we have not</td>
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<td>1 and I know you, Chair, that is something that you take to heart to ensure that the plight of the victims is not underestimated. The impressive manner in which you started this commission shows that you do care about the victims. And haste might just result in us having a half-baked – a very hasty and rushed, but half-baked product. I wanted to say this without any fear of contradiction, since I represent, broadly speaking, the victims, as I’ve defined, together with Mr Ntsebeza and other parties. There is nobody in this country who is more keen for the finalisation of this commission than the victims. I think that has to be made very clear, but that does translate into a rush job, which will not result in the reconciliation and the truth and the justice, nogal, that we all seek. So I think that that statement needs to be made, so that there are no accusations about delaying tactics. The last point I want to make, Chair, is that - is to link this issue, at least as far as we are concerned, with the other issues that we raised on Monday about resources. It is very difficult for the parties that we represent to participate in this commission. It is extremely difficult. It is extremely difficult even for us, as the legal representatives, given the distances, the number of people. Just to give you a perspective, Chair,</td>
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<td>1 powers of the Honourable President to extend the existing terms of reference to incorporate the issues associated with said raids and the resultant death. 5. We are already set to participate in the inquiry on behalf of a separate set of clients and it would be convenient for us to deal the matters in the same proceedings. 6. In addition, it is our humble view that Ms Masutle, being the 46th victim and the first woman fatality of the broader Marikana crisis, is in the same position as the other 45 victims. Her life is worth the same as the other victims. 7. we are also of the view that including this issue would ensure total closure of the issues of the Marikana issue once the commission has finalised its work. 8. We have already been informed by the Commission Secretariat that the work of the commission will commence on 1 October 2012. We would accordingly appreciate a response to this request on or before Wednesday, 26 September 2012, so that we may either commence our preparations or seek alternative ways to pursue the wishes of the family. 9. This letter will be copied to the Minister of Justice and Constitutional development and we are more than willing to meet and engage with any functionaries of your office of the South African government to further engage on this matter should it be deemed necessary by your good offices. This may provide an opportunity for us to expand on and further to motivate</td>
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<td>1 and I know you, Chair, that is something that you take to heart to ensure that the plight of the victims is not underestimated. The impressive manner in which you started this commission shows that you do care about the victims. And haste might just result in us having a half-baked – a very hasty and rushed, but half-baked product. I wanted to say this without any fear of contradiction, since I represent, broadly speaking, the victims, as I’ve defined, together with Mr Ntsebeza and other parties. There is nobody in this country who is more keen for the finalisation of this commission than the victims. I think that has to be made very clear, but that does translate into a rush job, which will not result in the reconciliation and the truth and the justice, nogal, that we all seek. So I think that that statement needs to be made, so that there are no accusations about delaying tactics. The last point I want to make, Chair, is that - is to link this issue, at least as far as we are concerned, with the other issues that we raised on Monday about resources. It is very difficult for the parties that we represent to participate in this commission. It is extremely difficult. It is extremely difficult even for us, as the legal representatives, given the distances, the number of people. Just to give you a perspective, Chair,</td>
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to have to consult with 270 people, even if you were to estimate it an hour or two hours per person, that goes into about a month, a full month of consultations, before you even decide which of those people you are going to call. And to have to do that under the extreme trying circumstances, for people who are poor and who's reason for being killed in the first place was the fact that they earn R4 000 a month, is really I think stretching it too far. And therefore, if there were to be break, Chair – I'm raising it only in this context - of any sort, it would not only serve the purposes of having the pre-trial issues that my colleagues have eloquently spoken about, but it would assist the victim parties to pursue this issue of how it is going to be that for the next four months, the victim parties are well-resourced, and I'm not – I'm just talking about logistical resources here, I'm not even talking about fees - that's matter that we can deal with separately, maybe with the Department of Justice, but just merely to make them able to participate meaningfully. And, Chair, the last point I want to make is that we have represented these people pro bono in the criminal cases. We have no problem with that. There will be subsequent civil cases for their wrongful arrests, their assaults that they suffered at the hands of the police, their unlawful detentions. We do not need anybody's assistance with that, but as far as the participation in this inquiry is concerned, Chair, there is no moral or legal or logical reason why these people should not be assisted. They are here not to gain anything from this commission, they are here to assist you, Mr Chair, to assist the country to reach the truth and the reconciliation and the justice that is sought. They could have stayed away for all that matters. There's no monetary judgment that will come into their favour, and as much as any other party that is here, is here to assist the commission and the country, they are also in that same position. And once again, if this issue of the resourcing of the victims is not heeded, we will take it to the next level, but at this stage we are trying to use as peaceful means as possible to write letters, to petition, to speak the Department of Justice, to appeal to the president, to appeal to you, Chair, that there must be equality of arms. That there must be recognition that these victims need to be assisted one way or the other, and therefore any break will also assist us to deal with those issues. Chair, I will stop at that. I just wanted to place these matters insofar as they might also be dealt with during whatever break is contemplated. Thank you, Chair.

MR MPOFU: Yes, Chair, I agree with you. On the contrary, it would be to our advantage if the material was dissipated at this stage, and I might say that for the post-mortem of the female victim, that I referred to, is also underway and we will, when we get access to it, ensure that our colleagues get it. So I would – I don't think and I can speak for Mr Ntsebeza without even consulting him, that the dissipation of those post-mortems would cause any prejudice.

CHAIRPERSON: Thank you. Does anyone – any other member present, representing the parties, wish to say anything at this point. Mr Bizos, it would help if you turned your machine on.

MR BIZOS SC: A further interest which we must bring to the notice of the commission, the people that have been injured, who are Mr Dali's client's – Mr Mpofu, I'm sorry, I know he was a clerk so this is why – we have said anything at this point. Mr Bizos, it would help if you turned your machine on.

MR BIZOS SC: A further interest which we must bring to the notice of the commission, the people that have been injured, who are Mr Dali's client's – Mr Mpofu, I'm sorry, I know he was a clerk so this is why – we have
1st to 31st October 2012
Marikana Rustenburg

there are two problems. The one is the one that Mr
Ntsebeza's mentioned. I though that could be solved by
showing that to them later, particularly in the company of
people who could give them the necessary counselling. But
there is another problem, and that is, we haven't got all
the footage that we would like to see. You will remember
that I made an appeal to the representatives of the media
houses, to make other material that has not actually been
broadcast available. I understand there hasn't been a full
response to that. I also understand that there is or may
be at the very least, footage available in respect of the
events of the 13th, on the Monday which were dealt with in
the inspection in loco yesterday. So it would presumably
be advisable if all the TV footage that is available, if
there is TV footage available on that as well, should all
be shown at the same time. So proceeding with the TV
footage today, doesn't seem a practical proposition.

The post mortem reports clearly no one can be
prejudiced if they are handed in now. If the Police aren't
able, or consider themselves not able at this stage to give
us their power point presentation, they will be given an
opportunity to do so when we next meet. The further point,
which I had hoped we'd be able to deal with today, would be
evidence from the people who pointed out spots at the
inspection in loco yesterday and the day before, just
confirming effectively on oath what they had pointed out to
us and giving some extra explanation, but it would seem
that it is thought that members of the family might wish to
be present when that evidence is given as well, and so it
may well be appropriate to hold that back also. But is
there anything that counsel for the evidence-leaders wish
to add before we - I deal with the application?

MR MADLANGA: No, Mr Chairman, thank you.

MR MADLANGA SC: Mr Chairperson, I just
want to very briefly explain to -

CHAIRPERSON: I think you must say who
you are, for the benefit of the transcribers. Sorry, Mr
Ntsebeza, you want to say something?

MR NTSEBEZA SC: Chair, I just wanted to
in reply to, to just put the correct position, so that
there is no misunderstanding about what I'm instructed by
my attorney. My attorney seems to have been dealing with a
Ms Cutshwa, spelt C-U-T-S-H-W-A, and Mr Ganyile, G-A-N-Y-I-
L-E, the social workers in the Department of Social
Development, one from the Eastern Cape and I would like to
just read what she has said to be the position, so there
are no mistakes about what I said here when things do not
work out well. And in relation to that, I am going to
request the assistance of the Commission and I can already
bank on the assistance of the evidence-leaders, who have

1  CHAIRPERSON: I understood from what Mr
2  Ntsebeza said - thank you, Mr Bizos. I understood from
3  what Mr Ntsebeza said that this later instruction that he
4  got, that he gave us in his reply, was to the effect that
5  negotiations are underway, and it would appear that there's
6  already a commitment, if I understood him correctly, from
7  the Department to assist people to be here. Did I
8  understand you correctly, Mr Ntsebeza?
9  MR NTSEBEZA SC: Yes, you did, Chair. In
10  fact, the Department or the social workers indicated that
11  they might be ready to do so on the 8th.
12  CHAIRPERSON: Thank you. Does anybody
13  wish to make any comment before -
14  MR BRUINDERS SC SC: Chair, yes, Tim
15  Bruinders, AMCU, we of course don't have any objection with
16  what appears to be the way that you propose to proceed this
17  morning, but there's one question that we'd like to ask and
18  that is this, in addition to the post-mortem reports being
19  handed up, why can the PowerPoint presentation not be
distributed before it's dissipated, why can that not be
given to the parties this morning? It doesn't have to be
led formally, we just want a copy of it so that we can
prepare. We have written numerous letters to the
commission requesting a number of documents and audiovisual
material. We haven't had a response to any of them. We

1  make no point about that. We understand that it is very
difficult to get documents out of not only the SAPS, but
also Lonmin. We'd like to see whatever there is available
now, not here this morning, but in the comfort of the trees
we consult under in Marikana, so that we can prepare.

CHAIRPERSON: I think the question you
ask in relation to the PowerPoint presentation should be
addressed to the representatives of the South African
Police Service. They have the PowerPoint presentation.
Part of it, as you heard, was shown to Mr Chaskalson and
his learned friend, Mr Wesley. Even they didn't see the
full presentation. The commission evidently hasn't got it
at the moment, but it's a request which will properly be
addressed by the representatives of the Police Service, and
I would appeal to them and to the parties generally, to
cooprate with each other as much as possible, so that we
can expedite these proceedings and time won't be
unnecessarily spent on procedural matters which can be
solved outside the place where the commission holds its
formal sittings. What I would suggest is, what I would
suggest is the following way forward, that we receive the
post-mortem reports, or the copies that are available, we
hear that extra copies will be made and given to the
parties. We see those now.

[10:04] I had hoped we could see the TV footage, but

25 [10:04] I had hoped we could see the TV footage, but
1st to 31st October 2012 Marikana Rustenburg

been extremely helpful in assisting us to get this thing on track. But this is what has happened. When we contacted the people in the Department of Social Development, he says in paragraph 19 of what would be his affidavit. “Ms Cutshwa confirmed the arrangements between her office and Mr Ganyile’s office. She said the Eastern Cape Provincial Government and Department of Social Development was facilitating the families attendance of the Commission on 8 October 2012. She confirmed that the Department of Justice would pay for transportation and accommodation of the families to attend the Commission. I enquired from her as to the duration of the families’ attendance at the Commission. In particularly I enquired if the families will be unable to attend the Commission for a specific period, or for the entire duration of the Commission. Ms Cutshwa said she did not have answers to my questions, and advised me to direct those questions to Mr JB Skosana.” Mr JB Skosana, as the Commission will know is the secretary of this Commission. So it is none too clear and it is for that reason that I would appeal for the Commission at your level, Mr Chairman, and at the level of the evidence-leaders to be involved in this matter to the extent that the Commission is itself satisfied that we will not deal here with a token appearance on the 8th, and then we are back to square one. We really want, when once we start, we run with this. We have made arrangements for exactly that. But for me, it will be a charade if they are only brought here for the 8th of October. They are not provided for in terms of accommodation, they are not provided for in terms of where they will stay, and the time is none too clear as to for how long they can stay. We are expecting that for the duration of the Commission they should be here. It can only be fair that if that Commission is going to be enquiring into all of the mandated terms of reference that they should be here for the duration of the Commission.

MR NTSEBEZA SC: We would really need a period of time before we resume when these matters will have been clarified.

CHAIRPERSON: Thank you, Mr Ntsebeza.

The points that you have made will be taken into consideration. I don’t think it appropriate for me to say any more than that about that at the moment. What I suggest we do now, is we allow Mr Chaskalson to hand in what he was proposing to hand in. Thereafter it seems to me that it’s virtually to be common cause among all the parties present that we should have an adjournment. The only question outstanding is until when? And what I suggest we do is that we, after Mr Chaskalson has handed in the documents to which has referred, we take an adjournment, to enable the representatives of the parties to meet together, to see whether they can reach an agreement as to the date when we should resume. I hope that when they do that, they will have regard to the two factors that I mentioned in the beginning namely the need for expedition, on the one hand, on the other hand the need to deal with the matter, not as described by Mr Mpofu, in half-baked fashion, but what the nation expects of us is a proper investigation, not a superficial one, expect us to deal with the matter expeditiously of course, but they also expect us to do a proper job and be thorough, not in relation necessarily to every bullet that was fired by every person, because that may be the subject of other cases later, but certainly in respect of the terms of reference we have. So, Mr Chaskalson, are you ready to hand in the documents?

MR CHASKALSON SC: I am, Mr Chairperson.

What strikes me is that we may have difficult indexing and paginating – well, when nobody else has copies of them in front of them, but possibly with the, unless any of my colleagues object, we can index and paginate or give them names, attend to the pagination and put up and index, which – from which everybody else can paginate once the copies have been furnished to them.

CHAIRPERSON: That sounds like a sensible suggestion. I suggest you proceed along the lines you have indicated.

MR CHASKALSON SC: Then, if we can then hand up those there files, and if I can suggest an appropriate annexure numbering.

CHAIRPERSON: Shall we give them exhibit numbers? I suppose the whole bundle can be exhibit 1, and then it will be accompanied in due course by an index which will indicate what precisely is contained in the exhibit, is that correct?

MR CHASKALSON SC: Given the circumstances, that would be the most convenient approach, Mr Chairperson, but at the outset I might just draw your attention to a number of issues, or if you can just note them at this stage, because the document isn’t yet paginated. I don’t have my master file in front of me, so it’s not going to help me even if it is paginated because that’s at the copy shop. But my copy is at the printers. Mr Chair, it’s merely a note, I don’t need a file in front of me, but I want to draw attention to the fact that the two, that the first three post mortems that you will find in that file with death registration numbers 553 of 2012, 555 of 2012, and 554 of 2012, in other words 553 to 555, although they are not sequentially appearing in the bundle, are the post mortems in respect of the three victims prior...
1st to 31st October 2012
Marikana Rustenburg

1. to the 16th in respect of whom there was a suspicion that
2. the police may have been responsible for the killing. All
3. of the following post mortem reports are the post-mortem
4. reports of victims of the 16th itself, and the two reports
5. in respect of which there is not yet satisfactory
6. identification have the death registration numbers 578 of
8. The last point that I would make is that we are
9. in possession of black and white photographs of post mortem
10. photographs to accompany these reports in respect of all
11. but the first three of the post-mortem reports. We are
12. currently trying to locate colour copies of those
13. photographs, because the black and white copies are of very
14. little assistance. If we can locate colour copies within
15. the near future, that is what will be distributed to the
16. Commission and to the parties but if we can’t, we will have
17. to make do with the black and white photographs which at
18. present are not included in that file.
19. And finally, Mr Chair, just to repeat that there
20. is one report that is still outstanding from the 16th but we
21. expect to receive that very soon.

22. MR CHASKALSON SC: Indeed, Mr Chair.
23. CHAIRPERSON: That’s the one that’s not
24. been finalised yet?
25. MR CHASKALSON SC: Indeed, Mr Chair.

26. received this bundle of documents as exhibit 1. We will
27. return the copies to you, so that the index can be inserted
28. and the pages can be appropriately paginated. Now, I
29. suggest that we take the – I propose that we take the tea
30. adjournment. We won’t resume immediately in 15 minutes,
31. unless we are told, which is unlikely that we will be told,
32. that the parties have had a meeting and have agreed on
33. certain aspects which are part of the way forward. The
34. first thing of course, is the date to which we should
35. adjourn. If the parties can’t agree then I will have to
36. decide what date’s appropriate, but I hope that they will
37. be able to agree, being mindful of the two factors that I
38. mentioned. But there are various other matters which I
39. have, some of them I’ve mentioned here in formal sittings
40. of the Commission, others I’ve mentioned outside, things
41. that the parties can agree on, which will shorten the
42. proceedings and in fact make it much easier for us to
43. proceed with the necessary expedition, and these matters
44. can also be discussed by counsel. At this point, we will
45. adjourn and we will resume after we’ve been told that it is
46. appropriate for us to continue.

47. [COMMISSION ADJOURNS COMMISSION RESUMES]
48. [14:04] CHAIRPERSON: Good afternoon, the
49. Commission resumes. I understand the advocates and other
50. representatives of the parties had a very fruitful meeting

51. at which various matters were discussed and agreed, ways in
52. which the proceedings can be expedited and proceed more
53. efficiently, but before I call upon Mr Madlanga to address
54. us on that, I’ve been informed that we have with us today
55. the members of the family of five of the deceased persons,
56. people who were not here when we started on Monday and I’d
57. ask my colleague, Adv Tokota, to read out their names,
58. together with the names of the deceased whose family
59. members they are and then I wish to say something to them.
60. Excuse me, Mr Interpreter, I’m sorry, I understand these
61. people are either Sesotho speaking or Setswana speaking. I
62. know that you’re proficient in those two languages also, so
63. would you please make the interpretation – I don’t know
64. whether, if you’re interpreting Sesotho, the Setswana-
65. speaking people will follow you, but I’ll leave that to
66. your discretion. Thank you. Mr Tokota, would you please
67. read out the names of the family members who are present as
68. well as the deceased persons whose families they belonged
69. to.
70. MR TOKOTA SC: Thank you, Mr Chairman.
71. Family member Ithumeleng David Sagalala, the deceased
72. Modisaotsile Van Wyk Sagalala. Family member Esther
73. Dinkwese Mabebe, Eric Chapelo Mabebe the deceased. Family
74. member Msenyeno Lebogang Fransina, deceased Andries
75. Motshalepula Msenyeno. Family member Sam Monene, deceased

76. CHAIRPERSON: Those members who are
77. present whose names were read out, who are family members
78. of the deceased, the Commission wishes to express its
79. sympathy and its condolences on the loss which they’ve
80. suffered and to give them the assurance which we gave also
81. on Monday, that we will do everything we can to the best of
82. our ability to ascertain the facts which gave rise to the
83. deaths of the deceased persons whose names were mentioned.
84. Thank you, Mr Interpreter. Mr Madlanga, are you now able
85. to inform us what happened, what the results are of the
86. meeting that you had with the representatives of the other
87. parties?
88. MR MADLANGA SC: Thank you, Chairman,
89. Commissioners. Mr Chairman, agreement was reached on a
90. number of issues covering a whole range of matters,
91. including the exchange of witness lists, witness
92. statements, discovery of documents and of course that the
93. matter be postponed to a specific date. I do not propose
94. that saying anything – or rather, stating or setting out
95. the dates of the time frames other than the dates of
96. postponement and the agreed date is the 22nd of October
97. 2012, that is the date that we propose the Commission
should postpone the matter to.

There was agreement on all the issues, unanimous agreement, except for on the date of postponement but even on that, there was sufficient consensus that the matter be postponed to the 22nd of October. Thank you, thank you Chair.

CHAIRPERSON: I think that if regard is had to the proposed timetable for the exchange of documents, the preparation of a consolidated index and bundle of documents and so on, it would be unrealistic for these proceedings to be adjourned for any date prior to the 22nd of October. I want to stress though that the – an enormous amount of work will have to be done, not only by the parties’ representatives but also by the members of the Commission over that period. There’s an enormous amount of reading that will have to be done.

The documents, as I understand it, which will be exchanged by the parties will be made available to the Commission and the idea is that we will all be in possession of sufficient knowledge of what’s in the documents to ensure that the evidence, when it is led, is dealt with expeditiously, without undue interruption or anything of that kind.

So I’m grateful, my colleagues and I are grateful to the representatives of the parties for the trouble that they took to come to this agreement and for the many excellent suggestions which are contained in this document which will, I am sure, enable the Commission to perform its work as effectively and efficiently as can be expected in the circumstances.

So the order that I make, insofar as I’m called upon to make an order, is that the proceedings will be adjourned until the 22nd of October. Is there anything, before we formally take the adjournment, that anyone wishes to place on record. 9 o’clock on the morning of Monday, the 22nd October. Does anyone wish to add anything or raise any question before we formally adjourn? I don’t see any indication. I beg your pardon, Mr Semenya.

MR SEMENYA SC: Chairperson, we had also requested some direction on how the Commission intended writing on the various themes and what it is that is expected of us. I don’t know if that has *11:03.

MR MADLANGA SC: My I respond to that, Chair? We have not approached the Commission on that issue yet. We will do that and we will communicate the response to our colleagues. Thank you.

CHAIRPERSON: We were handed the minutes of this meeting a few minutes before we came into court. We read them, but we haven’t had a chance to consider the various points that have been referred to us for decision
1. **Chair:** Thank you. I ask the representatives of the parties to please put themselves on record. It's pleasant to see you all again. Welcome back. I hope that the fortnight that's elapsed since we were last together has been profitably spent. I understand members of the family are now able to be present. I want to thank the Department of Social Development and all those who were involved in making it possible for them to be here and to say they're very welcome, we're very pleased to see them. Yes?

**Mr Gumbi:** My name is Louis Gumbi, I'm representing the police and present civil rights union, POPCRU.

**Chair:** Thank you. Yes, you haven't yet applied, as I understand it, to take part in the proceedings but if you wish to, so to apply, I suggest you make a written application to the secretary and we will consider it. Of course you have the full right to be here, to having a watching brief and I understand there may be a desire on your part to have access to the documentation, and in that regard I would suggest you contact the evidence leaders who will be able to assist you.

But if you wish to actually participate in proceedings by making oral submissions and leading witnesses and cross-examining witnesses, you have to apply in writing for permission to do so, which will be considered in due course.

**Mr Gumbi:** I will do that.

**Chair:** Thank you. I'll ask the parties to please put themselves on record. I think we proceed in order of seniority. I think Mr Bizos, you are the senior practitioner present, is that correct?

**Mr Bizos SC:** I think so. I together with my colleagues whose names I've put on record previously appear for the Legal Resources Centre. I don't know whether you will merely want our presence to be announced or whether you want me to deal with them?

**Chair:** No, I just want you to put yourself on record which you've now done.

**Mr Bizos SC:** Yes.

**Chair:** Yes. Mr Burger, I see you're here again for Lonmin?

**Mr Burger SC:** Chairperson, Commissioners, we appear for Lonmin. I'm Schalk Burger, I'm assisted by my learned friends, Terry Motau and Horace Shozi from the Johannesburg Bar.

**Chair:** Thank you. Who is here from the police?

**Mr Semenya SC:** Mr Chairman, I appear together with Mathibedi Ngawana Sello and Baloyi on behalf of the police. My name is Ishmael Semenya.

**Chair:** Thank you, Mr Semenya. Who is here for NUM?

**Mr Bruinders SC:** Members of the Commission, Ms Barnes and I appear for AMCU. My name is Tim Bruinders.

**Chair:** Thank you, Mr Bruinders. Who is here for NUM?

**Mr Tip SC:** Mr Chair, Commissioners, I am Karel Tipp, I appear for NUM together with my colleagues, Hamilton Maenetje and Thando Ntsonkota.

**Chair:** Thank you. Now on behalf of the dependents of the deceased and the family of the deceased, we have two groups of counsel, as I understand it, is that fair? The one group is led by Mr Ntsebeza. Mr Ntsebeza, I see you're here this morning.

**Mr Ntsebeza SC:** Yes, I am here and I appear with Mr Stuart Wilson, Ms Louise and Ms Motwenya on behalf of the deceased families.

**Chair:** Thank you. And Mr Mpofu?

**Mr Mpofu:** Thank you Chair, yes, I'm also here together with my learned friend, Mr Lesego Musi. We appear for the three parties that were mentioned previously, namely the arrested and injured persons on the one hand, the Lonmin community committee which represents them and the Masutle family still under the provisional situation, Chair, because our request to the President, or attempts have not yet been finalised but we will keep you abreast as to that tender representation.

**Chair:** Anyone else who wishes to place him or herself on record as representing one or other of the parties or some party?

**Ms Chabedi:** Chairperson, I'm Dikeledi Chabedi for the Department of Mineral Resources. I'm led in this matter by Advocate Cassie Badenhorst SC and also assisted by Mr Louis de Bruin from the Johannesburg Bar, both of whom are not present today.

**Chair:** Thank you. Is there anyone else?

**Mr Le Roux:** Mr Chairman, I'm Willem Le Roux. I appear for the Chamber of Mines.

**Chair:** Thank you, Mr Le Roux. If there's no one else who wishes to put him or herself on record, we now proceed with the opening statements. We requested the parties who were able to do so to make opening statements and to put on record their version of the events which form the subject matter of the first part of the inquiry. I think it's appropriate to begin with Mr Semenya. But before Mr Semenya starts, I think the
1st to 31st October 2012

Marikana

Rustenburg

Police Service.

MR SEMENYA SC: Thank you, Chair and Members of the Commission. By way of introduction we're making an opening statement on behalf of the South African Police Service and the statement has six parts to it. We start by making general remarks which we consider important for setting the tone for our presentation. Then we identify the applicable standing orders, policy considerations, legislation and other instructions. We then foreshadow to the best of our ability the evidence that will account for the tragic loss of lives on Monday, 13 August 2012, the 13 August event we call it, and Thursday the 16th August 2012 around the kraal, which we describe as scene 1. Thereafter we turn to the events at what has now become known as koppie 3. This we term scene 2. In the fifth instance we draw from the Commission's terms of reference to identify the roles that each of the parties represented here played in this tragic event. And lastly, we propose some recommendations around these matters.

CHAIRPERSON: Thank you, Mr Semenya. I understand the interpreter has a copy of the document from which you're reading, and so perhaps at the end of each paragraph, each appropriate division, you can stop to give him an opportunity to interpret.

MR SEMENYA SC: I'll do so, Chair. By way of general remarks, we state that it is with a deep sense of obligation to our nation that the South African Police Service appears before this Commission, regret because public commentators setting out to make sense of complex issues in our society often revert to a narrative that suggests a stand-off of sorts between the police on the one hand and the people on the other. This creates in the minds of many people the perception of the police as an alien and possibly hostile force removed from the people the police are meant to serve in terms of our constitutional mandate. In reality nothing can be further from the truth of the outlook and commitment of the South African police service. The Constitution of the Republic of South Africa, in particular chapter 11 directs that Africans as individuals and as a nation to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.

Furthermore, the Constitution imposes on the South African Police Service a responsibility to prevent, combat and investigate crime. To maintain public order, protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law. To ensure that the police service leads up to the constitutional imperatives, all members are subjected to their property and to uphold and enforce the law. To maintain public order, protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law. To ensure that the police service leads up to the constitutional imperatives, all members are subjected to the Code of Conduct of the South African public police service itself. But before any of these persons or those injured were mineworkers, supervisors or police officers, they were in the first instance citizens and residents of this great nation.

They were members of families, communities and organisations who are poorer today as a result of various events at Marikana. Therefore as we set out to assist this Commission with establishing the facts around the Marikana tragedy we wish to underscore our regret at the loss of life and the injuries that affected various families, communities and sectoral groups at that time. Our thoughts are with the families on all sides of this equation who have lost loved ones and our best wishes go out to those who are recovering both physically and psychologically from this tragedy. The police service lost two members in one of the early incidents of the week commencing, Warrant Officer Monene, Warrant Officer Lepaaku and Lieutenant Baloyi who was severely injured, as we shall report in detail later in our evidence.

These members, as we stated earlier, were members of families and communities.

[09:57] The sentiment applies no less to the eight civilians who had lost their lives since Thursday, 9 August 2012. It is necessary for us to stress this perspective because public commentators setting out to make sense of the early incidents of the week commencing, Warrant Officer Monene, Warrant Officer Lepaaku and Lieutenant Baloyi who was severely injured, as we shall report in detail later in our evidence.

These members, as we stated earlier, were members of families and communities.

[09:57] The sentiment applies no less to the eight
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<td>1. service published on 10 June 2005. The Code of Conduct is</td>
<td>1. works alongside a range of departments in the justice,</td>
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<td>2. a written undertaking which each member of the South</td>
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<td>4. bring about a safe and secure environment for all people of</td>
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<td>5. South Africa. Members are called upon to make the Code of</td>
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<td>6. Conduct part of their code of life, principles and values.</td>
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<td>9. instructions and guidelines. Police rely on them for their</td>
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<td>10. operational guidance. These FOPs, instructions and</td>
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<td>18. colleagues. Help assure proper vigilance. Provide police</td>
<td>19. by Lonmin PLC, the South African Police Service, the</td>
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<td>20. conditions or tasks. Facilitate communication where there</td>
<td>21. their members and officials, the National Union of</td>
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<td>22. Mineworkers, its members and officials, the Department of</td>
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<td>22. operating, being proactive and planning ahead.</td>
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relations and security dimensions of the situation around Marikana deteriorated, in the course of the week, the South African Police Service remained focused on one key outcome, a peaceful resolution in which lives and property would be preserved. You will hear at no stage during this situation did the South African Police Service premeditate loss of life and injury as an unstoppable end game. We pause here to point out that we have noted the speed with which commentators have characterised and labelled as a massacre the actions that circumstances imposed on the individual police officers, faced with imminent danger to their lives and those who fired many shots in the reasonable belief that this was an answer to the imminent danger they were in. This characterisation brought with it the connotations, completed unfounded as we shall seek to demonstrate of the events at Marikana as a wilful, brutal campaign on the part of the South African Police Service. We shall show that there was no murderous intent on the part of the Police Service. The evidence will regrettably show that some of the protesters intended a blood bath. We are mindful of the President's injunction in the immediate aftermath of these tragic events at Marikana, that all of avoid finger-pointing and recriminations. However, having considered the roles played by various parties represented here as documented in evidence, it will be difficult to get to the bottom of these events, without a proper interrogation of the inter-union rivalry at Marikana/Lonmin which agreement in July 2012 directly with workers outside the collective bargaining structures and the role that the Department of Mineral Resources and other departments could have played in monitoring the fulfilment of mining charter obligations by Lonmin. Those obligations of the charter include mine community development and housing and living conditions of miners. We are also here with the understanding that without engaging in unseemly muckraking or blame, this is an opportunity for us to outline the forces that are at play in the situation at Marikana and how the Police Service set out to perform to the best of its ability in very difficult and dangerous circumstances. But, Chairperson, and members of the Commission, the Police Service is also here with the understanding that we are a developing society that often learns invaluable unforeseen lessons under challenging conditions. In this spirit, the Police Service remains open to learning from this process and to do so as part of improving its practices, policies and service to the community. The Police Service will do so because it is in an imitable compact with all sectors of South African society. There is no one, or no institution on whom the Police Service can turn its back. There is no situation from which the Police Service can walk away literally or figuratively given its constitutional imperatives to protect life and property, secure the safety and security of everyone and to uphold the law and order. When death, injury or damage is suffered by any member of our society, the South African Police Service is called on to serve and to ensure that law and order is maintained. When death, injury or damage results from conflict among any constituencies the Police Service steps in and conducts itself impartially. When police officers are targeted the Police Service steps in, suppressing the human response of the moment in order to render a professional service. Some members who may have been affected by the death of their colleagues in the events of Monday, 13th August 2012, were removed from Marikana and posted elsewhere. This is never easy. This was not easy at Marikana, not when the Police Service tried to save the injured or when it collected the dead, regardless of whether they were police members or fellow citizens against whom the police acted. In fact, this will never be easy, but we hope that our presentation alongside all others that will be made in the course of this Commission will help us build a better society and a better Police Service, that has learnt valuable lessons from this unprecedented course of events.

The South African Police Service is committed to humane policing in a human society while retaining the capacity to deal with forces or individuals who actively threaten peace, order, stability and a better life to which we all aspire. As we touch on humane policing, it is appropriate at this point to indicate that the police submission to the Commission contains various graphic records of the violence that results from events around Marikana. With our respect to the families of those who have their lives, and still out of deep concern for the survivors of those incidents, these graphics will be detailed in the on screen presentations later. We do so without intending to extend any trauma and hurt to those affected. Mr Chairman, members of the Commission, we also deal with applicable standing orders, policy considerations, legislation or other instructions that appertain to these matters. Under those headings, we propose to give a presentation regarding the training of the various units of the Police Service, the policy considerations which apply in crowd control and management, the constitutional mandate of the Police Service, and the various provisions of various statutes dealing with police conduct. These however, and the evidence will be, were not adequate instruments to deal with a treacherous situation.
of more than 3 000 belligerent protesters who were armed and resisting any effort to disarm.

Around the events that happened at the kraal, and also on 13 August, the evidence will show the following.

By the time shooting occurred around the kraal on the afternoon of Thursday, 16 August 2012, numerous attempts by senior officers including General Mpembe and Lieutenant-Colonel MacIntosh had already been made since Monday, 13 August 2012 to persuade protesters to disarm. At 10:37 they had refused and proceeded to a kopjie, killing two police officers and severely injuring another on their way there. They also robbed the police officers that they had killed and injured of two pistols, an R5 rifle, a shotgun, a police two-way radio and ammunition.

Teargas, stun grenades and rubber bullets were used to disperse them and stop them going into a residential informal settlement. None of these measures deterred the protestors. That was Monday, 13 August 2012. On Tuesday, 14 August 2012, and Wednesday, 15 August 2012, the police service continued trying to negotiate with the protestors to disarm peacefully. The protestors demanded to speak with Lonmin management. Attempts were made by senior police officers to persuade the Lonmin management to address these protestors.

Lonmin management refused, saying it was not prepared to engage protesters outside collective bargaining structures. They also labelled the protestors as, in quotes, “faceless,” connoting they may not be their employees. Lonmin, however, later acknowledged that some of these were indeed their employees, when photographs of these were shown to them.

On Wednesday, 15 August 2012, the police service facilitated a meeting between AMCU, NUM and Lonmin management. At the end of that meeting, the police service facilitated that both unions separately address the protestors at the kopjie and to persuade them to disarm.

The protestors adhered at the NUM delegation and did not give them the opportunity to address them. The AMCU delegation was received well, but the protestors still did not disarm.

Chair, the evidence will show that the leader of AMCU, Mr Mathunjwa, is seen pleading on his knees, begging the protestors to disarm. They never did. Later that day, Mr Mathunjwa indicated to General Mpembe that by 9 o’clock in the morning, the following day, that is now Thursday, 16 August 2012, the people will put down their weapons and that everyone will walk away happy. By 9:30 on Thursday, 16 August 2012, the people had not laid down their weapons. It was reported later that the protestors will not disarm.

The joint operation centre then took a decision at 13:30 to disperse the protestors, disarm them, and where necessary, effect arrests at 15h30. The implementation of this measure was preceded by the deployment of barbed wire, to send a message that the armed protestors may not cross the police line. The protestors defied this and attempted on three occasions to breach the police barbed wire. Teargas, stun grenades, water canons and rubber bullets were used to try and stop them from breaching the police line. This did not deter them. They had protected themselves from rubber bullets by wearing numerous layers of clothing and covering themselves with a blanket.

Chair, members of the Commission, you will hear evidence about the ineffectiveness of police-issue rubber bullets in such circumstances. You will also hear evidence that one of the leaders of the armed group of protestors, in a green blanket, who we later now know to be Mr Noki, confronted Lieutenant Colonel McIntosh who inside Nyala and said, we quote, “We are going to kill one another today.”

On the 3rd attempt, within a space of five minutes since the first attempt to breach the police line, the protestors managed to breach the police line around the kraal and came charging at police officers with dangerous sharp weapons and firearms.

Officers from the technical response team, which had been deployed as a support service and show of force,
Page 133
1 will accordingly be secured for subsequent sittings of the 2 Commission.
3 The Commission will now adjourn for 15 minutes.
4 [INQUIRY ADJourns INQUIRY RESumes]
5 [11:16] CHAIRPERSON: Mr Semenya, you were going
6 to move onto scene 2, the koppie, paragraph 45 of your
7 statement.
8 MR SEMENYA SC: Chair, perhaps, before I
9 commence that, there is a party, I am told requires to put
10 themselves on record.
11 CHAIRPERSON: Yes, who wishes to put, 12 which party wishes to put itself on record?
13 MS MEYERFELD: Good morning,
14 Commissioners. My name is Bonita Meyersfeld from the
15 Centre – oh, do you want me to come up?
16 CHAIRPERSON: May I suggest that you move
17 to the microphone -
18 MS MEYERFELD: Certainly.
19 CHAIRPERSON: - so that what you say will
20 be heard, and come properly on record. We don’t want when
21 we read the transcript to see inaudible at this point.
22 MS MEYERFELD: Good morning,
23 Commissioners. My name is Bonita Meyersfeld, I am the
24 director of the Centre for Applied Legal Studies. I am
25 here in my capacity as a representative of the South

Page 134
1 African Human Rights Commission, and we apologise and beg
2 your indulgence for our late participation in these
3 proceedings. Our – the approach of the South African Human
4 Rights Commission has been very considered. It is clear
5 that it does not wish to duplicate or replicate any of the
6 investigations underway by this Commission of Inquiry. The
7 Human Rights Commission would, however, be very grateful
8 for an opportunity to participate in these proceedings, in
9 the form of a watching brief, and, if appropriate, on
10 occasion, the members of the South African Human Rights
11 Commission would be grateful for an opportunity to present
12 submissions in the public interest and that would be
13 communicated to you in due course.
14 CHAIRPERSON: Yes, thank you very much.
15 Of course, you don’t permission to have a watching brief.
16 As far as participation is concerned in a more direct way,
17 you would require permission but we will deal with that as
18 and when it arises. Thank you.
19 MS MEYERFELD: Thank you very much.
20 CHAIRPERSON: Mr Semenya, perhaps you can
21 now proceed with paragraph 45.
22 MR SEMENYA SC: I see that the
23 interpreters are not here yet, Chair.
24 CHAIRPERSON: Yes, the Interpreter is in
25 many ways, the most important person in proceedings of this

Page 135
1 kind. You are quite correct, we must wait for him to come
2 before we commence.
3 MR NTSEBEZA: Chair, may I just also
4 bring to your attention, the fact that during the tea
5 adjournment, the families were taken a venue where
6 apparently they are having tea, and it does not seem to
7 have been a synchronisation of how that will be factored
8 in.
9 CHAIRPERSON: We I did say when we
10 adjourned that we were adjourning for 15 minutes.
11 MR NTSEBEZA SC: Yes.
12 CHAIRPERSON: And we came back after 12
13 minutes, so everyone who was present when we adjourned,
14 would have known that we were likely to commence, or
15 recommence 15 minutes, or slightly longer than that, after
16 that. But I hear what you say and in future, perhaps that
17 point can be made more clearly to those who go away to this
18 other venue that you have referred to.
19 MR NTSEBEZA SC: Thank you.
20 CHAIRPERSON: I understand that the
21 Interpreter was away arranging for other interpretation to
22 take place in a room close to the auditorium where we are
23 which is received a television feed, and the - what is
24 happening, is being interpreted into Setswana as I
25 understand it.
1st to 31st October 2012

Marikana Rustenburg

Act. At koppie 3 water canons were used to disperse the protesters. Some dispersed westwards, and through the TRT line led by Captain Kitt without incident.

Chair/PERSON: TRT being the Tactical Response Team.

MR SEMENYA SC: Indeed, Chair. Others remained obdurate and police officers heard shots being fired from inside the koppie crevices and bushes. Believing this to be fire from the protesters, some of the police officers returned fire with sharp ammunition. Other police officers returned fire against specific protesters they had seen firing at them. The evidence will be that some of the 13 protesters who were shot and killed at Koppie 3, had charged police officers with dangerous sharp weapons and had been shot in self-defence. We account for this below. Others could have been killed when police officers returned sharp fire believing shots to have been fired from the bushes and crevices in the koppie by protesters. The police officers are prepared to accept that they may have been responding to "friendly fire" believing it to be fire from the protesters. Without forensic evidence, we are unable to give an unqualified account explaining the death of some of the persons inside koppie 3.

Three firearms were found on the scene, and 13 bodies were discovered. Using the lettering of the local criminal record centre, to identify each body found at koppie 3, an account of each of the bodies found at scene 2, koppie 3, will be described below. We must point out however that too many members of the Police Service dispute the correctness of the Google map that we were given by the evidence leaders at the beginning of the Commission’s sitting. The disputed aspects of that Google map will become apparent during evidence, if the evidence leaders should decide to submit it into evidence. The dispute relates to the number and location of sharp ammunition cartridges found in the koppie, among other things. So we propose to use the Google map for a very limited purpose of identifying the location of bodies found at koppie 3.

Chair, and members of the Commission, the two bodies marked A and B, were part of the group that took position inside koppie 3. The group was armed with pangas, spears and knobkerries and charged out of the koppie towards the police line. The police shouted out to the charging group to stop and fired warning shots into the ground. The group retreated into the bushes and charged once again. The evidence will be that the police shot at the group when it did not stop in response to the warning shots and killed the two. The body marked C was inside the koppie and came out running towards the line of the police who were moving towards the koppie to effect arrests. The shooting from the koppie had stopped at this point. The person was armed with a spear and a knobkierie. The members of the Police Service shouted at the person to stop. The person broke his run, and walked towards the police. The police instructed the person to lie flat on the ground on his stomach. He knelt down and placed his hands on the ground without letting go of his weapons. A police officer approached the person to effect an arrest, the person jumped up with a spear in his hand and lunged at the police officer, missing the neck of the police officer. The police officer fired at the person, and the person continue to lunge and attempted a further assault on the police officer. The police officer continued to shoot at the person and another police officer also shot at that person. While continuing to shoot at the person the police officer under attach, tripped and fell on his back and the person fell on his back, next to the police officer.

The bodies marked D, E, G, H, J, K, L and M, where among the large group of armed protesters who were inside the koppie. Gunshots were fired at the police from inside the koppie. The police fired shots in the direction of the firing group, killing these eight persons.

[11:36] The police service does not yet have ballistic reports relating to these deaths, and is, at this stage,
1. Marikana, but this failure cannot be ignored if we are to learn from these events and seek to ensure that they do not recur. In our submission, there is a real possibility that this tragedy could have been averted if the parties involved here had played their proper roles.

2. The evidence will show that on 23 July 2012 Lonmin struck a wage deal directly with workers outside the collective bargaining process and only informed the unions about the deal after it had been struck. The National Union of Mineworkers, the recognised trade union at Marikana, was not pleased. Yet when it really mattered, tensions having risen to boiling point by August 2012, Lonmin steadfastly refused even to address the protestors on their wage increase demand, contending that the protest was illegal and that it was not prepared to negotiate outside the collective bargaining process. This inconsistent approach, we will argue at the end of the hearing, must have sent mixed messages to the protestors. The argument will be that the workers must have believed that if they could secure wage allowances from Lonmin, just to base after their first demand for increases, and without embarking on any industrial action, much more could be achieved by upping the ante to violent, unprotected strike. The argument will be ultimately that Lonmin created this beast that it later found impossible to tame, and this is inconsistent approach, we will argue at the end of the hearing, must have sent mixed messages to the protestors. The argument will be that the workers must have believed that if they could secure wage allowances from Lonmin, just to base after their first demand for increases, and without embarking on any industrial action, much more could be achieved by upping the ante to violent, unprotected strike. The argument will be ultimately that Lonmin created this beast that it later found impossible to tame, and this is.

1. The argument will be that the apparent failure to monitor with reference to the violent strikes.

2. Lonmin also has obligations under the Mining Charter to improve the housing and living conditions of its workers and to develop the community of which they are part. Reliance will also be placed from what this Commission has observed during the inspection in loco, very little, if anything, has been achieved in this regard by Lonmin. At the end we will argue that when living conditions remain stagnant, while cost of living is on an upward trend, it is inevitable that wages will leave behind the affordability curve. Wage increase demands then become inevitable as workers seek to do with their wages that which the mining company has failed to do under the Mining Charter. This also raises the question of enforcement. The Department of Mineral Resources is charged with that responsibility. The housing and living conditions standard was developed by the Department of Mineral Resources in conjunction with the Department of Housing in April 2009. The argument will be that the apparent failure to monitor progress in this regard, could very well have contributed to the events culminating in this tragedy.

1. There is evidence also of violent rivalry between NUM and AMCU. The evidence will be that in the days leading up to Thursday, 16 August 2012, there were violent clashes between members of NUM and AMCU, during which deaths were reported. Subsequent to the events of 16 August 2012, we have heard in the public media about union office bearers being assassinated at Marikana. The sharp question that arises is what role leaders of the rival trade unions played to calm down the rising tensions.

2. Chair, members of the Commission, we shall argue at the end of the hearing that little, if anything, was done by these leaders, when it is their duty to avert what inevitably proved to be a tragedy. The argument will further be that the blame on the two unions is not mitigated by Lonmin’s conduct fanning the flames of inter-union rivalry, when on 23 July 2012, it negotiated a wage deal directly with workers, thereby upsetting collective bargaining structures to the chagrin of NUM.

3. Although it is a sensitive issue, particularly at this time, we have to ask whether the protesters, themselves, could have played a more constructive role that could have averted this tragedy. It will be argued at the end of the hearing that whereas everyone, including the workers, has a right of assembly under the Constitution, the right to protest being a legitimate right of the workers, this right could not be asserted outside the parameters of the law.

4. The bearing of arms, the charging at the police, the destruction of property, the killing of police officers, security personnel and the members of the public, cannot be justified in a constitutional democracy. It will be argued therefore that the unions have a duty to inculcate discipline amongst its members.

5. Chair, members of the Commission, you will also hear evidence about the dogged refusal by the protesters to disarm. You will also hear evidence of an anthropologist who’s an expert in the area, about the ritual that some of them underwent in the belief that they would be invincible and invulnerable. This vaguely attempts to explain the inexplicable conduct of charging at the police with spears, despite the force displayed by the police.

6. You will hear evidence about Mr Mathunjwa, the president of AMCU, begging them to disarm to no avail. You will hear about the protesters charging at the police, killing two officers, and attempting to kill scores more. You will hear about the leader of the protestors demanding to sign a pact of death with the police negotiators. You will see video footage of a protestor shooting at the police. You will see evidence of bullet marks on at least one of the police Nyulas.

7. [11:56] You will see evidence of vehicles torched by the protesters. You will hear evidence of the protesters threatened to kill two police officers who were recording video footage of the developments shortly before the tragic
1st to 31st October 2012

1 16 August 2012, first to facilitate and assist those
2 families of the deceased, wishes speedy recovery for those
3 injured, encourages better and responsible industrial
4 relations between the mining employers and their workers,
5 wishes the mining sector and their workers to make the
6 rightful contribution in the country’s economy, accepts the
7 right of everyone to lawful protest, with corresponding
8 obligation to do so within the limits of the law. She also
9 expresses her gratitude to, and confidence in, the members
10 of the Police Service who discharged their responsibilities
11 in what was obviously a trying and unprecedented occasion.
12 Finally the Police Service remains committed to
13 discharging its constitutional mandate to prevent, combat
14 and investigate crime, maintain public order, protect and
15 secure the inhabitants of the Republic and their property,
16 and to uphold the law and to enforce it without fear or
17 favour. Thank you, Mr Chairman, and members of the
18 Commission.
19 CHAIRPERSON: Thank you, Mr Semenya. I
20 now call upon Mr Burger, on behalf of Lonmin to present the
21 opening statement on behalf of his client.
22 MR BURGER SC: Thank you, Chairperson and
23 Commissioners. Lonmin takes part at this stage of the
24 inquiry to assist the Commission in exploring Theme 1,
25 namely the events as they unfolded during the period 9 to

1 shooting at scene 1. Those police officers had to be
2 removed and that explains in part the insufficient footage
3 of the events of Thursday, 16 August 2012, both at scene 1
4 and at scene 2.
5 Chairperson, and members of the Commission, we
6 will at the end call for various recommendations. The
7 first point we make is that the Marikana tragedy was a very
8 first for the country. There was no history of protesters
9 with such large number, bearing arms, posing immediate
10 threat to the life and property, armed with dangerous
11 weapons, sabre-rattling, with an intent to engage the
12 Police in a mortal duel. The policies of crowd control and
13 management have proved inadequate to contain this type of
14 situation. The Police Service will then have to reconsider
15 its practices, policies, training, equipment and additional
16 resources to better help it address future events of this
17 kind. A recommendation along this would therefore be
18 apposite.
19 Whereas, Chair, and members of the Commission,
20 Lonmin could have been within its rights to refuse
21 engagement in salary negotiations with the armed
22 protesters, it was evident from the Police requests that an
23 engagement, albeit not culminating in the revision of the
24 wage agreement concluded, could have assuaged the
25 protesters and averted the armed conflict. We shall call

1 and to those injured, extends her condolences to the
2 families of the deceased, wishes speedy recovery for those
3 injured, encourages better and responsible industrial
4 relations between the mining employers and their workers,
5 wishes the mining sector and their workers to make the
6 rightful contribution in the country’s economy, accepts the
7 right of everyone to lawful protest, with corresponding
8 obligation to do so within the limits of the law. She also
9 expresses her gratitude to, and confidence in, the members
10 of the Police Service who discharged their responsibilities
11 in what was obviously a trying and unprecedented occasion.
12 Finally the Police Service remains committed to
13 discharging its constitutional mandate to prevent, combat
14 and investigate crime, maintain public order, protect and
15 secure the inhabitants of the Republic and their property,
16 and to uphold the law and to enforce it without fear or
17 favour. Thank you, Mr Chairman, and members of the
18 Commission.
19 CHAIRPERSON: Thank you, Mr Semenya. I
20 now call upon Mr Burger, on behalf of Lonmin to present the
21 opening statement on behalf of his client.
22 MR BURGER SC: Thank you, Chairperson and
23 Commissioners. Lonmin takes part at this stage of the
24 inquiry to assist the Commission in exploring Theme 1,
25 namely the events as they unfolded during the period 9 to

1 for a recommendation that employers in such circumstances
2 have a duty beyond accepting a contractual right. The duty
3 must include taking action appropriate in the circumstances
4 to save lives.
5 The tragedy in Marikana also shows that the duty
6 of unions goes well beyond the narrow confines of
7 industrial bargaining. They must also hold a moral duty to
8 educate their members, particularly in relation to “floor
9 crossing,” where membership of the one is exchanged to the
10 other. We shall call for a recommendation for unions to
11 agree a protocol regulating the peaceful movement or change
12 of union membership or the creation of competing unions.
13 The Department of Mineral Resources has bound
14 itself to ensuring that the objectives of the Mining
15 Charter have been observed, including consultations with
16 communities on projects and conduct and assessment of their
17 needs, as well as ensuring housing and living conditions
18 are improved so as to facilitate ownership by family units.
19 We shall call for a recommendation that the department must
20 monitor the realisation of the Mining Charter objectives
21 with greater vigilance and vigour.
22 Concluding the opening remarks on behalf of the
23 South African Police Service, the National Commissioner of
24 Police reiterates the Service’s regret at the loss of
25 lives, expresses her regret at the destruction of property

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1st to 31st October 2012

Marikana

Rustenburg

1. events during the period in question. As part of this
2. process, we have already made available documents, emails,
3. maps of the area, video recordings, and the log kept of the
4. events as they unfolded.
5. According to the evidence we’ve been able to
6. obtain thus far, the demand for a basic salary of R12 500
7. by the rock drill operators surfaced in the second half of
8. June 2012 at Lonmin’s Karee shaft. In the statements to be
9. filed, we briefly address the events as they unfolded from
10. that time, but will seek to paint a more detailed picture
11. from Thursday, the 9th of August 2012. You will however
12. hear, Chair, that by Thursday, the 16th of August 2012, the
13. area around the by now well known koppies near the informal
14. settlement where a large crowd of striking workers had
15. congregated, was under the control of the South African
16. Police Service. Of the events as they unfolded on that
17. fateful day, Lonmin and its security personnel have limited
18. firsthand knowledge.
19. The events of the preceding day, Wednesday the
20. 15th of August, and the interaction between the main
21. protagonists, being the striking workers, and the South
22. African Police Service, as well as the representatives of
23. NUM and AMCU, Lonmin employees acting as liaison and
24. providers of interpreting services, will be addressed and
25. should assist the Commission in forming a picture of what

Notwithstanding this, NUM offers the following submissions at this stage of the Commission, each of which will be briefly expanded upon below.

Firstly, the unprotected strike had begun on 9 August 2012; secondly, the background to the unprotected strike and developments in the area and the circumstances that lead up to the events of 11 to 16 August 2012; thirdly, collective bargaining issues that arise; fourthly, the level of preparation and planning on the part of SAPS during the days before 16 August 2012 and the conduct of police officers at the time of the shooting on that day; fifthly, the inquiry into the events subsequent to 16 August 2012.

We then address the unprotected strike commencing on 9 August 2012. The unprotected strike by the rock drill operators - which we will abbreviate as RDO’s - which commenced on 9 August 2012 was from inception characterised by high levels of intimidation and violence. The strike soon descended into a complete disregard for the rights and lives of non-strikers, resulting in the death of 10 people between 9 and 15 August 2102. NUM believes that unprotected strikes in general have catastrophic consequences for all parties, but none more so than the employees who participate in them. Not only do they lose the dismissal protection of the constitutionally entrenched right to strike, but these strikes are often plagued by significant levels of violence, intimidation and destruction of property.

[12:36] It is for these reasons that NUM consistently urged its members not to associate with the unprotected strike, to continue reporting for duty, called for the strikers to return to work and for their demands to be channelled through established collective bargaining processes and procedures. NUM also consistently urged Lonmin and the SAPS to take steps to prevent the unlawful conduct of the strikers and the intimidation and violence directed at non-strikers. NUM is of the view that the position it adopted in this regard gave rise to anti-NUM sentiment amongst the strikers and violence towards its members, officials and the union itself. Since the commencement of the strike numerous mass meetings were called by NUM encouraging its members to distance themselves from the unprotected strike action and associated violence and intimidation. NUM also actively assisted its members as well as other employees who wanted to report for work but who for one or other reason were finding it difficult to get to work. On the morning of 11 August 2012, several hundred of the unprotected strikers who appeared to include non-Lonmin employees gathered near the Nhlondokop Stadium and marched towards the Western
1st to 31st October 2012

Marikana Rustenburg

Page 157

1. Platinum branch offices of NUM. It is believed that the
2. marchers had malicious intent and upon their arrival in the
3. vicinity of the NUM offices a confrontation ensued between
4. the marchers and a number of NUM members during which
5. firearms were discharged. Although there already appeared
6. to be differing versions regarding this incident, NUM will
7. in due course lead evidence that in the circumstances the
8. use of firearms by NUM members was justified.
9. We now deal further with the background to the
10. unprotected strike. NUM is of the view that the tragic
11. events at Marikana have their roots in recent labour
12. disputes in the area, in particular at Lonmin’s Karee mine
13. and the nearby Impala Platinum mine. These disputes were
14. also characterised by violence, intimidation and loss of
15. life and in the case of Impala Platinum mine the
16. undermining of agreed collective bargaining processes. As
17. at Lonmin, NUM and Impala had entered into a two-year
18. collective agreement dealing with wages and other
19. substantive terms and conditions of employment. During the
20. course of that agreement, Impala took a unilateral decision
21. to grant an additional wage increase to one category of
22. employees being miners. Another category of employees, the
23. RDOs, were aggrieved by this decision and embarked on an
24. unprotected strike in support of their demand that they too
25. should be granted an increase in addition to the increase

Page 158

1. already provided for in the collective agreement. After a
2. protracted unprotected strike Impala acceded to that
3. demand. Many employees and former employees of Impala
4. Platinum mine and Lonmin reside in the same or nearby
5. townships, informal settlements and villages within the
6. vicinity of these mines. Events and conduct at a
7. particular mine or in a particular community permeates
8. through nearby mines and surrounding communities. In this
9. regard NUM understands that persons who were not Lonmin
10. employees, including former Lonmin and Impala Platinum
11. employees and residents from nearby communities were
12. involved in the Lonmin industrial unrest and also gathered
13. on the koppie near Marikana Mine. NUM submits that without
14. direct reference to recent labour disputes at other mines
15. in the Rustenburg area and to the circumstances of the
16. surrounding communities, the Commission would be deprived
17. of critical background and factual information required to
18. adequately probe the incidents at the Marikana Mine.
19. Without this information being properly placed before the
20. Commission the Lonmin incidents will not be placed in the
21. sufficiently complete context so as to enable the
22. Commission to make a fully informed evaluation of the
23. events and the conduct of the various parties. The
24. consideration of this background by the Commission will
25. materially contribute to a proper appreciation of the

Page 159

1. events and incidents leading up to 16 August 2012. NUM is
2. also of the view that the social and economic circumstances
3. of the communities in the vicinity of the Marikana Mine
4. where many mine workers employed by Lonmin and other mines
5. reside, and associated community grievances and protests
6. contributed to the general situation leading to the Lonmin
7. incidents. We now deal with further submissions concerning
8. collective bargaining. NUM will give evidence of its
9. longstanding engagement in and commitment to the processes
10. of collective bargaining. These are rooted in the
11. Constitution of the Republic of South Africa and further
12. provided for in the Labour Relations Act, 66 of 1995. They
13. entail lawfully organised union and employer entities
14. functioning within the bargaining environment that not only
15. regulates their interaction but also provides for the
16. possibility of resort to lawful strike or lock-out
17. measures. They provide certainty and stability to the core
18. of South Africa’s economy, the events at Marikana were
19. destructive of this regime. Notwithstanding the
20. significant gains made to wage levels in the mining
21. industry through collective bargaining processes over the
22. years, the overall level of mining wages remains low. The
23. work is hard and dangerous, living in social conditions are
24. for the most part deplorable. But the enforcement of wage
25. demands that are pursued not through a collective agreement

Page 160

1. reached after regulated negotiation in accordance with the
2. law or through regulated collective bargaining processes,
3. but through manifestly unprotected strike action, through
4. intimidation and through the wielding of weapons and acts
5. of violence to the extent of some killings during the days
6. before 16 August 2012 is both unacceptable and
7. unsustainable. The impact of an approach of this kind on
8. labour relations and economic activity is profoundly
9. negative.
10. In response to the Marikana tragedy a range of
11. commentators have raised broad questions around the
12. functionality of the current collective bargaining system
13. within South Africa’s industrial relations environment. It
14. is NUM’s respectful submission that it is not the role of
15. this Commission to undertake an in-depth or general
16. examination of the country’s collective bargaining system.
17. Such an exercise would be undesirable not only because of
18. its magnitude but because also an examination of this
19. nature impacts on all sectors of the economy and is best
20. undertaken by all affected parties in forums designed for
21. that purpose. Specific collective bargaining issues do
22. However arise in the Lonmin context which this Commission
23. should consider in probing the conduct of Lonmin, NUM and
24. AMCU as mandated by the terms of reference. For present
25. purposes, it is the conduct of the parties within the
current collective bargaining framework that must be examined. Two broad collective bargaining and industrial relations issues accordingly arise. First, the commitment of the parties to honour existing collective bargaining structures and agreements, and second, the approach of the parties to the management of the unprotected industrial action in this context and their endeavours to avoid the catastrophic events that unfolded during the period in question. Like Impala Lonmin’s actions demonstrated a fundamental undermining of agreed collective bargaining processes and collective agreements.

As stated earlier, NUM not only distanced itself from the unprotected strike and associated violence and intimidation, but it took proactive steps to facilitate the return to work of those employees who did not want to participate in the strike, and encouraged the strikers to channel their demands through the existing collective bargaining structures and processes.

Support of their original demand.

As stated earlier, NUM not only distanced itself from the unprotected strike and associated violence and intimidation, but it took proactive steps to facilitate the return to work of those employees who did not want to participate in the strike, and encouraged the strikers to channel their demands through the existing collective bargaining structures and processes.

Chairperson: I think perhaps this is an appropriate stage for us to take the lunch adjournment, as you’re moving onto a new topic, the role of the South African Police Services.

Yes.

Chairperson: Very well, we will adjourn now for an hour until 2 o’clock.

[Inquiry Adjourns Inquiry Resumes]

Good afternoon. The Commission resumes. I have been informed that the day passes which people have today are only valid for today. From tomorrow no-one will be allowed into this auditorium, except the commissioners, unless they are in possession of accreditation documents which contain their photographs. So, apparently photographs have to be taken at the City Hall. So we have decided that we will sit this afternoon until 4 o’clock, we won’t take a tea adjournment, we will...
Mr Chair, we deal next briefly with the question of the inquiry into subsequent events. NUM is also of the view that the examination by the Commission of a number of events, incidents and statements that occurred or were made after 16 August 2012 involving or bearing upon various parties already identified in the terms of reference will materially contribute to a proper appreciation of the events, incidents and/or their conduct during the period on and before that date. Subsequent events and incidents that NUM believes require examination for this purpose include

1. the peace accord signed on 6 September 2012 and the associated negotiations. (2) the addendum to the wage agreement signed on 18 September 2012 which ended the unprotected strike. (3) the killing of NUM shop steward, Mr Dumisani Ntinti on 11 September 2012 in the immediate vicinity of the kopjie and in similar circumstances to the killing of Isaiah Twala on 14 August 2012. Fourthly, the killing of NUM branch secretary, Mr Daluvuyo Bongo on 5 October 2012 and subsequent attacks on the members and officials at the Wonderkop Hostel complex and surrounding settlements.

We next turn briefly and lastly to the terms of reference of the Commission. In NUM's view there should be no uncertainty that the Commission's present terms of reference adequately encompass the enquiries that should be directed towards the background to the unprotected strike and to incidents and events subsequent to 16 August 2012 even on the basis that they will not become principle concerns of the Commission. NUM hence believed it advisable to secure an appropriate amendment to clarify the Commission's powers in this regard. In contemplation of this on 9 October 2012 NUM submitted a motivation to the President proposing an amendment to the terms of reference of the Commission as published in Government Gazette of 12 September 2012. A copy of NUM's submission was provided to the Commission and to the parties. And that, Chair and Commission, completes the opening statement for NUM.

CHAIRPERSON: Thank you, Mr Tipp. I just want to make it clear in relation to what I said earlier about the day passes. Members of the public don't require day passes or any accreditation to come to the auditorium. So, what I said earlier doesn't apply to them. Those who are here using, having access to special facilities who have day passes will find delaying further, that the day pass won't let them in tomorrow and from tomorrow special accreditation documents will be required which have photographs of the holders thereof. I was talking about that, that is the reason why we will adjourn at 4 o'clock this afternoon. Members of the public don't have to worry about it because they don't need day passes or accreditation documents to get in. So, I hope that is clear. Mr Bruinders, we didn't receive documents from you, I don't know whether you propose making an opening statement on behalf of AMCU?

MR BRUINDERS SC: I do.

CHAIRPERSON: Would you please proceed?

MR BRUINDERS SC: I will. Members of the Commission, an opening address is meant to tell a story. Here it is meant to tell the story about the events of 9 to 16 August 2012 and how that story will unfold in the evidence that will be led before you. It is a hard story to tell and certainly much more so because it is a story of so many deaths that could have been avoided had rational, reasonable and ultimately simple measures been taken. It is also hard because AMCU has not had enough time to master the thousands of pages of documentary evidence, nor has it finalised the many witness statements that it has taken. Members of the commission, AMCU will furnish the evidence leaders with a number of statements. Commission, among them is the statement of Mr Mathunjwa its President. His statement tells a major part of the story we recount briefly today.

So how to tell that story. AMCU thought it best to tell it chronologically. It does so in a written opening statement, that statement is being finalised and will be served on the Commission tomorrow. In the meanwhile we give a summary of the chronology of that story and it is the following. AMCU first became aware that the rock drill operators wanted to communicate their demand of a wage increase of R12 500 a month at Lonmin on 21 June and then 21 July 2012. On 21 July particularly these rock drill operators consisted of members of the NUM and AMCU largely but it appears that the majority of these rock drill operators were members of the NUM. At first Lonmin management engaged directly with the rock drill operators, that is they engaged with them outside of the existing collective bargaining structures. And what also means is that they did not engage with the NUM or AMCU about the demand of the rock drill operators. Lonmin responded to this demand by unilaterally approving an allowance of R750 a month for rock drill operators. Approval was unilateral because it was not done after bargaining collectively or even consulting with the NUM for AMCU. Having negotiated directly with the rock drill operators about their demand for a wage increase it appears that after the operators rejected the counter offer Lonmin refused to negotiate with them directly again until after 16 August 2012. That engagement too was unsuccessful. But Lonmin never engaged with AMCU over the demand by the rock drill operators. AMCU is unaware that Lonmin engaged with NUM over the
On 10 August 2012, the rock drill operators marched to Lonmin offices. They wanted to speak to the rock drill operators about their demand. The Lonmin management advised the rock drill operators to approach the NUM about their demand.

On 11 August 2012 rock drill operators marched to the NUM offices. As on 10 August 2012, they were unarmed. As on 10 August 2012 the march proceeded peacefully. That is until marchers got to about 500 metres from the NUM offices and that is when official of the NUM shot and killed two rock drill operators who participated in the March. As a result of the conduct of the NUM officials the rock drill operators decided to arm themselves in self-defence and to gather at the big koppie at Wonderkop where they thought they felt safe. That is where they gathered daily between 11 and 16 August 2012. They gathered in the morning, and left for their homes at night. On 12 August 2012 the strikers at the koppie decided to march to the offices of the NUM to put their demand to the NUM and to complain about the shooting of their colleagues on the previous day.

Again, roughly about 500 metres from the NUM offices they were prevented by Lonmin Security from proceeding any further. The marchers resisted the attempt by Lonmin Security to prevent them from marching to the NUM offices. Lonmin Security shot and killed two of the rock drill operators who participated in that march. There was a scuffle between marchers and Lonmin Security. As a result, two Security officers were killed.

On 14 August 2012 the strikers at the koppie, engaged with them over their demand. Lonmin refused to speak to the rock drill operators about their demand. The Lonmin management advised the rock drill operators to approach the NUM about their demand.

On 15 August Mr Mathunjwa met with Lonmin management, the SAPS and the NUM. At that meeting, Lonmin agreed to engage with the strikers, if they renounced violence and returned to work. Mr Mathunjwa went to the koppie where he addressed the strikers and conveyed management's offer to them. The strikers received Mr Mathunjwa, but said to him that it was late, in other words, it was late in the day. They wanted to continue discussing this matter with Mr Mathunjwa at 9 on the following morning. Mr Mathunjwa then contacted Lonmin management and the SAPS. He reported that the strikers were receptive to the offer by Lonmin.

A Mr Kgotla of Lonmin undertook to meet with Mr Mathunjwa at 8 o'clock on the follow morning to talk about how to induct returning strikers. The overwhelming majority of the strikers left the koppie for their homes on the night of 15 August 2012. On the morning of 16 August 2012, Mr Mathunjwa met with Mr Kwadi. Mr Kwadi is from Lonmin. Mr Mathunjwa informed him about the undertaking given by Mr Kgotla on the previous evening. Mr Kwadi did not seem to know about this. He undertook to consult with...
The strikers again asked Mr Mathunjwa to go back to Lonmin. He asked them to leave the koppie and to return to work. Lonmin had withdrawn its offer that it had made on the previous day. That was the offer to talk to or engage with strikers if they renounced violence and returned to work. Still later that morning, Mr Mathunjwa spoke to the Provincial Commissioner of Police over a mobile phone. The Provincial Commissioner used the opportunity to scold Mr Mathunjwa about why he was not a koppie. Mr Mathunjwa returned to the koppie. This was the first time that he went to the koppie on 16 August. Before doing so, he met with three generals of the SAPS at its base outside the koppie. They included the Provincial Commissioner. Mr Mathunjwa informed them of what he was about to do, and then told them about the withdrawal of the offer by Lonmin. The Provincial Commissioner said, that was not her problem. Mr Mathunjwa then went to the koppie. The SAPS refused to supply a vehicle or any assistance to Mr Mathunjwa to get there. He went to the koppie on his own steam. He informed strikers at the koppie of the fact that Lonmin had withdrawn its offer made on the previous day. He asked them to leave the koppie and to return to work. The strikers again asked Mr Mathunjwa to go back to Lonmin and to ask him to assist to get management to talk to him or to address the strikers. Mr Seedat undertook to see what he could do. He never got back to Mr Mathunjwa. Mr Mathunjwa tried again to contact the SAPS, to get their co-operation in resolving the conflict between Lonmin and the strikers. That attempt was unsuccessful.

Having been deserted by Lonmin and the SAPS, Mr Mathunjwa returned to the koppie for a second time on that fateful day, on Thursday, 16 August 2012. He informed the strikers that no one from Lonmin was prepared to talk to him about the strikers’ request or to accede to the request to come to the koppie to engage with them about their demand. He pleaded with the strikers to leave the koppie. They informed him that they would stay and that they were happy for him to leave. He left. Not long after he had left the koppie, the SAPS shot and killed strikers at the big koppie and later at the small Koppie. Mr Mathunjwa and his team did not witness the shooting.

By 16 August 2012 neither Lonmin nor the SAPS had communicated to the strikers on the koppie or indeed AMCU or the NUM a written or oral time-based ultimatum to leave the koppie on the pain of clearly defined consequences. The strike did not end on 16 August. It continued until it was finally settled when the rock drill operators and their unions agreed to an increase. But not before Lonmin again unsuccessfully negotiated with the strikers directly, unilaterally and outside of the collective bargaining structures. AMCU does not deal in great detail in this opening address for the conduct of the SAPS on 16 August 2012. That is left for others this afternoon. But
We have carefully listened to the submissions made by our learned friend, Mr Semenya. He has said that it was planned and it made a sort of half a concession that it may have been unlawful violence in respect of the koppie. But in general terms we again, having read the documents that have been made available to us up to now, that the force used, the lethal force is not sanctioned by any of our laws, by the Constitution, by our legislation. It is significant, Mr Chairman and Members of the Commission, we have read a lot of paper. I think that we've got something like 14 files from all the documents that have been submitted. Maybe we missed it, but we have not seen any evidence of a single policeman being scratched, never mind shot at on the 17th, or 16th, I beg your pardon. The police are entitled to use lethal force in order to defend their lives. On the evidence that we have so far read, this great life-threatening danger didn't lead to the harm, physical harm of any police officer. By way of contrast 34 lives were lost on the 16th. Where is the proportionality that the Constitution, the legislation and the standing orders provide for? Was it thrown overboard by the police that turn machine guns, R4s, R5s and R6s are machine guns, Mr Chairman. In asking, you recall that we asked for a lot of documents, and I want to thank my learned friends acting for the police, they have been very generous, they have given us a lot of documents.

But we wanted to know their plan. We got a plan. What does it say? That they used as a model a plan which was put together as to how you deal with a hostage – yes. Now I ask rhetorically, who is this Mr Scott that put this plan together to use a method of dealing with hostage takers in a situation where there were 3000 people, some of whom were armed? But there is no suggestion that they shot only at the armed people. We don’t know and we may not find out precisely how many of the people that were actually shot by this in terms of the Scott plan.

We are going to call expert evidence that what the police planned and what they did on the 16th is unheard of in practically the whole world, that where you have 3000 people, some of whom are armed, and you turn R4s, R5s and R6s against them. We are going to ask for permission to cross-examine those that formulated this plan to explain themselves. We will refer the Commission, contrary to what our learned friend has said that there are no precedents in South Africa and this is unique. Unhappily that is not historically correct. There were similar situations where commissions such as yours pronounced upon the conduct of the police in the particular cases. They have invariably suggested restrain and a strict liability against those who are too readily using violent means to put the end of lives. We will refer you to those findings, precedent and cases to the Constitutional Court, the Supreme Court of Appeal, the Provincial Divisions of how police are expected to behave. There is even a standing order that we will refer you to in the police documents that says that what the judges say must be strictly adhered to. Unhappily what the judges have said - and we will refer you to the passages don’t square up with the conduct of the police on the 16th.

On the contrary, it’s not what the judges have tried to prevent that they pay regard to. It may well be that they may have been influenced by irrational statements made by some persons in high authority, shoot to kill. That’s not part of our jurisprudence, that is not the way in which a police force is to behave. We hope to have an opportunity to present that case to you. I’m very bad at reading documents, Mr Chairman. You’ve got the document, I don’t want to read it out, but I wanted to make what our main submissions are going to be. And this is why we are here. The moment we heard this, Mr Chairman, we actually engaged forensic and other experts in order to show, how are they going to explain that the vast majority of their wounds were in the back? [Inaudible] back to be shot. I’m sorry, I think one of the Commissioners wanted to ask a question perhaps.
wished you to do earlier and that is give the interpreter a chance to interpret, because you see what you say is important that the people here who don’t understand English should –

MR BIZOS SC: Oh, I beg your pardon. I know him to have a very good memory for many years.

INTERPRETER: Thank you for the compliment, Mr Bizos.

[15:01] MR BIZOS SC: My attention has been drawn by my learned friend to paragraph 9 in particular that I should possibly read out on page 4. We pose the question, who took the decision to adopt the plan that led to the deployment of armed police and the policies followed on the 16th of August. We don’t know who is going to responsibility and we invite the evidence leaders to have the necessary consultations as to who we have to listen to, to say that I take responsibility for what happened. Who took the decision to use live ammunition? Were the preparatory steps and decision making of SAPS and other policing units which led to the shooting and deaths of the 16th of August, consistent with the applicable legal and policy requirements?

At the inspection in loco, Mr Chairman, you were shown places far away from the original shooting where people who were injured, were hundreds of metres away from where the original danger was, they were wounded, they have told their story. Were they chased and were they were shot at whilst they were running away, did the police have regard to the decided cases that even if you intend arresting a person, you don’t shoot in order to kill them or to inflict grievous bodily harm. Who took the decision that this wild chase in the veld in hundreds of metres, could take place? These are the questions, Mr Chairman, that, how is the fact that, how is it, was it good luck or the divine will that in this war situation, which one of the witnesses for the police describes, there managed to be 34 deaths and not a single even minor injury? We haven’t seen any. I don’t know whether our learned friends have seen any and we believe that the conduct of the South African Police set out in 1.1 and 1.24 which the commission as we see it at this stage is to determine the facts and the circumstances that surround the killing of 34 people by the South African Police Service on the 16th of August 2012. There doesn’t seem to be much doubt or contestation about the fact that those 34 on the 16th of August 2012 were killed by the police. We represent, as you said Mr Chairman, families of 21 of those who were killed on the day, the names and further particulars of whom have been provided to you, Sir. We have organised to find out how best we can say this, but at the end of the day we will invite the commission to make the finding that those who were killed and whom we represent, the families of whom we represent were unlawfully killed by the SAPS. It is our understanding that the SAPS will contend, and that much seemed to emanate from the long address that we were given at the beginning of the SAPS presentation, that it opened fire on our clients next of kin out of necessity. More particularly our understanding is that 1, their contention is that certain strikers were shot while they ran, armed with pangas and machetes in closed
1st to 31st October 2012  
Marikana  
Rustenburg

1 evidence, that the SAPS took leading up to and including
2 the 16th of August not only made the workers’ deaths
3 foreseeable, in the end it made those deaths the most
4 likely result.
5 [15:21] We are the first to accept that in an orderly
6 society it is the duty of law enforcement agencies, as my
7 learned friend submitted, to disarm people who are armed,
8 dangerous in a decent society, that it is the task of the
9 South African Police Service to disperse people who are
10 gathered unlawfully in circumstances which bring discomfort
11 to others who have the right to that same area and space to
12 go on with their legitimate lives. But this, we will show
13 that whilst disarming and dispersing the miners may not
14 have been an illegitimate objective, something which we
15 accept. However, the manner and the timing of the SAPS
16 attempts to do so, inevitably invited injury and as it
17 sadly happened, death as well.
18 It appears that an attempt was made to negotiate
19 directly reasonably and meaningfully with the workers
20 gathered on the large koppie, known colloquially as the
21 mountain. Instead the commanders on the scene, which seems
22 to be admitted sent in National Union of Mineworkers and
23 Association of Mine Workers and Construction Union
24 officials to discuss their labour demands with the striking
25 workers. SAPS officers on the scene must have known by

1 reports mean. A typical post mortem report at our, in our
2 possession has the following conclusions, a total of eight
3 shotgun pellets entered the body 16 to the right lower
4 back, 2, one to the left lower back, 3, one to the back of
5 the head. In summary all the fatal projectile wounds were
6 sustained from the back. It seems to us therefore, that if
7 this evidence is sustained which we show on our reading of
8 the documents and we are the first who will concede that we
9 probably are wrong in some ways, but if it is shown to be
10 so that no less than 14 of the striking miners were shot
11 from behind, mainly in the back or in the back of the head,
12 that kind of evidence which we would submit is unlikely to
13 be contradicted, would then be wholly inconsistent with the
14 claims of necessity that the SAPS will seek to advance.
15 In the event we submit, this commission must
16 consider whether in those kind of circumstances, it would
17 be competent for anyone, let alone a policeman to shoot
18 someone in the back and then plead rationally that it was
19 an act of self defence. We will submit that it is not so.
20 Now whatever the truth of that tragic day, Chairman and
21 Commissioners, it cannot be that the SAPS could not have
22 acted differently. It could and should have brought the
23 day and indeed the gathering to an end peacefully and
24 without loss of life. That will be our contention. Indeed
25 we will contend that every step in our reading of the

1 formation towards SAPS at crime scene 1 with the apparent
2 intent to attack the officers who were stationed there. It
3 seems also to be the contention by the SAPS that other
4 miners were shot whilst they resisted arrest, allegedly
5 with firearms, at a small koppie at crime scene number 2.
6 More cynically, and this would not appear in my written
7 statement, it would appear that the claim is that the SAPS
8 killed the miners because the miners charged at them
9 despite the SAPS manifest superiority of firepower, because
10 the miners believed that they were invincible because of a
11 muti that they had taken. This seems to be the
12 justification for the killing of those whom we were told
13 charged at the SAPS in this belief.
14 For us, Mr Chairman and the commissioners, the
15 subtext of this profound justification for the SAPS killing
16 the miners is that the miners, according to them, acted
17 like possessed vermin, that they had to be destroyed like
18 vermin and that they were destroyed like vermin and this we
19 will submit cannot be the attitude of a police service in a
20 post-apartheid democratic South Africa.
21 Moreover, Mr Chairman, we will submit the police
22 version in our contention is contradicted by much of the
23 independent documentary evidence so far disclosed to the
24 commission, particularly post-mortem reports which is going
25 to be an area of contestation as to exactly what those
1st to 31st October 2012

Marikana

Rustenburg

1 Prior to June 2012, Lonmin’s response to the
2 RDO’s apparently well-founded complaints of
3 disproportionately low pay was to hold them to a collective
4 agreement negotiated with the NUM. Lonmin insisted on
5 engaging with the RDOs within the existing collective
6 bargaining structures, which is laudable. In June and July
7 2012 however, Lonmin changed tack and openly engaged with
8 the RDOs outside Union structures, as we all know now on 3rd
9 of August it offered the RDOs a modest increase in some of
10 their allowances. When the RDOs rejected this offer,
11 Lonmin accused them of acting outside Union structures and
12 refused to engage with them, remarkably self serving,
13 inasmuch as Lonmin had negotiated with the RDOs outside
14 existing Union structures and then had dumped them when
15 they did not accept this offer.
16 It seems fairly established, as some commentators
17 before me have indicated, that the evidence would show
18 fairly overwhelmingly that all the striking RDOs said they
19 wanted as a precondition to dispersal from the mountain was
20 a meeting with Lonmin’s management to discuss their
21 grievances, and we shall, if necessary, lead evidence that
22 the miners repeatedly assured their families that all they
23 were waiting for was for Lonmin to arrange a meeting with
24 the strike committee. Lonmin consistently refused such a
25 meeting as Adv Bruinders said very clearly step by step,

2 even when it became obviously that substantial violence
3 might ensue if that meeting didn’t take place. We submit
4 and we will show in evidence, that instead it instigated
5 and escalated an excessive security response. It’s letters
6 to the Minister of Minerals and Energy are appalling. In
7 one of them for example, dated the 13th of August 2010, when
8 Chief Commercial Officer, called for the State, and I
9 quote, “to bring its might to bear using resources at its
10 disposal to resolutely bring the situation under control.”
11 Subsequent events give that letter an inflection that is as
12 sinister as it is tragic.
13 Whether or not a meeting with Lonmin would have
14 averted the deaths of the 16th of August, we may never know,
15 but Lonmin’s failure to consider meeting with the
16 representatives of the striking workers –
17 [15:41] CHAIRPERSON: The interpreter has asked
18 us to adjourn for a few minutes, they want to get – yes, he
19 said for a few minutes. No, we don’t have to adjourn then,
20 just another interpreter who’s going to take over for a few
21 minutes. Yes, please proceed, Mr Ntsebeza, we’ve now got a
22 new interpreter.
23 MR NTSEBEZA SC: Yes, thank you very
24 much, Mr Chair. I was in paragraph 27 of my written
25 submissions. Mr Chairman and honourable commissioners, we
26 submit that whether or not the meeting with Lonmin would

1 in numbers towards the police space and they were given
2 nowhere else to go.
3 In these circumstances, we submit death and
4 injury were depressingly predictable but less predictable
5 was the fact that many of these miners would be shot, as we
6 have claimed in the back and in the back of the head
7 apparently while trying to escape. We will contend that
8 the use of automatic weapons was in itself astonishing,
9 especially in the absence of any indication that the miners
10 possessed more than three firearms and in the absence of
11 any suggestion that they had threatened to use them.
12 Honourable Commission, it will be your unenviable
13 task to take into account the chilling allegations that are
14 made in documents and statements made to the independent
15 police investigative directorate, which contain accounts of
16 injured miners being shot dead by the Police whilst they
17 lay prostrate on the ground, in the immediate aftermath of
18 the first volley of Police fire. It is a matter for
19 comment that these harrowing accounts of what can only be
20 described as extrajudicial execution are more consistent
21 with the injuries disclosed in the post-mortem reports than
22 the explanations so far advanced by the Police. They
23 certainly do call for an answer, which we hope you will be
24 able to find. We will, with your leave, Mr Chairman, and
25 your Commissioners, seek to introduce and rely upon

2 national and international instruments dealing with public
3 order, police and crowd control and we shall invite the
4 Commission to find that the SAPS conduct on 16 August fell
5 far short of these standards and in many ways blatantly
6 violated those standards. We will also ask you for leave
7 to introduce expert evidence relating to the miners’ fatal
8 injuries and to the inappropriateness of the SAPS’s
9 approach to the gathering on the mountain, because in the
10 end, our submission will be that the timing, the manner of
11 SAPS’s response to the gathering on the mountain was or
12 were 1, aggressive, 2, misguided, 3, disproportionate, 4,
13 unreasoneable, and 5, unlawful.
14 Mr Chairman, and honourable members of the
15 Commission, I heard my learned friend and my most respected
16 leader of Lonmin saying that this is not a time to
17 apportion blame or point fingers, I think that’s how he put
18 it. But please allow me to say that it is our contention
19 that whilst the primary responsibility lies with SAPS
20 insofar as it is agreed that they are the ones who were
21 responsible for the deaths on that day, we believe Lonmin
22 must also share the blame for the following reasons,
23 firstly, if response to the rock drill operators called
24 RDOs at the centre of the strike, ranged from feckless to
25 the imperious, finally Lonmin abrogated all responsibility
26 to the National Government.
1 have averted the deaths of the 16th of August, that's now a
2 matter of conjecture, but what we do say is that Lonmin's
3 failure to consider meeting with representatives of the
4 striking workers, was a tragically lost opportunity in the
5 days leading up to the massacre. We contend that Lonmin
6 was patently more interested in crushing the strike than in
7 understanding its causes. There's another changing of the
8 guard, I notice.
9
10 CHAIRPERSON: Thanks.
11 MR NTSEBEZA SC: Chairman and
12 commissioners, we are strongly making the submission we
13 have just made, because after the massacre, Lonmin did
14 agree to negotiate with the community of representatives
15 elected from among the striking workers on the mountain.
16 The representatives travelled to Rustenburg, where they
17 negotiated with Lonmin management and ultimately agreed the
18 wage increase that ended the strike.
19
20 What ultimately I'm going to show is that a
21 revolution was always possible provided that Lonmin was
22 willing to engage consistently and fairly with workers, and
23 it is tragically most unfortunate that it had to take the
24 terrible events of the 16th of August for that to be pressed
25 home to Lonmin.
26 We will respectfully seek your permission, Mr
27 Chairman and Commissioners, to introduce evidence from an
28 expert on socio-economic circumstances underlying the
29 mining industry. His name is Mr Gavin Hartford, and this
30 we'll do in an attempt to show the root causes of the
31 strike as the expert sees it.
32
33 The expert will say, amongst others, that at the
34 heart of the Marikana strike lies a economic and social
35 crisis in the mining communities. That at the root of the
36 crisis is the migrant labour system, which can be traced to
37 the 1880's and which sustained the economic base of the
38 apartheid regime and has remained substantially unrefomed
39 in the 18 years since the advent of a democratic South
40 Africa. On a lighter note, talking about the olden days,
41 somebody pointed to me the colour code of the flag behind
42 yourselves, which strongly reminds oneself of the Vier
43 kleur, which was the Republic of South Africa's flag, as it
44 then was. So I think this is the appropriate time to draw
45 contrast that it does appear that the more things change
46 however they still remain the same.
47
48 But on a more serious note, coming back to the
49 topic, I felt I could resist that one, because this year
50 that migrant labour system has remained substantially
51 unrefomed in the 18 years since the advent of democracy,
52 and we point out that all our clients are sustained by
53 migrant labour, and that some of the other miners killed on
54 16 August, are migrant labourers from Lesotho and
55
56 Swaziland, exactly as it was pre-1994.
57 It is therefore to say, if you allow us to call
58 him, Mr Chair and Commissioners, that the specific
59 migratory and housing conditions of migrants have led to a
60 double economic burden of sustaining households, both in
61 the rural family settings and homesteads, and immediately
62 adjacent to the mines. That collective bargaining
63 processes and institutions have failed dismally to address
64 the causes of discontent in mine labouring communities, and
65 that mine company management is complicit in this failure.
66
67 He will say that solving the underlying causes of
68 labour unrest at Marikana, require radical reaping of the
69 future of migrant labour of the collective bargaining
70 system and of manager-employee relations at the mine level.
71 And he will say that there is an urgent need to promote
72 greater freedom of association at the mines, like Lonmin,
73 as the first step towards restoring the legitimacy of the
74 collective bargaining system.
75
76 What he will say is that what happened on the 16th
77 of August was not the unfortunate result of a dispute
78 between two labour unions. Indeed attempts by some to
79 reduce the massacre to failings within the NUM or AMCU, are
80 either unfortunately misguided or mischievous or both,
81 because the evidence is that neither union had much control
82 over the striking workers or the committee that represented
83 them. NUM and AMCU members were shot in more of less equal
84 measure.
85 Through that evidence, and afterwards, we would
86 hope to submit to you, Commissioners, that the massacre was
87 the grimly predictable result of the deeply entrenched
88 poverty in which migrant labourers are held. An
89 undemocratic workplace, the winner take all kind of
90 structure of our unions and our 50 plus one, absolutely
91 undemocratic, Broken collective bargaining procedures and
92 institutions, high-handed mine management and a militarised
93 - unfortunately, apparently from these events, trigger-
94 happy police force. It would be unfortunate indeed and
95 would tragically obscure the truth our clients seek, where
96 either the NUM or AMCU to be made to take responsibility
97 for far-reaching structural and policy failings which
98 throws South Africa's social and economic crisis into sharp
99 review.
100
101 Chairman, Commissioners, let me first say in
102 making my final remarks about what is in paragraph 35 of my
103 statement, that let me first thank the efforts that have
104 been made to get the families of the deceased to this
105 gathering. I have met them, Mr Chairman, and every single
106 one of them has indicated that they wanted to be here, they
107 want to be here, because they believe the Commission is
108 geared to establish, if not for them, but for everybody who
1 The one grievance that clearly is weighing
d2 heavily with the families, is the fact that it is only one
3 family, or one person per family, who can be assisted to be
4 here. We had made a request that the state or the
5 Department of Social Development to take it out the
6 parameters of controversy, the Department of Social
7 Development should make available assistance for at least
8 two persons per family.
9 There are practical reasons for this, and may I
10 just indicate that the tradition is that widows do not
11 travel, or travel with the same kind of freedom that we, in
12 our nuclear families have, even if there's been a death
13 that has befell the family. There usually is a
14 requirement, traditional or other, you may think about
15 that, and there'll be a debate about whether this is so,
16 but the fact of the matter is that there are circumstances
17 like those where, at least if the widow is going to be
18 travelling somebody must assist her.
19 Now, this requirement that one person per family
20 must travel, has led to an untenable situation where,
21 because of patriarchy, that decision being left with the
22 families, men has selected men and they have left grieving
23 widows at home, and yet it can't be otherwise. And without
24 being childish about it, Mr Chairman and honourable members
25 of the Commission, it does not sit well for a plea to be

[16:01] And it appears that it is because she either was
2 not contactable or she was not contacted. And to smoothen
3 this, we would request whoever is making these arrangements
4 to liaise with my attorneys all the time, because my
5 attorneys are in constant contact with the people whom we
6 represent. So that is where we are at. Secondly –
7 CHAIRPERSON: May I interrupt you Sir?
8 That's a fair request and we will see to it that it's
9 complied with.
10 MR NTSEBEZA SC: Thank you, Mr
11 Commissioner. Further, once again I would like the members
12 of the Commission responsible for making these arrangements
13 to liaise with my attorneys and establish what the glitches
14 were for Gumuza, on behalf Yona family, and Ngweyi, N-G-W-
15 E-Y-I, Gumuza, G-U-M-U-Z-A, Yona is Y-O-N-A. Ngweyi, on
16 behalf of Michael Ngweyi, why or what the glitches were
17 that nobody came to pick Mrs Ngweyi on behalf of Michael
18 Ngweyi, even though arrangements had been made that she
19 would be picked up.
20 I am told by my learned friend that there is
21 Qwelane, Q-W_E - oh Gwelani, G-W-E-L-A-N-I, from
22 Lusikisiki, who apparently also would want to be here
23 because one of the people close to him, is one of those who
24 died. It is work-in-progress. It's something that can be
25 dealt with, and I'm merely placing it on record.

made that the resources are not limitless.
2 I certainly appreciate that I'm a taxpayer and I
3 would like to make sure that my tax money goes to
4 appropriate causes, but there are horses for courses, and I
5 want to say and make this submission as a plea, and make it
6 as politely as I can, it does not sit well with us that
7 families must be told that there are no funds, and there
8 may well be no funds, when, as I say in the submission,
9 there does not seem to be any the amount of – there does
10 not seem to any amount of restraint in the employment of
11 legal representatives on behalf of the state, and I can
12 then imagine, from the volume of the work, that this is
13 justified. I can understand that, and I'm not making this
14 thing facetiously, the submission, but to be told that
15 because we don't want to misuse your taxpayer's money by
16 allowing a minimum of two per family to attend these
17 proceedings, it is just disproportionate on a scale of
18 things. This is an occasion where we, as a country, must
19 redeem ourselves. It will be of no use, in our humble and
20 respectful submission if the families get out of this
21 entire exercise, which was set up for an objective, that
22 they get away from it feeling that they did not get an
23 equal opportunity to be part and parcel of it.
24 I know the argument has been made that it is not
25 even compulsory for the state or the government to make the
worker is killed, is for the job that has been left vacant
to be offered to a family member. So she’s now preparing
to leave her five children. Tsepiso, 17 years. Nowili, 13
years. Sizwe, 12 years. Xolile, 9 years. Noxolo, 3
years. She will leave those children to come to work at
Lonmin in terms of that tradition. Those children, in a
way that they mean to sharp relief an intersection between
the [inaudible] system and the rights-based society where
socio-economic rights are an ideal that is striven for.
Those children have lost their father to the police,
insofar as it is un-refuted that his father was killed by
the police, and they are now leaving their mother to the
migrant labour system. They now require a searching
examination from this commission and a full explanation of
the circumstances which press on them. The sad prospect of
a parentless childhood, things that you and I take for
given. This society must promise us a better society
than the previous one. Your wisdom, the three of you, will
be sought in the search for an answer to those conundrums.
Thank you, Mr Chair, thank you, Commissioner.

CHAIRPERSON: Thank you, Mr Ntsebeza,
we’ll carry on tomorrow with the opening addresses. We
will adjourn now for the reasons I explained earlier until
9 o’clock tomorrow morning.

[INQUIRY ADJOURNED]
| Page 205 | 1 | CHAIRPERSON: | I'm sorry to interrupt you. |
| 2 | I must confess, Sir, I can't understand that. I assume that in the case of those who died there will be - |
| 3 | depending obviously on, presumably on the findings, but there will be or may well be dependence claims of some kind. |
| 4 | MR MPOFU: | Correct. |
| 5 | CHAIRPERSON: | And the appearance here on behalf of the dependents could be seen as a necessary anticipatory action. |
| 6 | MR MPOFU: | Correct. |
| 7 | CHAIRPERSON: | Or step in regard to contemplated dependence claims. |
| 8 | MR MPOFU: | Ja. |
| 9 | CHAIRPERSON: | Those who were injured would presumably also have claims. |
| 10 | MR MPOFU: | Absolutely. |
| 11 | CHAIRPERSON: | I assume they were included in the Terms of Reference is an appropriate, reasonable and necessary anticipatory step in respect of those actions, and would be entirely analogous to the case of the people who are appearing, I think. |
| 12 | MR MPOFU: | Yes. |
| 13 | CHAIRPERSON: | For the defendants. |
| 14 | MR MPOFU: | Absolutely. |
| 15 | CHAIRPERSON: | So I don't know whether – I don't want to stop you, obviously you want to carry on on the statement that was made, but I thought it appropriate at this early stage to indicate the puzzlement on my side in following what is happening, and I would hope that the decision that's been conveyed to you is not necessarily a final one and that the matter might well be able to be taken further before a final decision one way or the other is given. But please proceed and when you're finished I'll ask Mr Madlanga if there's anything he wishes to say. |
| 16 | MR MPOFU: | Thanks, Chairperson. That from the Chairperson and the Commissioners is more than what we would have bargained for, and we are very grateful. Any intervention, obviously it's not something that is in your complete powers, Chairperson and Commissioners, but that statement settles that issue of the so-called distinction. But I might add, Chairperson, that similarly with the arrested persons, those persons, the reason I would assume they were included in the Terms of Reference is because their arrest is directly linked to the issues here, and indeed as I mentioned, the reason why we managed to secure a long postponement, anticipating the finalisation of the Commission, was that the magistrate understood that whether the so-called provisional withdrawal of their charges will materialise, will depend among other things on the outcome of the Commission, and they too therefore have an equally direct interest in the outcome. But more than that, Chairperson, the issue here is that these people, yes of course we concede upfront that the most affected persons are the people who lost their breadwinners, but the people who were there, the 300 people who were arrested and injured and lost some limbs, are equally traumatised, and these are people who are requiring counsel. If I can just relate, Chairperson, the consultation we had with about 200 of them at the koppie last week were, the emotions that ran through there, where grown men were crying tears trying to explain what had happened, you first start to try and discriminate and create categories of victims in these kind of circumstances, is in very bad taste. But that's the first reason, if it is not resolved, that we might not be able to continue. |
| 17 | CHAIRPERSON: | But more than that, Chairperson, the issue here is that these people, yes of course we concede upfront that the most affected persons are the people who lost their breadwinners, but the people who were there, the 300 people who were arrested and injured and lost some limbs, are equally traumatised, and these are people who are requiring counsel. If I can just relate, Chairperson, the consultation we had with about 200 of them at the koppie last week were, the emotions that ran through there, where grown men were crying tears trying to explain what had happened, you first start to try and discriminate and create categories of victims in these kind of circumstances, is in very bad taste. But that's the first reason, if it is not resolved, that we might not be able to continue. |
| 20 | CHAIRPERSON: | But more than that, Chairperson, the issue here is that these people, yes of course we concede upfront that the most affected persons are the people who lost their breadwinners, but the people who were there, the 300 people who were arrested and injured and lost some limbs, are equally traumatised, and these are people who are requiring counsel. If I can just relate, Chairperson, the consultation we had with about 200 of them at the koppie last week were, the emotions that ran through there, where grown men were crying tears trying to explain what had happened, you first start to try and discriminate and create categories of victims in these kind of circumstances, is in very bad taste. But that's the first reason, if it is not resolved, that we might not be able to continue. |
| 21 | CHAIRPERSON: | The second one is that we also received, unfortunately, yesterday afternoon, having made the request to the Presidency about the extension of the Terms of Reference to include Ms Pauline Masuhlo, and I'm sorry, we have not even briefed the family except by telephone, that the Presidency have turned down that request, and that in our view might necessitate some kind of legal action and unfortunately if that legal action materialises, one of the prayers we'll ask for would be that the Commission should not proceed, awaiting the inclusion. But of course there might be, I'm sure will find - |
| 22 | CHAIRPERSON: | Mr Mpofu, I don't want to interrupt you, but I must say I have puzzlement about that one as well because if we have Terms of Reference and we're busy dealing with those Terms of Reference, the fact that someone wants to add an extra Term of Reference doesn't stop our inquiry into the existing Terms of Reference. |
| 23 | MR MPOFU: | Ja. |
| 24 | CHAIRPERSON: | So it's not for me to give advice to the judge that's called upon to consider that prayer if you include it, but I just express my puzzlement on the point. Please proceed. |
| 25 | MR MPOFU: | Well, I'm sure that sentiment will find its way into the answering affidavit, Chairperson. But be that as it may, the issue is that - |
1st to 31st October 2012  
Marikaná  
Rustenburg

1 and we don’t want to trivialise this issue – Chairperson,
2 maybe I’ll take you one step back. Our people have been
3 unjustly, in our view, charged with the murder of their own
4 comrades and friends. Because of that we took the
5 professional judgment that despite the fact that we were
6 approached by some of the deceased’s families, that we
7 would not represent the deceased’s families because however
8 absurd we think the claim may be, the point of the matter
9 is that as lawyers we cannot represent the people, the
10 murdered people and the people who allegedly murdered them,
11 and so that’s why we took that decision, and the reason
12 we’ll only represent the deceased person in Pauline Masuha
13 is because she was killed a month later in a separate
14 incident, and so whatever deceased’s families approach us,
15 we hand them over to Mr Ntsebeza’s people for the
16 professional reasons that I’ve just described. But those
17 are the impediment issues, Chairperson.
18 I now want to talk about what I would call the
19 opening address, or –
20 CHAIRPERSON: Before you deal with that,
21 perhaps it’s appropriate for me to call upon Mr Madlanga to
22 see if he has anything to say –
23 MR MPOFU: On the issue of funding –
24 CHAIRPERSON: - with regard to the points
25 that you’ve raised so far. Mr Madlanga, do you wish to say

1 able to deal with the point now, but he can deal with the
2 matter. I don’t think it’s appropriate for us to hold up
3 the proceedings now by calling on him to do that. In any
4 event, I suspect that he hasn’t got instructions on it, or
5 full instructions anyway, but I’m telling him now in the
6 open forum, as it were, that I will be calling on him to do
7 that –
8 MR MPOFU: Thanks, Chair.
9 CHAIRPERSON: - in due course. Would you
10 now like to proceed with your opening statement?
11 MR MPOFU: Yes, I would, thank you,
12 Chair. Now Chairperson, the group of people that I
13 represent have a slight advantage over the other parties in
14 that we had a, what one might call a head start in dealing
15 with some of the issues when we were doing the bail
16 applications for the 272 arrested persons. It became clear
17 in those proceedings that the people who were being
18 charged, as I’ve already said, for the murder of their own
19 colleagues and we raised it and it caused, as it should,
20 national and international concern, and they were released
21 – we gave a deadline for them to be released on the Sunday,
22 the 1st of September, and on that day a press conference was
23 called for their release.
24 In the course of that bail application we
25 discovered, to our amazement, that only 16 plus-minus of
the 34 people had actually been killed at the scene that we all saw on television, which we now collectively know as scene 1, or Groot Koppie - in our team that's what it's called – and that the other 18 or so, being the majority of the people who had died, had been killed at Klein koppie, and that is contained in the evidence of Brigadier Van Zyl, who testified in the bail application and whom we anticipate will also be called to testify here, and these already created the signs of what our approach will be, which I will outline, not in great detail as this is only an opening statement.

CHAIRPERSON: Can I interrupt you for a moment?

MR MPOFU: Yes.

CHAIRPERSON: Do I understand the situation correctly that what you've described as scene 1 is what is covered by CAS137/08/2012 -

MR MPOFU: Ja.

CHAIRPERSON: - in the documents that we've been handed, which will be referred to later today?

MR MPOFU: Yes.

CHAIRPERSON: And what is referred to as scene 2 is covered by CAS138.

MR MPOFU: Yes.

CHAIRPERSON: So 137 is scene 1.

MR MPOFU: Yes.

CHAIRPERSON: 138 is scene 2. Is that it?

MR MPOFU: Yes.

CHAIRPERSON: That will enable us to follow the photographs, plans, and so forth –

MR MPOFU: And the terminology –

CHAIRPERSON: - that's already been handed –

MR MPOFU: Yes, Chair.

CHAIRPERSON: Thanks.

MR MPOFU: And in fact what we do, in the first scene we describe it in a kind of generous fashion as the Groot Koppie scene, which deals with what happened at the kraal and near that koppie, and then if you remember when we did the inspection, we then had to walk to Klein Koppie, and that's what we call scene 2. Now Chairperson, the –

CHAIRPERSON: I'm sorry, Mr Tokota reminds me that the interpreter has been sitting here very patiently and you and I have been having a conversation which, and Mr Madianga took part for a short time as well and the poor interpreter has got to remember everything that's been said. I think we should give him a chance now before you carry on.
Chairperson, that I referred to earlier, the pattern has been that the person goes to work now in the past two weeks, they get identified by Lonmin Security and then they disappear, or they get held at some barracks or something of that nature at Number 1 Shaft, which is some kind of intermediary holding or office for the Police to come and take the defenceless victims.

Chairperson, this talks also to – when I say that this is a collusion, it’s a collusion of high significance and I will show that what my learned colleague Mr Semenyai said that this is unprecedented is not correct. This collusion between State and capital has happened in many instances in this country. In 1920 African miners went on strike and the government of Jan Smuts dealt with them with violence, and harshly, and one of the results of that was that they reduced the gap between what white mineworkers were getting and what black mineworkers were getting, was reduced and the pact that had been signed in 1918 of introducing the colour bar in the mines was abandoned. That abandonment precipitated a massive strike by the white mineworkers in 1922 and that strike was dealt with by the Smuts government by bringing in the air force – the air force and about 200 people were killed. This is one of the most important happenings in the history of this country.
action to address the situation.

CHAIRPERSON: I'm interrupting you, but what is the date of that email that you –

MR MPOFU: It is the 15th of August, 2:58, exactly 24 hours before the people were mowed down at that mountain. This document is part of the Lonmin documents, Chairperson, so it's not some email that we got through espionage. It continues by saying, "You are absolutely correct," it's addressed to somebody called "Dear Albert," who is Albert Jameson of Lonmin, I assume. "You are absolutely correct in insisting that the Minister, and indeed all government officials, need to understand that we are essentially dealing with a criminal act. I have said as much to the Minister of Safety & Security. I will stress that Minister Shabangu should have a discussion with Roger," whoever Roger might be, and as Chairperson, you've already confirmed, or rather extracted from me, this was on the 15th of August and it's, I'm just quoting that part. It's a long line of emails under, in the same vein, effectively encouraging so-called concomitant action to deal with these criminals, whose only crime was that they were seeking a wage increase.

The third point, Chairperson, is that what happened here was premeditated murder of defenceless people, and that any suggestion that it was a spontaneous act is gainsaid by the evidence. We have a situation where it is said that in this meeting at half past 1 on the 16th, that if plan 3, or stage 3 of the operation will have to be implemented and that the discussions around that had gone as far high up as the Commissioner of Police and the Minister. In the minutes of that meeting, Chairperson, the Provincial Commissioner – about whom I will say something later, I'm reading from the minute, it's of A197/3 in the Police bundle –

CHAIRPERSON: Again for clarity, can you give us the date of that meeting?

MR MPOFU: Yes, the meeting was on the 16th, I'm sorry.

CHAIRPERSON: Yes, I thought it was but I wanted you to have it on the record –

MR MPOFU: Yes, yes, to have it on the record, yes. It was on the 16th at 13:30 and it finished at, meeting was adjourned at 14:00, and just before it was adjourned, under closing remarks the following is recorded, "The Provincial Commissioner indicated that she had already communicated with the National Commissioner, informing her of the current situation and that a deadlock was reached with the negotiations, and also that phase 3 of the operational plan will be executed. She also indicated that the National Commissioner indicated that she will inform the Minister of Police on the current situation and actions that will be taken."

[10:12] And that the living conditions that you observed, Chairperson, of eight grown African males being lumped into one room with no other facilities are also justified on this basis that well, they have a comfortable bed in their real homes and they are just here to sell their labour, and that is one of the underlying factors for the wages against which the people were protesting in the first place, and on that score, at that level, Chair, much as we would like to, we cannot blame the South African Police Services. The South African Police Services is simply an agent of a government that has allowed this to continue 20 years into democracy. Not that we can blame Lonmin at that level, Chair, because again Lonmin is simply a microcosm of what I earlier called capital which has benefited from such a system. But we'll show, we'll bring an expert if we have to, to show that there are underlying causes that go beyond what we see here, but that, with the greatest respect, does not excuse, it does not excuse the primary, what we've referred to as the primary parties, from their responsibility for the specific tragedy that occurred in Marikana.

The last point, Chair, is that – and we'll make this point directly and indirectly, that the decision to
1. That this had happened, but they want to know the truth of
2. what happened, and that was the failure of that commission,
3. for whatever reason, and we would like to say on behalf of
4. the persons that I represent, the victims of this massacre,
5. that we hope that this Commission will do everything in its
6. power, and we trust, we know that no stone will be left
7. unturned to do so, but we simply want to emphasise that
8. issue.

   There was also, I referred back to the massacring
9. of miners in the 40s and the 20s. At that stage there was
10. something called the Lansdowne Commission which was put in
11. place and it had recommended, among other things, that the
12. mining people should be paid a living wage, the miners.
13. This was in 1943, if I'm not mistaken, Chair, and the
14. government and the Chamber of Mines in particular rejected
15. the findings of that Lansdowne Commission, and part of the
16. history that I've mapped can be traced back to the failure
17. of that Lansdowne Commission. So let us use the Margo
18. Commission and the Lansdowne Commission as examples of what
19. hopefully will not be the outcome of a commission of this
20. nature.

   Having said that, Chairperson, I would like to
21. say that I, as we say in the concluding paragraph, that
22. because inter alia of the impediments that we face of
23. resources to consult with 300 people at these distances -

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<th>Page 226</th>
<th>Page 227</th>
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| 1. and I must use this opportunity to salute the members of my
2. team who have used money from their pockets or for their
3. children to, in the past two months to represent these poor
4. people up to this stage. Obviously those resources are not
5. limitless and when we run out, we'll run out and we'll
6. simply, we won't disappear, Chairperson, we will tell you
7. that we will not be coming anymore. But it cannot be
8. expected of people of this calibre who really represent the
9. human rights culture of lawyering to go on forever. Be
10. that as it may, Chair, because of those things we have not
11. even at this stage finished consulting with all our people.
12. As I said earlier, if we were to consult with them even for
13. two hours each, it will take us about one and a half
14. months, and the photocopying of paper and all those
15. expenses are at our, for our own accounts, and therefore
16. what we've said, that's some of the highlights and we may
17. or may not be able to present some of this evidence to you,
18. depending on what happens with these issues of funding and
19. the like, but I am deeply appreciative of the indulgence,
20. Chair, of time to put some of these important issues to
21. your attention on behalf of the victims of the Marikana
22. Crisis. Thank you.
23. CHAIRPERSON: Thank you, Mr Mpofu. The
24. next party that submitted a document to us by way of
25. opening submission, is the Department of Mineral Resources.

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| 1. on behalf of Kgosi Bob Mogale, his royal family and the
2. traditional community. If Mr Chairperson would allow us,
3. we would also like to make an opening statement.
4. CHAIRPERSON: Yes, of course you may make
5. an opening statement. Please proceed.
6. MS KGOROEADIRA: I want to move to the
7. front, Mr Chair. Thank you, Mr Chairperson and members of
8. the esteemed Commission of this inquiry. It is with great
9. sadness to the Bapo Ba Mogale traditional community, Kgosi
10. Bob Mogale and his royal family, that we have to meet under
11. these circumstances, which to us are less than ideal for
12. the Bapo Ba Mogale traditional community to be introduced
13. to yourselves and the international community. I beg leave
14. to take off my jacket.
15. Mr Chair and Commissioners, we have just been
16. instructed to join the Commission of Inquiry. As a result
17. thereof we have just written submissions, which we will
18. forward to Ms Pillay and other evidence leaders as soon as
19. we are done now. Thank you.
20. We also beg leave of this Commission to submit
21. our evidence, evidence, statements, documents, notary lease
22. agreements, and any other documents that would assist this
23. Commission, from the traditional community.
24. CHAIRPERSON: We would be very
25. appreciative if you were to make those documents available.
I suggest you hand them over to Ms Pillay, one of the evidence leaders, and she can maybe take the matter further from there.

MS KGOROEADIRA: Thank you, Mr Chair. Mr Chair and Commissioners, our submissions are divided into six parts, namely background of the events that led to the massacre and the tragedy that we are currently addressing today, the notarial lease with Lonmin especially, the social and labour plans around Lonmin, as well as DMR – Department of Mineral Resources, events preceding the Marikana Massacre in and around the Bapo Ba Mogale traditional community land, the role of the mining companies, especially Lonmin, in this instance Lonmin, and the Department of Mineral Resources Centre as a regulator in the events preceding and leading up to and after the Marikana Massacre. The impact, we would also like to address the impact that the Marikana Massacre has had on the Bapo traditional community at large.

[10:32] As already indicated, I am Advocate Karabo Bareng Kgoroeadira. I am led by Rusty Mogagabe SC, who is not present today. I am assisted by Adv Mphiri Masilo and we shall be acting on behalf of the parties I’ve already mentioned. Lonmin Platinum Marikana operations are situated on a farm called Wonderkop. This farm is Farm JQ400 portion 2 which is situated on the western limb of the Merensky Platinum Reef, commonly known as the Platinum Belt. Lonmin had entered into a notarial lease agreement with the Bapo Ba Mogale Traditional Community and that this was preceded by the Mining Charter and the Mineral Petroleum and Resource Development Act. However, the spirit of the current Mining Charter with specific reference to local community government, job creation and local economic empowerment underpinned the basis upon which the Bapo Ba Mogale Traditional Community accepted the proposal to have the mines established for example, Lonmin, and operated on their land. The farm Wonderkop is a sub-village of the Bapo Ba Mogale Traditional Community land and falls within the jurisdiction of Kgosi Bob Edward Mogale and his royal family and the traditional community. This is also where the massacre of the 16th of August 2012 occurred, which is termed the Marikana massacre by the media.

Marikana, originally termed Marakaneng, is in fact a small town a few kilometres away from Wonderkop Farm and is actually the border of the Bafokeng Villages and the Bapo Villages and the Royal Bafokeng Villages fall under Rustenburg and Royal Bapo falls within the jurisdiction of Madibeng and Brits. Accordingly the land on Lonmin Platinum, on which Lonmin Platinum Mines, Marikana operations were its largest platinum operations in South Africa are situated and on which the massacre occurred belongs to the Bapo Ba Mogale Traditional Community. It is so that to the extent that the Kgosi and his royal family, this is on the basis on which the Kgosi and his royal family and the traditional community wish to join these proceedings in that it is their land, that this Commission seeks to put under scrutiny.

I would now like to deal with the notarial lease agreement between Lonmin and the Traditional Community. As already communicated, Lonmin had a notarial lease agreement in order to lease the land of the Bapo Ba Mogale Traditional Community in exchange for payment of royalties and also undertook to meet a socio-economic obligation in the Bapo Ba Mogale Traditional Community area in terms of the Mining Charter, the South African Mining Charter and its basic conditions in terms of which their mining licence was issued. Presently the concerns of Kgosi Bob Mogale, his royal family and the traditional community, are that Lonmin is exploiting minerals on the land which belongs to the tribe or Traditional Community, fails to meet its obligations and undertaking made by it in relation to social and infrastructural development of the community, and initially failing to give preference to members of the community regarding employment opportunities within the Lonmin Mine.
1st to 31st October 2012

Marikana

Rustenbourg

1 point in the proceedings.
2 MR MAHLANGU: Thank you very much. The
3 Chairperson will realise I have no document from which to
4 read these things, and I am meeting this for the very first
5 time and sadly, the counsel is querying me, but all the
6 same.
7 MS KGOROEADIRA: Mr Chair, I beg leave to
8 just write down the parties' name for the Interpreter in
9 that the community will feel offended -
10 CHAIRPERSON: I was going to suggest that
11 because, obvious it's important the name be correctly
12 pronounced, the representative community here today, it's
13 only fair to the Interpreter that he should have it before
14 him so that he can pronounce it correctly.
15 MS KGOROEADIRA: Thank you, Mr Chair.
16 MR MAHLANGU: I've got it. Just the one
17 simple word Bapo Ba Mogale.
18 MS KGOROEADIRA: Thank you very much, Sir.
19 CHAIRPERSON: If that was the only
20 problem we had to solve with this Commission our job would
21 be very easy, but carry on.
22 MS KGOROEADIRA: Thank you, Sir. Thank
23 you, Mr Chair. As I said, sadly, the Bapo Ba Mogale
24 Traditional Community will ask this Commission to take a
25 tour around their village at some stage, to see for
26 yourselves that an area situated on the western limb of the
27 Merensky Reef termed the Platinum Belt, in which rich
28 deposits of mineral resources exploited by several mining
29 companies have nothing to show for their presence, save for
30 traditional land being infested by migrant labourers as
31 well as job seekers, without any form of consideration from
32 mines who happen to be the cause and attraction of these
33 occupiers of the land.
34 Sadly, Mr Chairperson, the Bapo Ba Mogale
35 Traditional Community still struggles for some of the basic
36 rights, such as water and sanitation. It is these social
37 struggles that may be attributed to the boil that has been
38 simmering around the mining community, as the Bapo Ba
39 Mogale Traditional Community is frustrated by Lonmin and
40 workers are frustrated by Lonmin to no avail.
41 Mr Chair, and Commissioners, we will lead
42 evidence to the various attempts by both the traditional
43 community leadership, the youth, and other members of the
44 traditional community where Lonmin was requested to meet
45 its social contractual obligation. We will also lead
46 evidence of the continued and constant refusal by Lonmin
47 management which was bold enough to say to the Bapo people,
48 Ba Mogale Traditional community they will not lift a finger
49 until there is social cohesion in the traditional
50 community.
51 [10:52] We will lead evidence to show that Lonmin, on the
52 land of the Bapo Ba Mogale traditional community, had been
53 operating for a considerable period of time - to be
54 specific, since the '70's, without any regard for the
55 social conditions of the communities on whose land they
56 operate, despite recently creating a burden of informal
57 settlements on the land of Bapo traditional community.
58 You will also hear, Mr Chairperson and
59 Commissioners, how Lonmin overlooked Bapo Ba Mogale
60 community in the share interest opportunities and continues
61 to do so. Now, Mr Chair, I would also now like to talk
62 about the events preceding the Marikana massacre. The
63 events which occurred in the Marikana tragedy are actually
64 preceded by the members of the traditional community, and
65 particularly the youth, venting their dissatisfaction and
66 their anger, mainly concerning, amongst other issues it had
67 with Lonmin, wages, Lonmin overlooking or disregarding the
68 Bapo Ba Mogale locals in respect of employment
69 opportunities, and issues relating skills development for
70 the community and the locals.
71 It is the very same issues that have previously
72 led to violence in the area, unrest in the traditional
73 community, and destruction of property, as well as the
74 temporary closing down of Lonmin's operations earlier on,
1st to 31st October 2012

Marikana

Rustenburg

[INQUIRY JOURNALS INQUIRY RESUMES]


Before you proceed, may I ask you whether what you are going to say, relates – what you are going to say now, relates to the first theme that we’re investigating at this stage, namely the actual shootings on the 16th and what led up to them, or whether it relates to the second theme which is Lonmin’s involvement in the creation of the circumstances which gave rise to the ultimate killing on the 16th? If it relates to the second theme, and it may also be linked with one of the later themes regarding the responsibility of the Department of Mineral Resources, which would involve monitoring or failing to monitor the compliance with the Mining Charter, if it relates to those issues, then I don’t think it’s necessary for you to speak us about it today. There will be a meeting tomorrow, I don’t know if you’ve been informed, there will be a meeting tomorrow of the representatives of the parties at which endeavour will be made to work out time limits, arranging for the exchange of information, and also, generally speaking, devising procedures to shorten the proceedings, possibly by the submission of agreed bundles of document and things of that kind. So it sounds to me, from what you were going to say, that it’s more relevant to the later stages, themes 2 and 4, so I put that to you. Is my

assessment of that correct?

MS KGOREAEDIRA: It is correct, indeed, Sir.

CHAIRPERSON: Well, then it seems to me then it would be appropriate for you just to close off then what you were going to say, with full reservation of your right, subsequently, when we come to those other themes, to make a further opening submission dealing with the points that you were proposing to make now. Is that appropriate?

MS KGOREAEDIRA: Indeed, Mr Chair, and thank you, Mr Chair and Commissioners. In closing, Mr Chair, I would just like to mention something that touched my heart. On the 18th of October this year, 2012, we had a meeting with Mr Commissioner Tokota SC and Adv Malunga to discuss the terms of reference and how the Bapo Ba Mogale traditional community will play a role in this part and, as Commissioner today, Mr Tokota Advocate SC said to the chief or the king, Kgosi Bob Mogale, he asked him, “In your words, what do you want to see happen?” And I’m about to quote him in Tsswana, and I would like Mr Interpreter to interpret it in English.

CHAIRPERSON: I think a number of the people present are also Xhosa speaking, so the interpreter must interpret it from the Setsswana into English and also isiXhosa.

Tswana and, yes, Mr Chair, thank you. He said, “God’s people help me, Lonmin is killing my children. My children are suffering from hunger. They do not have jobs. Please help me about Lonmin.” He said, “My land has become confused. It’s confused by Lonmin.” And that’s all he said, and that’s all he could say, repeatedly, for 20 minutes. That’s all his response was.

Kgosi Bob Edward Mogale, his royal family, the traditional community of Bapo Ba Mogale, welcome this Commission of Inquiry and sees it as godsend, and will assist the Commission in any investigation that needs to be done. Thank you.

CHAIRPERSON: Thank you very much, Adv Kgoreadira.

MS KGOREAEDIRA: Thank you, Mr Chair.

CHAIRPERSON: Is there anyone else who wishes to make an opening statement – any other party?

Please put yourself on record and then make the statement that you wish to make, having indicated the party for whom you’re making it.

MR RAMPILE: Thank you, Judge. My name is Tshepiso Rampile instructed by Nkaiseng Attorneys Incorporated from Vanderbijlpark, and I represent the two security officers, Mr Frans Mabelaene and Mr Hassan Fundi, who are Lonmin’s security officers. I represent the families in this very tragic event. In our case, the two deceased were – or met their deaths on the 12th of August at or near Wonderkop Hostel. The two of them, at the time they met their deaths, were security officers who were off-duty and were called to come and give backup, because there was a strike or a movement of people in that area. This is probably the two deaths that the families have instructed me, have not been covered in this Commission –

CHAIRPERSON: I’m sorry to interrupt you. That’s not entirely correct, because at the inspection in loco on the 1st of October, or it might have been the 2nd of October, one of those two days, we were shown the place where the incident to which you refer took place, and it will be covered in the evidence. Anyway, please carry on with what you want to say.

MR RAMPILE: It is correct that might be the case. Their concern is the degree of significance that is given to these deaths. It is our submission –

CHAIRPERSON: I’m sorry to interrupt you, but it’s covered by the terms of reference. It’s one of the matters that we – or those two deaths are among the matters which will have to be investigated in terms of the terms of reference. You can give your client the assurance that that will be done. Obviously, if you wish to

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1 question we have to ask was, were they capable in that 
2 number, with those resources, and were they trained to 
3 actually deal with that situation? That is one area that 
4 we would like, or the family would like the commission to 
5 establish. The families would like to establish whether 
6 there was knowledge of the extent of the anger in the 
7 workers.

8 [11:44] And those responsible for saving lives, did they 
9 actually - or were they sourced, or they informed about 
10 the potential or imminent tragedy that could befall these 
11 few security officers? These are some of the issues that 
12 the family would like this Commission to look into, but the 
13 causes are much more deep in the view of the family, and I 
14 wouldn’t like to belabour points that have already been 
15 made, except to say that the mining industry has got a 
16 history that I think the Commission is able to say, how do 
17 we make sure that we have a humane environment, because it 
18 is a big industry in this country. The Commission should 
19 ensure that the hate, because if you dehumanise a person, 
20 then you actually saw hate, and I’m not saying that this or 
21 that stakeholder, or this or that individual is 
22 responsible, because I think that that is what we entrust 
23 to the Commission to establish out of the evidence that 
24 will be given, but the dehumanisation to a point where you 
25 have, in a constitutional state, a basic, basic human right
Chairperson and Members of the Commission, I’d just like to place my name on record, Jonathan Burger instructed by the Wits Law Clinic, representing the Council for the Advancement of the South African Constitution, CASA. I’m here under watching brief. Thank you.

Chairperson: You’ve put yourself on record, that’s where you now are. No-one else wishes to say anything on behalf of one of the parties, so I call upon Mr Semenya, who has indicated he wishes to say something, I think in reply to points raised earlier.

Chairperson, thank you, and members of the Commission, I propose raising two things. The one is that we did not object during the presentation by various parties on matters clearly falling outside the purview of opening statements. Now, as a matter of rule, the primary purpose of an opening statement is really to inform us what evidence is going to be led, so that we’re better prepared to anticipate the evidence and in our answers to that evidence, to prepare and present it, so that the Commission can have a holistic understanding of what transpired, and to therefore inform its own finding and recommendations.

What unfortunately has happened is we have been listening to sound bites, which are hardly helpful for what this Commission is supposed to do. We have been told about people killed like vermin, things like toxic collusions, extrajudicial executions, racist, backward, ridiculous conduct. All of this, Chairperson, with the greatest of respect, is not helpful.

Chairperson: I don’t want to interrupt you, but it seemed to me to be easier and more conducive to getting on with the job, to allow people who wish to make fuller opening statements than you envisaged would be made, to indicate some of the arguments that they’d be raising at the end to enable us to focus on the broad issues that are before us. I could have called people to order, interrupted them and stopped them from saying some of the things they did, but I don’t think that would have been helpful in the context of this Commission. If you wish to criticise me for being too lax, I take the criticism for what it’s worth, and I just say I don’t agree with it, but please carry on.

Chair and members of the Commission, this is not intended to be a criticism. It is definitely intended to convey that we were not acquiescing to the nature of presentations that have been made. We also kept restraint, purely so that we can facilitate the hearing, but we should not be understood to have made common agreement with volatile statements that have been uttered.

1st to 31st October 2012

Marikana

Rustenburg
1st to 31st October 2012  
Marikana  
Rustenburg
MR NTSEBEZA SC: Mr Chairman, can I just make a request before we show, are shown any footage. As I indicated I would like to be sure that there are people who will council the members of the family in the event anything that they might see, might-traumatise them to an extent where such service is necessary. I would like to be sure that they are here.

CHAIRPERSON: Yes, I understood the arrangements had been made for that, but let's see whether the persons concerned are present at the moment. I take it the point that been made, doesn't apply to the preliminary footage that Mr Budlender has referred to. I see Mr Mahlangu has gone off, I think in search of the people responsible for the counselling should it be required. But I suggest we start in the meanwhile anyway with the preliminary footage to which Mr Budlender has referred, is that, are you happy to do that Mr Budlender?

MR BUDLENDER: Yes, yes Chairperson. The first footage then is as I say from E-News at 14:33 on the 16th of August 2012.

[News footage being shown]

Then Chairperson, the next piece is a minute later also on E-News it contains, it includes some footage of what was happening an hour before the shootings and some explanation by the news reporter on what he done to try and find out what was going to happen. [News footage being shown]

Chair, the next piece is a further piece of context to what happened on that day. It's again from E-News.

[News footage being shown]

Chair, perhaps I can just pause to make sure that everyone is assisted who needs assistance. There are people here. I must apologise I hadn't realised that footage was on that clip. I hadn't thought we had reached the shooting yet.

CHAIRPERSON: I would actually like to see that final clip again more slowly, but I think we must wait until the grieving parties have had an opportunity to leave the auditorium.

MR BUDLENDER: Mr Chairman, there will be, I'm afraid further footage of the shooting which will be, so I don't think it will be helpful to see that again. You will see it again from another, I'm afraid from a number of different angles.

CHAIRPERSON: May I ask the interpreter to ask those present who are vital, personally involved if they would not wish to have an opportunity to leave because it obviously is very distressing for them?

MR BUDLENDER: May I interrupt the interpreter to say that there will be a number of films showing the shootings from different angles.

CHAIRPERSON: Mr Ntsebeza, you have indicated you wish to say something?

MR NTSEBEZA SC: Mr Chairman, I would like to suggest that perhaps a helpful process would be for the commission to have a short adjournment, an arrangement be made in another room where I believe there was a short circuit link to what is happening here and that is where the families and the councillors should probably be, so that we can proceed relatively smoothly because I can, I can anticipate that -

CHAIRPERSON: Yes, thank you Mr Ntsebeza.

MR NTSEBEZA SC: With the footages that will come.

CHAIRPERSON: I think that's an excellent suggestion. I think we should implement it. As you heard neither Mr Budlender nor I knew that or realised that what we saw would be shown before we were satisfied that therapists and so forth were in position. But we will take a short adjournment, we will only resume when we are told that we are able to proceed and that what Mr Ntsebeza has suggested has in fact been implemented.
Chairperson: Thank you, Mr Chairman, may I just clarify further, one matter which I mentioned before we adjourned at lunch time, that was that I mentioned all of the footage which we are showing comes from news broadcasts, television broadcasts, that is the position. I said that we do not have any South African Police Service footage. I should have qualified that to say we have no South African Police Service footage of the events at Scene 1 and Scene 2. There is certain footage at other times and at other places, but we have no Police footage of Scene 1 and Scene 2. That will no doubt be dealt with at a later time. May I then proceed, Chairperson. What we saw shortly before the adjournment, was the build up, some of the context and then the – a clip of the shooting at Scene 1, which I think is the one which is best known as the one which has been seen very frequently on television.

Now the next clip which also comes from E-News, shows – seems to show some of the build up or scene setting which preceded the shooting at Scene 1. This appears to be events immediately preceding Scene 1.

[News footage being shown]

Thank you. That’s not terribly clear but it’s shown more clearly, the scene-setting at Scene 1, in the next two clips. The next clip shows the line of Police members being formed shortly before the shooting, one sees the line being formed and then one hears the shooting following shortly after that. This takes a short while to find this place because it’s part of a longer piece of film footage. It may take a few seconds for the technician to find it. So this is the line of police members being filmed before the shooting, and the shooting then following immediately, or shortly afterwards. This also comes from E-News.

[News footage being shown]
1st to 31st October 2012
Marikana
Rustenburg

1 composite film, showing the films which had been shown by
2 various television companies from different angles, and so
3 it enables one to see the same event from three angles. It
4 was made, this composite which I am going to show, was made
5 before ETV became aware of the Al Jazeera footage which
6 we've already seen, which is the furthest to the right, if
7 I can call it that. But it shows it from three other
8 vantage points. They later produced the composite which
9 included Al Jazeera. So this is a composite film showing
10 the shooting from different angles, slightly different
11 angles on that day.
12 Perhaps I could just clarify one thing, the
13 commentator to this composite film asks a number of
14 questions, and suggests some possible conclusions, those
15 aren't questions and conclusions which the evidence leaders
16 are proposing. They are simply on the film as we received
17 it.
18 [14:19] [News footage being shown]
19 Chair, just to round off that sequence I would
20 like to show again the Reuters footage which is really from
21 the vantage point of the police line.
22 [News footage being shown]
23 Chair, that is the footage which we have or
24 propose to show in respect of Scene 1. We have found only
25 a very short snip, ten seconds of television footage of

26 what seems to be Scene 2. There seems to be only that and
27 I would like to show that now. This is all we have of what
28 seems to be Scene 2. That's SAPS footage - I beg your
29 pardon, television footage.
30 [Television footage being shown]
31 That, I am afraid is all we have. It does seems
32 to be seen through - Chair, that is the footage we propose
33 to show of Scene 1 and Scene 2. There are two pieces which
34 we wish to show to round this off. The first is that on
35 the morning after these events the South African Police
36 Service held a media conference, which was addressed by the
37 Provincial Commissioner, Lieutenant-General Mbowo, and she
38 set out the Police account of what had happened the
39 previous day. This is from the SABC.
40 [News footage being shown]
41 The wrong clip, Chair. There's a clip which I'll
42 have to show on another occasion. Yes. I seem to have
43 marked the wrong clip. We will find it and show it on
44 another occasion. We then conclude, just to make it clear,
45 there is footage of the Provincial Commissioner of Police
46 at the media conference the following day, explaining what
47 has happened, giving the Police account of what had
48 happened the previous day. That will be on a disc which we
49 will distribute to everybody and we can show it in due
50 course. And then the last clip is really, just to round

51 1 this off, is a piece from the BBC.
52 [News footage being shown]
53 MR BUDLENDER: Chair, those are
54 presentations, video presentations we wish to make. I will
55 see if I can locate –
56 CHAIRPERSON: Can the Interpreter not
57 interpret what the Commissioner said on the last clip that
58 we saw?
59 MR BUDLENDER: Can we show that last clip
60 again?
61 [News footage being shown]
62 MR BUDLENDER: Can I just ask the
63 technician whether he has another SABC clip on – he found
64 it? Thank you, could we have that then. This is the
65 Commissioner speaking at the media conference, immediately
66 on the day after.
67 [News footage being shown]
68 CHAIRPERSON: Again, what the
69 Commissioner says, should I think be interpreted into
70 IsiXhosa and to Tswana, once we've seen and heard it. It
71 is quite long as I recall, Chair, it's over a minute, I
72 think, so we may then have to pause it, or perhaps we can
73 run it and then you can decide how to deal with it.
74 [News footage being shown]
75 MR MAHLANGU: Mr Chair, with all due
76 respect, it's - I can't get it very clear, I don't
77 understand what she's saying, she is not very clear to me.
78 If it could be replayed again, or if there's a – unless
79 there is possibly a written, somebody who has the speech
80 written by the Commissioner, I really cannot get clarity on
81 what she is actually precisely saying.
82 MR BUDLENDER: Chair, perhaps the best
83 thing to do, I assume that the Police Service has a full
84 recording of that media conference. Perhaps they could
85 make it available to us, and in fact the prepared speech.
86 The Provincial Commissioner was clearly speaking off
87 prepared notes. It's the National Commissioner, as I said.
88 CHAIRPERSON: The National Commissioner
89 was clearly reading from a prepared speech so the text of
90 that should be available and you are asking Mr Semenya and
91 his team to make it available and then at a subsequent
92 hearing, it can be read out and interpreted by the
93 Interpreter.
94 [14:39] MR BUDLENDER: That is so, Chairman.
95 Chair, those are the - I am sorry. That's all we propose
96 to show today, as far as television footage is concerned.
97 CHAIRPERSON: Thank you, Mr Budlender, I
98 think Mr Semenya, you indicated you wanted to say
99 something.
100 MR SEMENYA SC: Indeed, Chair. And
<table>
<thead>
<tr>
<th>Page 265</th>
<th>Page 266</th>
<th>Page 267</th>
<th>Page 268</th>
</tr>
</thead>
<tbody>
<tr>
<td>really, we are seeking guidance. We don’t want to make any comment about the evidentiary value of all the commentary that has been following the pictorials but it is important to the extent that they will be interpreted that certain sections of those comments made by other individuals in the footages, be translated for the audience as well.</td>
<td>1 your ruling we would have that as well interpreted, because it would be relevant further down.</td>
<td>1 whether he is going to shoot to kill or not? So that if this film or these films are to be of any evidential value, quite a lot of work has to be done and statements taken from both sides of the fence, so to speak, so that it can be either corroborated or contradicted by the film, otherwise, we will stand here and the witness will say, well, there was a big crowd, and they had sticks.</td>
<td>1 without having information about where they were positioned, who made the decision to shoot, it’s not going to be of particular value, and this is why I suggest that the evidence leaders should, with respect, call on the people that shot, that we can have statements, we can compare them to what appears on the films. There’s a lot of work to be done. For instance, I looked at my watch in the hope of agreeing or informing myself, for how far, how long did the shooting last before some good policeman shouted out, “cease fire.” He wasn’t listened to, on the face of it. But we need that sort of detail to be agreed on, made available to us and we be given an opportunity to test the veracity of the witnesses on both sides. Another comment, we were informed that good maps exist of the area. It may well be very useful for the purpose of taking the</td>
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<tr>
<td>Page 269</td>
<td>Page 270</td>
<td>Page 271</td>
<td></td>
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<td>statements, I see that my learned friend is smiling, maybe he has already done it, knowing this is the way in which he prepares himself, so that we can have on the map, where were the people that are shown on Al Jazeera, and where were the people that were on this particular – so that we will be able to form a picture of where the, we believe the truth lies. CHAIRPERSON: There was a composite map indicating where the cameras were on some of the footage provided by ETV, and it might be possible for that to be printed and for the various policeman that were involved to perhaps indicate where they were at the time, as far as they can remember on that map or enlarged map. Mr Budlender, have you any comments to make in respect of what Mr Bizos is suggesting? MR BUDLENDER: Chair, yes, but we can only do one thing at a time prepare, we can't show the films and have the witnesses and have the maps simultaneously. We thought we would be helpful to start with the available objective evidence which is available to show, this is what happened, and which can't really be disputed, and of course there are maps and there are diagrams and there are statements and it will be presented in due course and the next witnesses which my learned friend will present will talk, will produce photographs and maps and show where it is, but we can only do one thing at a time. CHAIRPERSON: I understand that. But really the question is, has what Mr Bizos has suggested been done, or would it be done by the time the relevant witnesses come and give evidence? MR BUDLENDER: Chair, the next witnesses will be the forensic, Police forensic experts who will talk about what they found on the scene after the shootings. That includes maps, it includes photographs and all of that material has been given to all of the parties. We can all make our best guess from that as to where the Al Jazeera camera was or where the ETV camera was. In fact, one can, if one was on the in loco inspection one can work it out quite directly, but it will all be presented. There has been no attempt to map where precisely the Al Jazeera camera was, if that's what's being asked but there are maps in the possession of the parties which will shortly be presented by the next witnesses. CHAIRPERSON: As I understand what Mr Bizos is saying. Assuming you were to call a policeman, let's call him Constable X, for brevity, he would like to know when Constable X goes in the box, &quot;you can see me on one of the television clips, you can see me on the Al Jazeera clip, I am the man on the left-hand side, is this, that and the other.&quot; That's the kind of evidence he'd like, so that when the witnesses go in the box, where their evidence is capable of being checked against a TV clip, the relevant information for its necessary checking to be done, should be available. That is, as I understand it, he wants. Now, if it hasn't been done yet, the suggestion is that by the time Constable X goes into the witness-box, attempts should be made to get that information. That's the point. I take it, from you say, it hasn't been done yet, but it should be possible to do it at some stage in the not too distant future. Is that correct? MR BUDLENDER: Chair, it may be possible for some of the Police witnesses to identify themselves on some of the videos, I don't know, but we will all have the opportunity to say to – each team will have the opportunity too say to the witness, &quot;where were you? Here is the film, where were you there?&quot; Mark yourself. So – but it seems to me it will be, we can't expect that we will be able to identify each of the policemen in relation to a piece of video footage, but we will all have the opportunity to try. CHAIRPERSON: I understand that, it would also be helpful, this is something that I can say to Mr Semenya, I take it's been done already, but if it hasn't maybe it should be done by the time Police witnesses give evidence, they should all have an opportunity to see all the media footage. So you don't want Constable X to say, I am sorry, I can't tell you where I was, because I haven't seen the media footage. That is the kind of answer, which while it might be true, would be very irritating. So perhaps we can avoid irritation on that front. Is that correct, Mr Semenya? MR BUDLENDER: Chair, we are having copies made of all the video footages which we've shown this afternoon, and set will be available to each of the teams so they will be able to consult with their witnesses on the video footage. CHAIRPERSON: Thank you, Mr Budlender. I understand, Mr Madlanga, that you are going to lead the next item of evidence. MR MADLANGA SC: That is so, indeed, Chairman. May I ask to call Lieutenant-Colonel Cornelius Jacobus Botha. ADV NTSEBEZA SC: Chair – CHAIRPERSON: Yes? ADV NTSEBEZA SC: - I wouldn't like to be, again be one of those instances that might be irritating, but just – I do understand that, Mr Chairman, it might just assist that we adjourn for a couple of minutes for the other family members, who were not here to come here.</td>
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</table>
Page 273

1 CHAIRPERSON: The Commission will adjourn for five minutes.

2 MR MADLANGA SC: Excuse me, Chair, there are photographs. I am going to be leading the witness, in fact, it's four witnesses, it's a slide show. I understand one of my colleagues did circulate the pack of the slides, and there are photographs there, so some of those may be quite upsetting, so perhaps, the people should remain in the adjacent room.

3 CHAIRPERSON: Mr Mpfu, sorry, I think we adjourned the Commission, but apparently it has been overruled. Mr Mpfu.

4 [14:59] MR MPOFU: Chair just a slight issue, I didn't want to lose the opportunity if we are now going to move to something else. Just so that we are on the same page in respect of what has been raised, my understanding is that, Chair, what is being done by the evidence leaders is to give us the kind of landscaping of the footage that is available, not yet leading the evidence in respect of that. They and SAPS and ourselves will have specific witnesses in respect of everything that has been shown and those people can then be interrogated. That is the first, my understanding of consult with your witnesses and lead them intelligibly

Page 274

1 MR MPOFU: Absolutely.

2 CHAIRPERSON: The suggestion is you can show them the DVD if it will be made available to you.

3 MR MPOFU: Yes.

4 CHAIRPERSON: So when they give their evidence they can relate themselves, place them necessarily on the scene of particular clips.

5 MR MPOFU: Thank you, Chair. Mr Budlender, has nodded approvingly. So I, our understanding is clearly the same. The second issue is then, Chair, related to that is that's obviously commendable but if the police services have, similarly have footage that they, that is in their possession, shouldn't we not necessarily now also have a similar kind of landscaping exercise, Chair, so that those parties like us who don't have any footage, can know what footage is available, go seek some if we have to and so on, without having to -

6 MR MPOFU: I understand that there is going to be a police presentation which includes clips of various kinds. I understand the presentation to last about six hours. I haven't seen it, you haven't seen it. It may be if you speak nicely to Mr Semenya, he will give you an advance copy. I can't guarantee it but you can try.

7 MR SEMENYA SC: Everybody has been supplied a video, Chair. Well you would recall that by agreement all of the parties were to submit their indices indicating the material they have in their possession. We agreed also timelines within which all of those was to be centralised to the evidence leaders and the understanding was that the evidence leaders would then distribute to each party all the material they have with them. I'm confident to say on my instructions, we have furnished the material indicated on the police index to the evidence leaders.

9 CHAIRPERSON: It sounds to me that this is a matter that can be sorted out after the commission has stopped sitting, by discussions among the representatives of the various parties. So perhaps we can now proceed. Lieutenant-Colonel, would you stand please?

10 MR MPOFU: Mr Chairperson, just before you proceed, may I please ask for a minute, to be excused for a minute?

11 CHAIRPERSON: The five minute adjournment that I announced earlier will take effect.

12 [INQUIRY ADJOURNS] INQUIRY RESUMES

13 [15:10] CHAIRPERSON: The commission resumes. Lieutenant-Colonel, do you wish to swear or affirm?

14 LT-COL: I will swear, Sir.

15 CHAIRPERSON: Do you swear the evidence you give in this, for this commission will be the truth, the whole truth and nothing but the truth please raise your right hand and say so help me God. Say so help me God.

16 LIEUTENANT COLONEL CORNELIUS JOHAN BOTHA: So help me God.

17 CHAIRPERSON: Thank you, you may be seated. Mr Madlanga, your witness has been sworn in.

18 EXAMINATION BY MR MADLANGA SC: Thank you, Chairman and commissioners, sorry for saying computers, I have just misplaced my laptop, Mr Chairman, can you please bear with me Chair, just a second. Colonel Botha, can you please tell the commissioners where you are employed and also explain as what?

19 LT-COL BOTHA: Mr Chairperson, I'm a Lieutenant-Colonel in the South African Police Service attached to the provincial crime scene processing team, Phokeng. I have 28 years service in the South African Police Service of which I have been employed as a fingerprint expert, official draftsman, photographer and video camera operator for the past 26 years. I have successfully completed a theoretical and practical training course as a fingerprint expert, official draftsman, photographer and video camera operator at the local criminal record centre, Uppington and also the SAPS criminal record centre, Pretoria.
1st to 31st October 2012
Marikana
Rustenburg

Tel: 011 021 6457  Fax: 011 440 9119  RealTime Transcriptions  Email: realtime@mweb.co.za

1  MR MADLANGA SC:  Colonel, I see that you are reading from something. Are you reading from your statement?
2  LT-COL BOTHA:  I’m reading from my statement, Sir.
3  MR MADLANGA SC:  Mr Chair, commissioners -
4  CHAIRPERSON:  I have no objection to his reading from his statement.
5  MR MADLANGA SC:  Mr Chair, commissioners of this nature.
6  LT-COL BOTHA:  Okay, Mr Chair, I was requested by the evidence leaders of the commission to do a Google map on the incidents that happened in a certain area
7  MR MADLANGA SC:  Can you also read paragraph 4 of your statement?
8  LT-COL BOTHA:  Based on the evidence she ought to have seen?
9  MR MADLANGA SC:  Could you please just read paragraph 5 of your statement into the record?
10  LT-COL BOTHA:  This is on a specific crime scene, must I just read that paragraph?
11  MR MADLANGA SC:  Alright, no, let us go, let's go to the slides.
12  CHAIRPERSON:  The essential thing is, to ask him to confirm it's correct if he is prepared so to confirm.
13  CHAIRPERSON:  Before we proceed, Mr Madlanga.
14  MR MADLANGA SC:  Chair, may I just indicate to the commissioners and colleagues that this is in Marikana, which I have prepared. That can be seen now.
15  LT-COL BOTHA:  Mr Chair, normally when a crime scene technician misses something that he or she ought to have seen?
16  MR MADLANGA SC:  Based on the evidence that you have already given, if you were to miss something that the police that are at the scene would have observed but did not show you, what would happen in that instance?
17  LT-COL BOTHA:  Mr Chair, it all depends on the situation. If I find something or if I miss something later, and the person that showed me the scene are not there, he will know about it. If he is there and he sees me missing it, he will obviously show it to me.
18  MR MADLANGA SC:  Yes, continue, Colonel.
19  MR MADLANGA SC:  Could you please just confirm.
20  LT-COL BOTHA:  Okay, Mr Chair, I was requested by the evidence leaders of the commission to do a Google map on the incidents that happened in a certain area
21  MR MADLANGA SC:  Yes.
22  LT-COL BOTHA:  Because it leads to paragraph 4.
23  MR MADLANGA SC:  Alright, no, let us go, let's go to the slides.
24  CHAIRPERSON:  The essential thing is, to ask him to confirm it's correct if he is prepared so to confirm.
25  MR MADLANGA SC:  Yes.
26  CHAIRPERSON:  Then we make it an exhibit and then we have a pack of photographs, maps and so forth, we could possibly, I take it that's an exhibit as well. If you want these statement to go in that could be Exhibit A, the pack of photographs, maps and whatever could be Exhibit B. 

Page 278

Page 277

Page 279

Page 280
1. MR MADLANGA SC: Yes, Chair.
2. CHAIRPERSON: And someone could number the individual pages so we have B1 and B22 and that sort of thing.
3. MR MADLANGA SC: Yes.
4. CHAIRPERSON: I think from a housekeeping point of view, we should do that.
5. MR MADLANGA SC: That's going to be done, Chair.
6. LT-COL BOTHA: That is correct, Mr Chair.

1. LT-COL BOTHA: Next to the railway line.
2. MR MADLANGA SC: Yes, now what I want to make about the railway line, in the SAPS video footage that I'm referring to, there is a general who is addressing the workers close to a railway line. Would this be the railway line?
3. MR MADLANGA SC: Please continue with the lettering.
4. LT-COL BOTHA: Mr Chair, C is the position of Marikana CAS 118/8/2012, that is the murder of a police official. D is the position of Marikana CAS 119/8/2012, that is where a seriously injured police official was removed from the scene which allegedly later died at hospital. Mr Chair, F is the position of Marikana CAS 116, ag sorry E is the position of Marikana CAS 117/8/2012 that was the body of a civilian member. Point F is the position of Marikana CAS 116/8/2012, the position of a civilian member.
5. MR MADLANGA SC: When we moved C, D and E that was your scene, is that not so?
6. LT-COL BOTHA: That is correct, Mr Chair.

1. LT-COL BOTHA: Mr Chairman, I was requested to mark out specific cases and points which I marked out with alphabetical letters and also distances.
2. LT-COL BOTHA: A on the Google map, the marker A is the position of Marikana CAS 107/8/2012 and Wonderkop hostel.
3. LT-COL BOTHA: Captain Moshwana attended scene G?
4. MR MADLANGA SC: Who had attended to this scene.
5. LT-COL BOTHA: That is correct, Mr Chair.
6. MR MADLANGA SC: Please continue.
7. LT-COL BOTHA: That is the case where the two security guards were allegedly killed, Mr Chair. Mr Chair, then on the 13th there was an incident at Marikana where a railway line is of interest, that is B, it is the position of the railway line.
8. LT-COL BOTHA: That is correct, Mr Chair.
9. MR MADLANGA SC: Colonel, on recollection I think you were in attendance at the inspection in loco on the 2nd of October, that is so?
10. LT-COL BOTHA: That's correct, Mr Chair.
11. MR MADLANGA SC: Ja, I do not know if you have had sight of some video footage that forms part of the SAPS presentation, that is still going to be shown.
12. LT-COL BOTHA: Mr Chair, I actually explained this point to you on the day of the reconstruction.
13. MR MADLANGA SC: Yes. That's going to be shown.
15. CHAIRPERSON: So have you put his statement to him? Has he confirmed his statement is correct?
16. MR MADLANGA SC: Yes, Chair.
17. CHAIRPERSON: Yes, for the purposes of the record -
18. MR MADLANGA SC: But yes, as exhibits yes, yes Chair.
19. CHAIRPERSON: So have you put his statement to him? Has he confirmed his statement is correct?
20. MR MADLANGA SC: Chair, I was still going to do that because I wanted, I wanted him to read paragraph 5 when we get to the scene and then I would have him confirm the statement at that point.
22. MR MADLANGA SC: But thank you for that, Chairman. Can you please take us through the lettering that is appearing on the map, Colonel?
23. LT-COL BOTHA: Mr Chairman, I was requested to mark out specific cases and points which I marked out with alphabetical letters and also distances.
24. LT-COL BOTHA: I'm going to explain it now. A on the Google map, the marker A is the position of Marikana CAS 107/8/2012 and Wonderkop hostel.
25. LT-COL BOTHA: That is correct, Mr Chair.

1. MR MADLANGA SC: Yes. We then crossed that dirt road and moved across where your colleague, Mr Moshwana pointed out a spot where he had found a deceased person, would that be the F that you are referring to just now?
2. LT-COL BOTHA: That is correct, Mr Chair.
3. MR MADLANGA SC: Please continue.
4. LT-COL BOTHA: Point G is the position of Marikana CAS 115/8/2012 the body of a civilian member.
5. MR MADLANGA SC: Who had attended to this scene.
6. LT-COL BOTHA: Captain Moshwana attended to this scene.
7. MR MADLANGA SC: Yes?
8. LT-COL BOTHA: Point H is the position of the koppie at Wonderkop where the alleged gathering took place.
9. MR MADLANGA SC: Is that the koppie closest to the kraal, kraal where scene 1 took place?
10. LT-COL BOTHA: That is correct, Mr Chair.
11. MR MADLANGA SC: I?
12. LT-COL BOTHA: Point J is the position of Marikana CAS 121/8/2012 that is the, I refer to it as the civilian that was dead with a skull of a cow on his chest and I attended to that scene. Point J is the position of a railway line?
1st to 31st October 2012
Marikana
Rustenburg

116 was processed by Captain Moshwana, I just placed it on

115 is more to the north-
114 photos to show Marikana CAS 115 it is more to the north-
113 eastern side of the photo. 116 is more to the southern
112 side. Marikana CAS 117 is also to the southern side. CAS
111 is more to the bottom of the photo and CAS 119 is
110 between CAS 118 and 117.
109 MR MADLANGA SC:  Let's move to the next
108 one, B4?
107 LT-COL BOTHA:  Mr Chair, that's also an
106 aerial photo of the same area. It's just CAS 116 and 119.
105 116 was processed by Captain Moshwana, I just placed it on
104 the aerial photo as it's visible on the photo. I will
103 describe the points from A to CCC as I have marked them. A
102 is the body of Marikana CAS 118/8/2012 that is the
101 policeman.
100 LT-COL BOTHA:  I am, the photos is D4,
101 but I'm reading D5.
102 CHAIRPERSON:  B?
101 LT-COL BOTHA:  Sorry B.
100 MR MADLANGA SC:  Please continue.
101 LT-COL BOTHA:  YY is the body of the
civilian person that was on the scene. C was the position
100 of a stun grenade. Then in the little block that is marked
101 E and GG that is just exhibits but I have used that as the
100 two sides of the block, I found the following exhibits, 10
101 times 9 millimetre cartridge cases, two times rubber
100 bullets of a shotgun, that is the blue rubber balls, three
101 times cartridge cases shotgun. Three times shotgun
100 cartridge cases. Two small pools of blood that were very
101 close to each other, it's actually the point GG. That is
100 also the point allegedly where the injured policeman was
101 removed to hospital, CAS 119/8/2012.
1st to 31st October 2012
Marikana
Rustenburg

CHAIRPERSON: Sorry, Mr Madlanga?

MR MADLANGA SC: Yes?

CHAIRPERSON: I'm not sure whether I'm following correctly but in my copy of the documents, after what I think is B6 is a document headed explanation of [inaudible] it appears to be virtually the same as 5 except it's, this is now B6.

LT-COL BOTHA: Correct, it's the same.

CHAIRPERSON: It's the same scene and so the marks are virtually the same.

LT-COL BOTHA: Ja.

CHAIRPERSON: I now follow, thank you.

LT-COL BOTHA: That's correct, Mr Chair, it just excludes CAS 116. Because the house of CAS 116 does not appear as on the previous photo.

MR MADLANGA SC: And B8?

LT-COL BOTHA: Mr Chair on the 14th of August 2012 I attended to a scene, on the 14th of August 2012, I have attended to a scene behind the kopje at Wonderkop Marikana. I have prepared the aerial photo and the description is actually on the photo. The body can be seen on the photo where it's marked at as body and next to the N of north I put the caption there that says hilltop that is edge of, the back of the hill at Wonderkop Marikana.

CHAIRPERSON: I'm not sure whether I'm following the transcript.

MR MADLANGA SC: That would be the southern side of the kopjie?

LT-COL BOTHA: That would be the southern side of the kopjie, Mr Chair.

MR MADLANGA SC: Is there anything you wish to say about B9?

LT-COL BOTHA: No, Mr Chair, the further photos were prepared by someone else.

MR MADLANGA SC: Thank you. May I ask you to just confirm if it is so, the truthfulness of the content of your statement?

LT-COL BOTHA: My statement reads correct, Mr Chairman. There is a few small changes in the sentencing of my qualifications but otherwise it's correct.

MR MADLANGA SC: And would that be in accordance with how you read the statement?

LT-COL BOTHA: That is how I read it, I changed it as the small changes yes.

MR MADLANGA SC: And those who should look at the transcript?

LT-COL BOTHA: Ja.

MR MADLANGA SC: Yes, now in paragraph 14 you mentioned attending to a scene or at a scene on the 13th of August and then in paragraph 5 you indicate who it is that indicated some points to you, that being Brigadier Van

CHAIRPERSON: Sorry, Mr Madlanga?

MR MADLANGA SC: Yes?

CHAIRPERSON: I'm not sure whether I'm following correctly but in my copy of the documents, after what I think is B6 is a document headed explanation of [inaudible] it appears to be virtually the same as 5 except it's, this is now B6.

LT-COL BOTHA: Correct, it's the same.

CHAIRPERSON: It's the same scene and so the marks are virtually the same.

LT-COL BOTHA: Ja.

CHAIRPERSON: I now follow, thank you.

LT-COL BOTHA: That's correct, Mr Chair, it just excludes CAS 116. Because the house of CAS 116 does not appear as on the previous photo.

MR MADLANGA SC: And B8?

LT-COL BOTHA: Mr Chair on the 14th of August 2012 I attended to a scene, on the 14th of August 2012, I have attended to a scene behind the kopje at Wonderkop Marikana. I have prepared the aerial photo and the description is actually on the photo. The body can be seen on the photo where it's marked at as body and next to the N of north I put the caption there that says hilltop that is edge of, the back of the hill at Wonderkop Marikana.

CHAIRPERSON: I'm not sure whether I'm following the transcript.

MR MADLANGA SC: That would be the southern side of the kopjie?

LT-COL BOTHA: That would be the southern side of the kopjie, Mr Chair.

MR MADLANGA SC: Is there anything you wish to say about B9?

LT-COL BOTHA: No, Mr Chair, the further photos were prepared by someone else.

MR MADLANGA SC: Thank you. May I ask you to just confirm if it is so, the truthfulness of the content of your statement?

LT-COL BOTHA: My statement reads correct, Mr Chairman. There is a few small changes in the sentencing of my qualifications but otherwise it's correct.

MR MADLANGA SC: And would that be in accordance with how you read the statement?

LT-COL BOTHA: That is how I read it, I changed it as the small changes yes.

MR MADLANGA SC: And those who should look at the transcript?

LT-COL BOTHA: Ja.
<table>
<thead>
<tr>
<th>Page 293</th>
<th>Page 295</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Zyl is that so?</td>
<td>1 CHAIRPERSON: I see, alright thank you.</td>
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<tr>
<td>2 LT-COL BOTHA: That is correct, Mr Chair,</td>
<td>2 MR MADLANGA SC: Yes, that is the</td>
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<tr>
<td>3 when I arrived at the scene brigadier Van Zyl met me there</td>
<td>3 evidence, Chair commissioners.</td>
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<td>4 and he pointed out the scene to me.</td>
<td>4 CHAIRPERSON: Mr Semenya, any questions</td>
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<td>5 MR MADLANGA SC: Thank you Chair,</td>
<td>5 you wish to ask the witness?</td>
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<tr>
<td>6 commissioners -</td>
<td>6 MR SEMENYA SC: Yes, Chairperson.</td>
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<td>7 CHAIRPERSON: I’m sorry, Mr Madlanga.</td>
<td>7 Colonel, from my consultations it appears that the mapping</td>
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<td>8 MR MADLANGA SC: Yes?</td>
<td>8 of the photographs as we have them, has been the best</td>
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<td>9 CHAIRPERSON: I would find it easier</td>
<td>9 attempt at identifying what you found on the scene, is that</td>
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<td>10 later on I think, if we could incorporate into Exhibit C</td>
<td>10 correct?</td>
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<tr>
<td>11 the exhibit numbers to which he refers. Now for example in</td>
<td>[15:50] LT-COL BOTHA: Just rephrase the</td>
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<tr>
<td>12 para 6 he refers to an aerial photograph. I take it that's</td>
<td>12 question, please? I don't understand.</td>
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<td>13 B8? In para 5 he talks about a photo plan that he, he</td>
<td>13 MR SEMENYA SC: This represents the best</td>
</tr>
<tr>
<td>14 refers to photographs he took, measurements and a photo</td>
<td>14 attempt by your team of identifying evidentiary material,</td>
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<tr>
<td>15 plan. Can we just for the sake of completeness get what,</td>
<td>15 as you found the scene, is that right?</td>
</tr>
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<td>16 what the B numbers are? So when we read it next time, it</td>
<td>16 LT-COL BOTHA: Mr Chair, I was requested</td>
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<tr>
<td>17 will be easier to follow.</td>
<td>17 by the evidence leaders to prepare the photos in this way.</td>
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<tr>
<td>18 MR MADLANGA SC: What B1 relates to,</td>
<td>18 MR SEMENYA SC: When the evidence later</td>
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<td>19 etcetera?</td>
<td>19 shows that there was more bullets fired and therefore more</td>
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<td>20 CHAIRPERSON: I think the only thing he</td>
<td>20 cartridges than are indicated on your pictures, that would</td>
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<td>21 refers to, photographs and plans and so forth that he</td>
<td>21 not be necessarily incorrect, am I right?</td>
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<tr>
<td>22 refers to are in paras 5 and 6.</td>
<td>22 LT-COL BOTHA: If we’re talking about the</td>
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<tr>
<td>23 MR MADLANGA SC: Yes.</td>
<td>23 two scenes that I’ve attended, that would not necessarily</td>
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<td>24 CHAIRPERSON: We haven’t got yet to para</td>
<td>24 be incorrect.</td>
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<tr>
<td>25 7. So para 5 he talks about the scene, which is I take it</td>
<td>25 MR SEMENYA SC: Neither are you intending</td>
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<table>
<thead>
<tr>
<th>Page 294</th>
<th>Page 296</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 depicted on B3 and B4, is that right? No, no para 5 is</td>
<td>1 to convey that you had picked up all the bullets that were</td>
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<tr>
<td>2 that B3 and B4?</td>
<td>2 fired, I mean cartridges of all bullets fired. That’s not</td>
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<tr>
<td>3 MR MADLANGA SC: Chairperson, may I</td>
<td>3 what you’re contending?</td>
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<tr>
<td>4 suggest this, unless there is going to be anything</td>
<td>4 LT-COL BOTHA: Sorry, can you just</td>
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<td>5 contentious about it, what I would suggest is that perhaps</td>
<td>5 explain the question, please?</td>
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<tr>
<td>6 then he depose to a sworn statement in which reference to</td>
<td>6 MR SEMENYA SC: It is not your evidence</td>
</tr>
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<td>7 all of those will be made -</td>
<td>7 necessarily that all the cartridges you indicate on your</td>
</tr>
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<td>8 CHAIRPERSON: Okay, at the same time.</td>
<td>8 plans, are all that was discharged on the day, correct?</td>
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<td>9 MR MADLANGA SC: In the manner in which</td>
<td>9 LT-COL BOTHA: Mr Chair, those were the</td>
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<td>10 you suggest, Mr Chair.</td>
<td>10 cartridge cases that I’ve collected on the crime scene, the</td>
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<td>11 CHAIRPERSON: That seems a sensible</td>
<td>11 amounts that I’ve given.</td>
</tr>
<tr>
<td>12 suggestion.</td>
<td>12 MR SEMENYA SC: There could be more,</td>
</tr>
<tr>
<td>13 MR MADLANGA SC: Yes, thank you, thank</td>
<td>13 that’s all I’m asking?</td>
</tr>
<tr>
<td>14 you. That is the evidence of the Colonel, Chairperson,</td>
<td>14 LT-COL BOTHA: Well, that’s the ones that</td>
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<tr>
<td>15 thank you.</td>
<td>15 I found. If there are more - there might be more, I’m not</td>
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<td>16 CHAIRPERSON: There is also a reference</td>
<td>16 sure.</td>
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<tr>
<td>17 in para 7 of the statement to an aerial video recording he</td>
<td>17 CHAIRPERSON: There may be some you</td>
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<tr>
<td>18 made on the 16th of August. Are you going to lead that</td>
<td>18 didn’t find?</td>
</tr>
<tr>
<td>19 evidence later?</td>
<td>19 LT-COL BOTHA: There might be some we</td>
</tr>
<tr>
<td>20 MR MADLANGA SC: That is the video</td>
<td>20 didn’t find. It’s possible.</td>
</tr>
<tr>
<td>21 footage that my learned friend, Mr Budlender referred to</td>
<td>21 MR SEMENYA SC: Those are the questions,</td>
</tr>
<tr>
<td>22 and which he said it does not show scenes 1 and 2. It is</td>
<td>22 Chair.</td>
</tr>
<tr>
<td>23 that video, but then the truthfulness of paragraph 7 in the</td>
<td>23 CHAIRPERSON: Thank you. Before someone</td>
</tr>
<tr>
<td>24 sense of him having taken that has been confirmed. But at</td>
<td>24 else asks questions, did you search the scene as thoroughly</td>
</tr>
<tr>
<td>25 this stage I don’t propose to lead him on that, Chair.</td>
<td>25 as you could to find bullets and cartridge cases and any</td>
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1st to 31st October 2012

Marikana Rustenburg

LT-COL BOTHA: Mr Chair, we've searched the scene quite thoroughly, but you have to draw a line somewhere. I mean, you can't search all the way to Marikana. You have to, you draw the line somewhere, and I searched on what was pointed to me, and then if you find something on your own observations further, or even on the edges, then you carry on until you find nothing anymore, and then you decide, well, this is where I draw the line, but it was searched thoroughly.

MR BURGER SC: Thank you, Chair.

CHAIRPERSON: Mr Tip?

MR TIP SC: Yes, Mr Chair, I made the recording myself. I was in the police helicopter.

LT-COL BOTHA: Yes, Mr Chair, I made the recording of approximately from what time to what time your recording was made by you?

LT-COL BOTHA: Mr Chair, if I remember correctly, it's either 15:58 or 16:58. I can also confirm that, but I know it's 41 minutes long. I cannot remember the starting time precisely now.

MR TIP SC: As far as you were able to tell at the time, did you capture the entire operation on your video recording?

LT-COL BOTHA: No, Mr Chair, definitely not. The video – we determined that the video actually started after the shooting at scene 1 already happened.

MR TIP SC: Is that because the helicopter was not yet on the scene, or because you had not switched on the video recorder?

LT-COL BOTHA: No, Mr Chair, it was, I was just a passenger in the chopper. I started recording immediately when we got into the air.

MR TIP SC: Thank you, Mr Chair.

CHAIRPERSON: Mr Bruinders?

MR BRUINDERS SC: Can I come back to a question asked to you by Mr Burger? When were the two bodies found, whom you say were security officers, at A?

LT-COL BOTHA: Mr Chair, I wasn't on the scene showed me the point. I took the reading and I placed it in the map. The point was just shown to me. I took a –

MR TIP SC: That will be the member of the evidence leaders.

CHAIRPERSON: I just wanted to get some clarity, if possible. Did you make that recording yourself whilst aboard the police helicopter?

LT-COL BOTHA: Yes, Mr Chair, I made the recording myself. I was in the police helicopter.

MR TIP SC: Can you give us an indication of approximately from what time to what time your recording was made by you?

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Marikana
Rustenburg

1st to 31st October 2012

MR BRUINDERS SC: Do you have a name of that person?
LT-COL BOTHA: It's Warrant-Officer Opperman.
MR BRUINDERS SC: If we would like to know more about what he saw and what he found, we'd have to talk to him?
LT-COL BOTHA: That is correct, Mr Chair.
MR BRUINDERS SC: Then you also referred to what you called civilians who were found and whom you show on B1, is that right?
LT-COL BOTHA: That is correct, Mr Chair.
MR BRUINDERS SC: Are we to understand that these civilians are not people that you found on the scene?
LT-COL BOTHA: They were on the scene, number E, the one marked as E, I found on the scene. It was indicated to me by Brigadier Van Zyl.
MR BRUINDERS SC: Was that on the 13th?
LT-COL BOTHA: That was on the afternoon of the 13th of August.
MR BRUINDERS SC: Did Brigadier Van Zyl point any other bodies out to you?
LT-COL BOTHA: He showed me the body of the policeman, also informed me that there are two other bodies, and due to the fact that it's a vast scene and I was alone at that stage, I called for members of the LCRC to attend to the other two bodies.
MR BRUINDERS SC: So just so that we understand you, are C and E the bodies that you saw?
LT-COL BOTHA: Yes, Mr Chair, C and E were the bodies that I saw on the crime scene.
MR BRUINDERS SC: They were pointed out to you by, you said Brigadier?
LT-COL BOTHA: Brigadier Van Zyl.
MR BRUINDERS SC: Who is he?
LT-COL BOTHA: If I'm not mistaken, he's the Provincial Detective Head of the North West Province.
MR BRUINDERS SC: What time was it when he pointed out the two bodies to you on the 13th?
LT-COL BOTHA: Mr Chair, it was shortly after I arrived at the scene, and again I said I can go and confirm precisely what time I arrived. I seem to remember it was just before or just after 3 o'clock in the afternoon, and it would have been just after I arrived at the crime scene.
MR BRUINDERS SC: How long before you was Brigadier Van Zyl on the scene?
LT-COL BOTHA: I have no idea, Sir.

MR BRUINDERS SC: He got there before you?
LT-COL BOTHA: He was on the scene when I arrived there.
MR BRUINDERS SC: The other two bodies that Brigadier Van Zyl told you about, did he show them, or point them out to your colleagues?
LT-COL BOTHA: Mr Chair, I'm not sure. My colleagues arrived and I was already busy processing my scene. So I don't know who showed them the other two bodies.
MR BRUINDERS SC: What are the names of your colleagues?
LT-COL BOTHA: The person that processed those two scenes, is Captain Moshwana.
MR BRUINDERS SC: When you got to that particular scene around 3 o'clock on the 13th, did you yourself see any injured?
LT-COL BOTHA: No, Mr Chair, I did not see any injured people; there were only deceased people on the scene.
MR BRUINDERS SC: Did Brigadier Van Zyl speak of any injured people when he was pointing out certain things to you?
LT-COL BOTHA: I was shown where the injured policeman was taken away. There were two small pools of blood on the scene. I cannot recall that he told me of any other injured people on that scene there, specifically.
MR BRUINDERS SC: When you got to that scene, did you see any police vehicles?
LT-COL BOTHA: Mr Chair, there was quite an amount of police vehicles and members on the side of the road.
MR BRUINDERS SC: How many vehicles?
LT-COL BOTHA: I cannot tell you how many vehicles, I did not count the vehicles.
MR BRUINDERS SC: You say quite a number, and I don't want to press you for an exact number, but can you give any idea, were these more than 10, more than 20, more than 30 vehicles?
LT-COL BOTHA: Sir, I'm going to have to guess if I want to give a total. There were a number of police vehicles parked on the side of the road, which you can see on the photo. I honestly cannot remember how many vehicles. I'm going to take a wild guess if I say now how many vehicles.
MR BRUINDERS SC: I wouldn't press an experienced policeman like you to take a wild guess, so I'm going to move on.
1st to 31st October 2012
Marikana
Rustenburg

1 vehicles. I can't really say.
2 MR BRUINDERS SC: These policemen that you saw there were not part of your investigating team?
3 LT-COL BOTHA: No, they weren't part of my investigation team.
4 MR BRUINDERS SC: Where were they from?
5 LT-COL BOTHA: I have no idea, Mr Chair.
6 MR BRUINDERS SC: Could you tell me they looked at?
7 LT-COL BOTHA: I obviously did look at them.
8 MR BRUINDERS SC: When you did, could you tell what units they were from?
9 LT-COL BOTHA: Mr Chair, I can remember that there were members from the POPs Unit because well there were members from the POP Unit because there were Nyalas also. I cannot, I don't know if there were members from any other units. I can't remember, I did not look at them like that to remember from where they are, so I can't tell you that.
10 CHAIRPERSON: I'm sorry, if I can just interpose for a moment. You talk about POP, members from POP. That's the Public Order Policing sector?
11 LT-COL BOTHA: Yes, Mr Chair, that's Public Order Police.
12 CHAIRPERSON: Now the Nyalas are those vehicles which Public Order Police use?
13 LT-COL BOTHA: Sorry, Mr Chair?
14 CHAIRPERSON: Nyalas, or they the vehicles that the Public Order Police section use?
15 LT-COL BOTHA: Mr Chair, they also use them, and I can remember I recognised one of the POP members, that's why I know. It's not because only there are Nyalas. There was a POP member that I recognised. He knew me as Colonel, so he was from POP. The rest I don't really know.
16 MR BRUINDERS SC: I hate to be a nag, but how many Nyalas were there?
17 LT-COL BOTHA: Sir, I can remember one standing at a dead body, and there was one next to the road. There might have been more. I can't remember.
18 MR BRUINDERS SC: It's rather a novel way of taking instructions, but could I peer across the rows to ask my attorney whether there's anything else he'd like me to ask this witness, Mr Chair?
19 CHAIRPERSON: You can do that, or you can get out of your seat and go and ask the attorney. Mr Bruinders, it's already past the time that we normally adjourn for tea. Would you appreciate it if we took the adjournment now, because we took the tea adjournment now, you can get instructions for as long as you like. Mr Bizos, who I'm going to call upon to cross-examine next, if he wishes to do so, could also get himself ready. Thereafter we'll have Mr Ntsebeza and Mr Mpofu. So I suggest we take a 10-minute adjournment at this stage.

Page 305

1 understand you can't give an exact number, but can you place us somewhere in the ballpark? Were there about three, six, 10, 20?
2 LT-COL BOTHA: Mr Chair, there were definitely more than three. If I must think, I think there were more than six, but if I have to say 10, more or less 10, plus-minus 10. I cannot say, it's not three or four, it was more than that.

Page 306

1 would be more than that.
2 [16:10] CHAIRPERSON: Thank you, that gives us an idea.
3 MR BRUINDERS SC: Do you remember what vehicles you saw?
4 LT-COL BOTHA: I can recall that some of the vehicles were Kombis.
5 MR BRUINDERS SC: Any other vehicles?
6 LT-COL BOTHA: No, there were a police bakkie of Marikana. I can't recall again, I didn't really notice that because that wasn't part of my scene.
7 MR BRUINDERS SC: How many policemen were there on the scene?
8 LT-COL BOTHA: Sir, again there were an amount of policemen on the scene, more than 10, maybe more than 20. I cannot, I did not count them. Some of them were in the vehicles, some of them were out of the vehicles. I cannot give an exact number.

Page 307

1 vehicles which Public Order Policing use?
2 LT-COL BOTHA: Sorry, Mr Chair?
3 CHAIRPERSON: Nyalas, or they the vehicles that the Public Order Police section use?
4 LT-COL BOTHA: Mr Chair, they also use them, and I can remember I recognised one of the POP members, that's why I know. It's not because only there are Nyalas. There was a POP member that I recognised. He knew me as Colonel, so he was from POP. The rest I don't really know.
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Page 308

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2 [INQUIRY ADJOURNS INQUIRY RESUMES]
3 [16:35] CHAIRPERSON: The Commission resumes. Mr Bruinders, you were cross-examining the witness.
4 MR BRUINDERS SC: Thank you, just a few more questions. Is it possible for us to have B1 up on the screen? Now Colonel, could you point to where it was that you saw the vehicles, on B1?
5 LT-COL BOTHA: Sir, if I must draw a line, then it's more or less between D, E and F on that gravel. You can see there's a road running there, on that road.
6 MR BRUINDERS SC: So that which looks like a yellow line is a road?
7 LT-COL BOTHA: It's a road, yes.
8 MR BRUINDERS SC: Is that the only place that you saw vehicles on that day?
9 LT-COL BOTHA: While I travelled to that point there was a Nyla in the veld. There were vehicles parked on that road. I can't remember seeing vehicles at any place else.
10 MR BRUINDERS SC: When you say the Nyalas...
1st to 31st October 2012  
Mariorna  
Rustenburgh

1 was in the veld, where in the veld was it?
2 LT-COL BOTHA: By the body, by C.
3 MR BRUINDERS SC: B is what you say the
4 position of the railway line is, not so?
5 LT-COL BOTHA: Just say again?
6 MR BRUINDERS SC: B is what you say the
7 position of the railway line is.
8 LT-COL BOTHA: I went to the point and I
9 Googled it and that is where it came out and it looks like
10 it's a railway line, yes.
11 MR BRUINDERS SC: You are reasonably
12 familiar with that area?
13 LT-COL BOTHA: Sorry, ask the question
14 again, sorry?
15 MR BRUINDERS SC: My question is, you are
16 reasonably familiar with that particular area between the
17 points B, G, F and so on?
18 LT-COL BOTHA: Well, the first time I saw
19 the area was when I visited the scene. It’s not a place
20 that I’ve seen before.
21 MR BRUINDERS SC: I understand. How long
22 did you spend there that afternoon?
23 LT-COL BOTHA: Mr Chairman, I can
24 confirm, but I think it’s more or less five hours that I
25 spent there.

1 LT-COL BOTHA: Yes, Mr Chair, there’s a
2 dirt road that runs parallel to it.
3 MR BRUINDERS SC: Did you see the dirt
4 road?
5 LT-COL BOTHA: On the day of the
6 reconstruction I was on the dirt road with the chairperson.
7 MR BRUINDERS SC: That’s a fairly
8 undeveloped dirt road.
9 LT-COL BOTHA: Yes, it’s not like the one
10 that’s marked with the yellow line.
11 MR BRUINDERS SC: So on the day of the
12 reconstruction you say - well, can I ask you, did you walk
13 from the more developed road to the less developed one?
14 LT-COL BOTHA: Yes, I walked on the road.
15 MR BRUINDERS SC: Your colleague who
16 recognised you as a colonel on 13 August, do you remember
17 his name?
18 LT-COL BOTHA: No idea, Sir. I just know
19 that he’s from the area - well, I don’t even know if he’s
20 from the area. He knew me as Colonel, so he knew me and
21 that’s why I know he had the red badge, which is a Public
22 Order Policing badge. That’s why I know that.
23 MR BRUINDERS SC: Now you say that he
24 recognised you, not so?
25 LT-COL BOTHA: He recognised me, ja.

1 MR BRUINDERS SC: And in those five hours
2 you walked around roughly the points B, C, F, G, D, E,
3 etcetera?
4 LT-COL BOTHA: No, Mr Chair, I did not go
5 to B. I did not then know that there was a discussion at B
6 or that a point B existed. I posted the scene where the
7 bodies were found. I did not go to F. I did not go to G.
8 MR BRUINDERS SC: So you won’t know that
9 – or firstly, do you know which way the railway line runs?
10 Could you point it out to us on B1?
11 LT-COL BOTHA: No, well which way the
12 trains can go on it, or which way it runs? It can go both
13 ways. Look, I know –
14 MR BRUINDERS SC: Which way does the
15 railway line run –
16 LT-COL BOTHA: On the photo –
17 MR BRUINDERS SC: Does it run from the
18 left to the right of that photograph, or does it run from
19 the bottom to the top?
20 LT-COL BOTHA: Oh, okay. Sorry. Sorry,
21 Mr Chair. It runs from the, just there by the side of B it
22 goes from the left to the right.
23 MR BRUINDERS SC: And is there a dirt
24 road that runs parallel to that railway line in the same
25 direction?
1 when the helicopter was already, had already landed on the
2 JOC?
3 LT-COL BOTHA: I was at the JOC when the
4 chopper was there. I arrived there when the Police - I
5 can't say that the Police chopper was there when I arrived
6 there. What I'm saying is when they said we're going to
7 fly, the chopper was there; it was on the ground.
8 MR BRUINDERS SC: Do you know whether
9 that chopper had been up earlier?
10 LT-COL BOTHA: No, Mr Chair, I don't
11 know.
12 MR BRUINDERS SC: Were you and the pilot
13 the only two in the chopper?
14 LT-COL BOTHA: No, we were five people in
15 the chopper.
16 MR BRUINDERS SC: Was anybody else taking
17 photographs from the chopper?
18 LT-COL BOTHA: There was a member, I
don't know from where he is, I presume it was a police
19 member that had a camera with him in the chopper.
20 MR BRUINDERS SC: Did you see him take
21 photographs?
22 LT-COL BOTHA: I did, I do think he did
23 take photographs, yes.
24 MR BRUINDERS SC: Besides you, anybody
25 take video footage?
26 LT-COL BOTHA: No, I took video footage.
27 MR BRUINDERS SC: I gave my camera to the, Warrant-Officer Venter that was
28 sitting right in front of me and she was, she took some
29 photos because I couldn't handle both cameras together.
30 MR BRUINDERS SC: Besides you, did
31 anybody else take video footage?
32 LT-COL BOTHA: Mr Chair, not that I know
33 of. I, according to me I took video footage.
34 MR BRUINDERS SC: So in this chopper were
35 a pilot and four of you?
36 LT-COL BOTHA: That is correct, Mr Chair.
37 MR BRUINDERS SC: You took video footage.
38 LT-COL BOTHA: I took video footage, yes.
39 MR BRUINDERS SC: Two of you took
40 photographs. 
41 LT-COL BOTHA: I do know that Warrant-
42 Officer Venter took photos because it was with my camera.
43 I presume the other guy took photos because he had a camera
44 with him.
45 MR BRUINDERS SC: What did the fourth
46 officer do?
47 LT-COL BOTHA: The person who was sitting
48 between me and the person on the other side with the
49 camera.
Chairperson: Yes, I had that answer.

Chairperson: Yes, I heard clearly. Right, then we can carry on. You’re correct, he gave the answer, to disarm and disperse the people. Please carry on, Mr Bizos.

MR Bizos: I’m sorry, with the rain.

Chairperson: [inaudible] not hearing the answer. To disperse –

Chairperson: Mr Bizos: To disarm and disperse.

Chairperson: Did he tell you more or less when he expected that operation to commence?

LT-Col Botha: Mr Chairman, he just said I must wait and they will call on me when they need me.

MR Bizos: When were you told that you were to board the helicopter?

Chairperson: Mr Chairman, I cannot remember the exact time. The people went to the chopper and Brigadier Van Zyl told me I must go because I’m going to make the recording.

Mr Mahlangu: Mr Chairman, I did not hear the question.

[16:55] Chairperson: Part of the problem we have here in the auditorium is that you don’t hear clearly. Right, then we can carry on. You’re doing it with anyone.

Chairperson: Mr Bizos, it’s suggested that if you pull the microphone closer, what you say may be amplified and we will then hear it.

MR Bizos: Very well. Did you discuss with any of the persons that you met or boarding the helicopter or when you sat down, what is going to happen, what am I supposed to film?

Chairperson: LT-Col Botha: No, Mr Chair, I did not discuss it with anyone. I was given the information by the brigadier.

Chairperson: LT-Col Botha: Did you discuss with the person that asked you to be there or any of your colleagues what was the nature of the operation that you were expected to film?

Chairperson: LT-Col Botha: No, I did not discuss it with anyone. I was given the information by the brigadier.

Chairperson: MR Bizos: What did he tell you, what operation were you to film? The police having a good day, an afternoon, or what were they going to do?

Chairperson: MR Bizos: What were you supposed to film?

Chairperson: MR Madlanga: Mr Chair –

Chairperson: MR Bizos: What were you supposed to film?

Chairperson: MR Madlanga: Mr Chairman, I think the witness did answer that the operation was to disarm and disperse the people.

Chairperson: Yes, I had that answer as well. What concerns me is we’re now in the middle of a thunderstorm and I’m not sure how, with what degree of accuracy or clarity the proceedings are being recorded. So perhaps those responsible for recording the proceedings –
1st to 31st October 2012  
Marikana  
Rustenbgur

1 LT-COL BOTHA: Mr Chair, I was obviously interested in what I was going to film. I did not ask anyone how the operation was going to be done or giving me a planning or anything like that.
2 MR BIZOS SC: Yes.
3 LT-COL BOTHA: I got into the chopper; the chopper flew to the specific area and I filmed.
4 MR BIZOS SC: What did you see was happening on the ground when you looked out of the chopper?
5 LT-COL BOTHA: Mr Chair, when I started filming, through the small lens you can't really see a lot, but when I started filming and then afterwards you can see that, at scene 1, I can't even now remember if I started recording specifically at scene 1, that the shooting definitely already took place.
6 CHAIRPERSON: In other words the incident -
7 LT-COL BOTHA: Ja, the incident.
8 CHAIRPERSON: - where the -
9 LT-COL BOTHA: The incident already took place.
10 CHAIRPERSON: - 34 people had been shot,
11 incident, the first shooting.
12 LT-COL BOTHA: Not, not, the first
13 LT-COL BOTHA: Ja, and -
14 MR BIZOS SC: Mr Chair, I disagree.
15 LT-COL BOTHA: Mr Chair, I was obviously interested in what I was going to film. I did not ask from the beginning when I started filming, I film what I see on the ground. I did not know there was a shooting happening, so I couldn't force the chopper to fly to a shooting.
16 MR BIZOS SC: Colonel, would you agree that if you had taken the trouble to be awake to any situation in which 35 people were killed, that you failed to record that bit of South African history?
17 LT-COL BOTHA: Mr Chair, I disagree.
18 MR BIZOS SC: What was the rank of the officer sitting next to you on the helicopter?
19 LT-COL BOTHA: Mr Chair, I did not say I
20 did you shoot any of the shooting, if I may -
21 LT-COL BOTHA: Mr Chair, I had a look at the video with the evidence leaders and according to us I did not.
22 MR BIZOS SC: Now would you agree if I put it very bluntly that on this momentous occasion in South Africa's history when 35 people were killed, a colonel in the employ of the Police was on a helicopter whilst this was happening, and his job was to film, but he managed to avoid filming anything that showed that people were being killed? Am I clear in my question, and if so, what is your answer?
23 LT-COL BOTHA: I will not agree. I did not fly the chopper, Mr Chair, and I filmed what I saw on the ground. I said from the beginning when I started filming, I film what I see on the ground. I did not know there was a shooting happening, so I couldn't force the chopper to fly to a shooting.
24 MR BIZOS SC: Colonel, would you agree that if you had taken the trouble to be awake to any situation in which 35 people were killed, that you failed to record that bit of South African history?
25 LT-COL BOTHA: Mr Chair, I disagree.

1 CHAIRPERSON: Oh, sorry.
2 LT-COL BOTHA: Ja, and -
3 CHAIRPERSON: Shooting at scene 1 had already happened?
4 LT-COL BOTHA: Ja, ja, and in the veld behind scene 1 there was a lot of people, if I must call it, dispersing.
5 MR BIZOS SC: I see. Did you film any people being shot? If we accept the correctness of your answer that you did not film the first shooting - I'm going to come back to that - did you record any of the shooting after the first shooting, so to speak?
6 LT-COL BOTHA: Mr Chair, I don't know when the second shooting took place. I don't know if I filmed it. I didn't even know that there was a second shooting until I got onto the ground.
7 MR BIZOS SC: So the film that you brought into being shows no shooting at all? 20 Sir, no it doesn't show any shooting at all.
19 LT-COL BOTHA: As far as I've got it,
20 MR BIZOS SC: Why the uncertainty?
21 LT-COL BOTHA: I'm not uncertain. I don't know if, when the shooting took place on the ground.
22 So I don't know -
23 MR BIZOS SC: No, no, the question was,
1st to 31st October 2012  
Marikana  
Rustenburgh

1 did not hear a thing. I said if I must now recall his words and quote his words, it's going to be – I can't do that. I can't remember precisely what was said. That's what I'm saying.

2 MR BIZOS SC: What was the subject matter that he was broadcasting to the people below?

3 LT-COL BOTHA: What was the what?

4 CHAIRPERSON: The question is, what was the subject matter of what he was broadcasting to the people –

5 LT-COL BOTHA: Just explain "subject matter" to me, please.

6 CHAIRPERSON: What was the topic that he was talking about when he was speaking to the people? Can you remember?

7 LT-COL BOTHA: Sir, I can, I cannot remember what was said. I mean the chopper's noise is not so loud that I cannot hear him, but if I have to recall specifically words and things now, I cannot remember what was said. He spoke to people on the ground every now and then and I can't remember what was said.

8 MR BIZOS SC: Perhaps if I may speculate, was he telling them, be careful, policemen, the crowd is going to kill you? Or some of the people are running from where they were onto the small kopje, chase them and kill them? This was [inaudible]. How come that it went above your head?

9 LT-COL BOTHA: Mr Chair, the first that I learned that there was a shooting at scene 1, ag, at scene 2, was when I got to the ground and I was told that people were killed there.

10 MR BIZOS SC: Do you think that the brigadier was as ignorant as you, and that the communication –

11 CHAIRPERSON: Sir, before you say that, I don't think it's appropriate for people to laugh when questions are asked. This is an important part of the case. Questions are being asked by counsel. Witness is doing his best to answer them. I don't think it's appropriate for people to laugh. Please bear that in mind. Carry on, Mr Bizos.

12 MR BIZOS SC: Did you hear the question?

13 LT-COL BOTHA: Mr Chair, I was not ignorant. The first, I'm again going to say, the first that I realised that people were shot, especially at scene 2, was when I got onto the ground.

14 MR BIZOS SC: Would the brigadier have had a clear view of what was happening below?

15 LT-COL BOTHA: I don't know, Sir.

16 MR BIZOS SC: What is the purpose – you know, Colonel, you undervalue your intelligence. What would the purpose –

17 CHAIRPERSON: I don't think it's appropriate to make comments, Mr Bizos. Just ask him questions.

18 MR BIZOS SC: Sorry, I'll –

19 CHAIRPERSON: Don't make comments. We can make comments later when we give the report.

20 MR BIZOS SC: Or when we argue. I'm sorry.

21 LT-COL BOTHA: Can I just –

22 MR BIZOS SC: What was the purpose of there being communication between the person, the high-ranking officer on the helicopter and presumably the high-ranking officer below?

23 LT-COL BOTHA: Can I just qualify my first question? I didn't sit in a position of Brigadier Fritz. That's why I said I don't know how his view was. He was sitting in the middle in the chopper, in the back seat.

24 MR BIZOS SC: Did the pilot say anything about what was happening below?

25 LT-COL BOTHA: Sir, there was a lot of talk on the radio. People said for instance the, you can see the people were moving or running in certain directions on the ground and stuff like that, and they were –

26 MR BIZOS SC: Just repeat that, please.

27 LT-COL BOTHA: You could see that people were dispersing in the ground, on the ground. There are photos of that. So there was obviously a lot said on the police radios.

28 MR BIZOS SC: Were there some people who were running on the ground who were shot dead and couldn't continue running?

29 LT-COL BOTHA: Mr Chair, I did not see anyone being shot at the ground.

30 MR BIZOS SC: Did you see anybody falling down on the ground?

31 LT-COL BOTHA: I did not see anyone falling down on the ground. I saw what looked like bodies lying on scene 1, and that was, that was that.

32 MR BIZOS SC: How many bodies did you see lying on the ground?

33 LT-COL BOTHA: I cannot recall. I did see that there were bodies on the ground.

34 MR BIZOS SC: How far from the place where there was the barbed, the razor wire, did you see the bodies on the ground?

35 LT-COL BOTHA: At kraal, at the kraal, in front of the kraal.
24 it must be close by.
23 that I saw wounded people or bodies lying 800 metres from
22 people on the ground. I could, I did, I cannot confirm
21 LT-COL BOTHA: Sir, there was a lot of
20 open space there. I could, I did, I cannot confirm
19 that I saw wounded people or bodies lying 800 metres from
18 the scene. I saw the bodies there in front of the kraal.
17 MR BIZOS SC: As a criminal expert of
16 LT-COL BOTHA: Yes, there were four other
15 LCRC members on the ground and I did not know what their
14 movement was on the ground.
13 MR BIZOS SC: Some of them killing
12 people, did you expect them to investigate themselves?
11 LT-COL BOTHA: The members on the scene?
10 your standing and rank, didn’t you think that you should
9 show some interest of what had happened and whether there
8 were other bodies and what steps were being taken in order
7 to protect the crime scene?
6 LT-COL BOTHA: Sir, I was flying, making
5 a video. It’s not that I was not interested, and the
4 chopper did not circle the whole time in, above that
3 specific scene.
2 MR BIZOS SC: Would you agree that you
1 were the most qualified policeman there on that day on the
0 importance of keeping the crime scene intact?

Page 331

1 LT-COL BOTHA: Sir, there were four other
0 LCRC members on the ground and I did not know what their
- movement was on the ground.

Page 330

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0 LCRC members on the ground and I did not know what their
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Page 329

1 LT-COL BOTHA: Where the Police were at
0 what stage? When the bodies were, when I saw the bodies
- lying on the ground?

Page 328

1 LT-COL BOTHA: Where the Police were at
0 what stage? When the bodies were, when I saw the bodies
- lying on the ground?
MR BIZOS SC: Did it not occur to you that the Police that had killed the people there may have an interest in changing the nature of the crime scene for their benefit?

LT-COL BOTHA: Mr Chair, again, at that stage I did not know who shot whom and who are the suspects and there were policemen on the ground, and policemen are trained to look after crime scenes.

MR BIZOS SC: Are you familiar with the Police Standing Orders, Colonel?

LT-COL BOTHA: Yes, Mr Chair.

MR BIZOS SC: Do you obey them?

LT-COL BOTHA: Yes, Mr Chair.

MR BIZOS SC: Do you know that Police Orders General 262, quite an old, promulgated on the 16th of September 2004, provides that whenever there is any operation that is performed, the commander of the Joint Operation Centre has certain obligations if any irregularity was performed. Did you know that?

LT-COL BOTHA: Yes, Mr Chair.

MR BIZOS SC: And in order 13 - please listen carefully - "The CJOC must ensure that debriefing takes place after each event or gathering, and that record is kept thereof." Do you agree with that? This was an event or a gathering where terrible things happened. Would you expect a debriefing to take place, to which you were partly a witness?

LT-COL BOTHA: Mr Chair, when I got back to the JOC I was briefed. I beg your pardon? You were debriefed?

LT-COL BOTHA: I was briefed by Brigadier Van Zyl.

MR BIZOS SC: I’m talking about debriefing, what happened after the operation. Were you debriefed? Were you asked what do you know about this?

After all, you’re an expert.

LT-COL BOTHA: Are we talking about when I landed back on the ground that afternoon?

MR BIZOS SC: Yes, that’s when I’m talking about.

LT-COL BOTHA: I was, if we – I call it brief. I was briefed by Brigadier Van Zyl of what happened.

MR BIZOS SC: Oh, you use it that way, okay. I can understand, you’re right, briefing and debriefing can, alternative ways of expressing oneself.

What did you say to the brigadier?

LT-COL BOTHA: I started planning to get people from – I first - ja, I started planning to, because it was, you could hear that it was a big scene, to get people from all over the province so that we will be able to process the crime scenes, and I phoned the four members who, the commander of the four members that was there of the LCRC and asked them to move into the crime scenes - I cannot now remember if they were there already – and to start video graphing immediately, please.

MR BIZOS SC: Did the brigadier ask you to hand anything over to him?

LT-COL BOTHA: No, Mr Chair.

MR BIZOS SC: Didn’t he ask you whether you took a video of what happened?

LT-COL BOTHA: He gave me an instruction to get in the chopper and make the video. He did not ask me afterwards to give the video to him.

MR BIZOS SC: I’ll read you paragraph 3, or subparagraph 3 of Order 13. "A thorough evaluation must be conducted and, if possible, video coverage must be shown." Are you saying that this, the directive in the Police Orders was ignored by the brigadier?

LT-COL BOTHA: Sir, I don’t say the brigadier ignored it. I, what I said is I did not give my video to him. I’m not, he did not ask me my video. I did not give him the video. I’m not, he did not ask me my video. I did not give my video to him. I, what I said is I did not give my video to him.
MR BIZOS SC: Colonel, either the brigadier didn’t know of the existence of this Order, or he deliberately avoided asking you whether you videoed the proceedings or not –

MR MADLANGA SC: Mr Chairman,

Commissioners, I’m loath to again intervene but from what my learned colleague read, or what he read from, he seems to be saying that it is the duty of the CJOC to do all of the things that he’s referring to, and I am not aware at this stage that the brigadier was the CJOC. Perhaps that should be established first.

MR BIZOS SC: “Every level of command must debrief the levels below it individually.” So says subparagraph 2 of Section 13 of the Order, Mr Chairman. I don’t know if my learned friend persists in his objection to my question.

CHAIRPERSON: The witness has heard the exchange between the two of you. Perhaps he can answer the question.

MR BIZOS SC: Well, did he disregard the Order?

LT-COL BOTHA: Sir, I cannot say that he disregarded the Order. He did not ask my video from me. I didn’t give him my video. I don’t know for what specific reason. I kept my video with me.

LT-COL BOTHA: What I’m saying is I did not, I don’t know what debriefing or – you used the word “aftermath” - or what meeting took place. The brigadier came out; he briefed me on what happened and I started organising members from all over the province. I did not give my video to him.

MR MADLANGA SC: Because there will be problems at the transcription. Thank you.

MR BIZOS SC: Okay. Please, Mr Interpreter, finish. Thank you, Mr Interpreter. I’ll repeat the question. Are you saying that the brigadier ignored this important Police Order, or are you going to say that brigadiers don’t have to comply with Police Orders?

LT-COL BOTHA: What I’m saying is it did not, I don’t know what debriefing or - you used the word “aftermath” - or what meeting took place. The brigadier came out; he briefed me on what happened and I started organising members from all over the province. I did not give my video to him.

MR BIZOS SC: Now then, one would have expected, if you are telling us the truth about these matters -

MR MADLANGA SC: Mr Chair –

MR BIZOS SC: Colonel -

MR MADLANGA SC: Mr Chair, may I ask my colleague Mr Bizos not to talk at the same time either with the interpreter or the witness? There will –

MR BIZOS SC: I apologise and I’ll try and obey your directive.

MR MADLANGA SC: There are other matters to cover with him.

MR BIZOS SC: I look forward to it. Now he comes, but there other matters –

MR MADLANGA SC: Mr Chair –

MR BIZOS SC: I look forward to it. There are other matters to cover with him.

MR BIZOS SC: I would say, I think your almost close to the end of this topic. You’ve got a fair amount of material for cross-examining the brigadier when he comes, but there other matters –

MR BIZOS SC: I look forward to it. Now the Orders also provide that there has to be a meeting of all concerned, all good practices as well as shortcomings must be recorded as part of a learning process to enhance good practices and address to prevent the recurrences of identified mistakes. That’s what the Order says. Was such a meeting held?

LT-COL BOTHA: Mr Chair, I must recall now, I think a week after the incident I was part of a Police contingent in Potchefstroom that debriefed this whole situation.

LT-COL BOTHA: A copy was given to the SA Police Service. If I remember correctly, a copy was given to IPID; they requested that, and the evidence leaders saw a copy of that.

MR MADLANGA SC: Because there will be problems at the transcription. Thank you.

MR BIZOS SC: I’d be saying that it is the duty of the CJOC to do all of the things that he’s referring to, and I am not aware at this stage that the brigadier was the CJOC. Perhaps that should be established first.

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<table>
<thead>
<tr>
<th>Page 341</th>
<th>Page 342</th>
<th>Page 343</th>
<th>Page 344</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>LT-COL BOTHA:</td>
<td>Sir, this was part of the</td>
<td>LT-COL BOTHA:</td>
<td>16th of August.</td>
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<td>12</td>
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<td>LT-COL BOTHA:</td>
<td>preparation for the presentation of the SA Police Service,</td>
<td>MR BIZOS SC:</td>
<td>I beg your pardon. 16th of</td>
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<td>13</td>
<td>14</td>
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<td>which you see.</td>
<td>which you see.</td>
<td>MR BIZOS SC:</td>
<td>August, yes.</td>
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<td>MR BIZOS SC:</td>
<td>The question was, what did</td>
<td>LT-COL BOTHA:</td>
<td>Mr Chair, as I’ve said,</td>
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<td>you say at this meeting?</td>
<td>you say at this meeting?</td>
<td>MR BIZOS SC:</td>
<td>that week was part of the building of the presentation of</td>
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<td>LT-COL BOTHA:</td>
<td>Well, I was there for a</td>
<td>LT-COL BOTHA:</td>
<td>the SA Police Service. A lot of things were discussed.</td>
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<td>17</td>
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<td>week. We obviously discussed what happened, what was</td>
<td>week. We obviously discussed what happened, what was</td>
<td>MR BIZOS SC:</td>
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<td>18</td>
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<td>taken, what photos was taken, was the scenes processed, all</td>
<td>taken, what photos was taken, was the scenes processed, all</td>
<td>MR NTSEBEZA SC:</td>
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<td>the things like that, concerning me.</td>
<td>the things like that, concerning me.</td>
<td>LT-COL BOTHA:</td>
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<td>21</td>
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<tr>
<td>[17:35]</td>
<td>MR BIZOS SC:</td>
<td>Did you say that, &quot;We made</td>
<td>CHAIRPERSON:</td>
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<td>21</td>
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<td>21</td>
<td>22</td>
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<td>MR BIZOS SC:</td>
<td>a mess with it?&quot;</td>
<td>MR BIZOS SC:</td>
<td>Bizos?</td>
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<td>22</td>
<td>23</td>
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<td>LT-COL BOTHA:</td>
<td>No.</td>
<td>LT-COL BOTHA:</td>
<td>Thank you.</td>
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<tr>
<td>MR BIZOS SC:</td>
<td>Did anybody else at that</td>
<td>CHAIRPERSON:</td>
<td>I’ve been asked by one of</td>
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<td>meeting, after knowing that 35 people had been killed, say</td>
<td>meeting, after knowing that 35 people had been killed, say</td>
<td>CHAIRPERSON:</td>
<td>the Commissioners to take a short adjournment so he can</td>
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1st to 31st October 2012
Marikana
Rustenburg

Tel: 011 021 6457  Fax: 011 440 9119
RealTime Transcriptions  Email: realtime@mweb.co.za
1st to 31st October 2012

Marikan

Rustenburg

1 Mr Chairman, members of the Commission. There are quite a
2 number of issues that have arisen out of the cross-
3 examination of Mr Bizos, which I had thought might be
4 appropriate at another occasion, but the answers that came
5 from the witness are such that I need to canvass some of
6 the questions that have arisen.
7
8 CHAIRPERSON: Are you in a position to
9 cross-examine, Mr Mpofu?
10
11 MR MPOFU: No, Chairperson, and very
12 briefly, our impediment is that insofar as the issues of
13 the 13th are concerned, the person who was arrested is our
14 main witness. You might not remember him, Chairperson, but
15 on the day he, he's the gentleman who kept on saying “We
16 were being shot from a helicopter,” and I think he
17 interacted with you and we had called him to the scene
18 specifically for this evidence.
19
20 CHAIRPERSON: So what you’re saying is
21 you require to take instructions from him –
22
23 MR MPOFU: And [inaudible] ja –
24
25 CHAIRPERSON: He is in custody, but we’ve
26 been told by Mr Semenya that you will be afforded every
27 facility to take instructions from him.
28
29 MR MPOFU: We will do so, Chairperson,
30 and also hopefully try and get him here on the next
31 occasion. So, and that –
32
33 CHAIRPERSON: Alright. There are a few
34 questions I’d like to ask you. The first is, I understood
35 you to say you arrived at the place where the JOC was
36 meeting at about 3 o’clock on the 16th. Is that correct?
37
38 LT-COL BOTHA: Yes, Mr Chair.
39
40 CHAIRPERSON: And you understood there to
41 be an operation, an operation was going to take place which
42 would involve the disarming and dispersal of the people on
43 the hill. Is that correct?
44
45 LT-COL BOTHA: That’s correct, Mr Chair.
46
47 CHAIRPERSON: You've been in the area for
48 some days. You’ve been there on the 13th and again on the
49 14th, so I take it you knew that there was a concentration
50 of several thousand striking miners on the hill. Is that
51 correct?
52
53 LT-COL BOTHA: Yes, Mr Chair.
54
55 CHAIRPERSON: Now the brigadier, you said
56 asked you to come there to make a video recording of the
57 operation. Is that correct? That’s what you, as you
58 phrase it – well you don’t say it’s the brigadier, but
59 you've explained it was the brigadier. In para 6 you say
60 you made a video, or an aerial video recording of the SAPS
61 operation, and you told us that the brigadier in fact asked
62 you to come there so you could make that recording. Is that
63 correct?
1st to 31st October 2012

<table>
<thead>
<tr>
<th>Page 349</th>
<th>Marikana</th>
</tr>
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<tbody>
<tr>
<td>1  it's the other side.</td>
<td>1 LT-COL BOTHA: Ja, they've asked me -</td>
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<td>2  CHAIRPERSON: Alright. Now the brigadier</td>
<td>2 CHAIRPERSON: That was to be put in the</td>
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<td>3  had got you there in order for you to make a video record</td>
<td>3 docket, I take it.</td>
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<td>4  of the operation.</td>
<td>4 LT-COL BOTHA: No, no, they've asked me.</td>
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<td>5  LT-COL BOTHA: Yes.</td>
<td>5 No, mine is in my docket. They've asked me for a copy.</td>
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<td>6  CHAIRPERSON: It appears from what you</td>
<td>6 CHAIRPERSON: Oh, they asked you for a</td>
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<td>7  tell us that you weren't able to do that because what one</td>
<td>7 copy. I see. Did anybody ask you if you'd succeeded in</td>
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<td>8  can describe as the major part of the operation had</td>
<td>8 actually recording the operation?</td>
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<td>9  apparently already taken place by the time you started</td>
<td>9 LT-COL BOTHA: No, Mr Chair.</td>
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<td>10  making your recording.</td>
<td>10 CHAIRPERSON: Yes, thank you. There's</td>
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<td>11  LT-COL BOTHA: Yes, Mr Chair.</td>
<td>11 nothing further I propose asking you at this stage. I may</td>
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<td>12  CHAIRPERSON: And when you got back to</td>
<td>12 ask some questions later. My fellow Commissioners may do</td>
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<td>13  the JOC and you saw the brigadier, he didn't ask you did</td>
<td>13 so as well. Yes, before Mr Mpofu asks a question, my</td>
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<td>14  you succeed in making a video recording of the operation,</td>
<td>14 colleague Advocate Hemraj would like to ask a question as</td>
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<td>15  as I understand you. He didn't ask you that question at</td>
<td>15 well.</td>
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<td>16  all.</td>
<td>16 MS HEMRAJ SC: Colonel, were you told</td>
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<td>17  LT-COL BOTHA: No Sir, I just made, I</td>
<td>17 what time the proposed operation would commence?</td>
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<td>18  made a video recording but not specifically of that</td>
<td>18 LT-COL BOTHA: No, Ma'am, I wasn't told.</td>
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<td>19  operation then, if we take it like that, ja.</td>
<td>19 MS HEMRAJ SC: Did you know, Colonel, in</td>
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<td>20  CHAIRPERSON: You were supposed to make a</td>
<td>20 which area precisely the operation was going to take place?</td>
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<td>21  recording of the operation and from what you've told us -</td>
<td>21 LT-COL BOTHA: Yes, Commissioner, I knew.</td>
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<td>22  I'm not suggesting this is your fault, but you weren't able</td>
<td>22 MS HEMRAJ SC: And what area was that?</td>
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<td>23  to do that.</td>
<td>23 LT-COL BOTHA: I was told that the people</td>
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<td>24  LT-COL BOTHA: That's correct, Sir.</td>
<td>24 at the koppie will be disarmed and dispersed.</td>
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<td>25  CHAIRPERSON: So the purpose of getting</td>
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<th>Page 350</th>
<th>Rustenburg</th>
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<tbody>
<tr>
<td>1  you there in fact failed.</td>
<td>1 LT-COL BOTHA: Yes, it flew directly</td>
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<td>2  LT-COL BOTHA: If you look at it like</td>
<td>2 there.</td>
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<td>3  that, Sir, yes.</td>
<td>3 MS HEMRAJ SC: Thank you.</td>
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<td>4  CHAIRPERSON: Now we know from one of the</td>
<td>4 CHAIRPERSON: As far as you could tell,</td>
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<td>5  documents which was made available to us by IPID that</td>
<td>5 was the brigadier in charge?</td>
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<td>6  Colonel Vermaak was calling for video material that</td>
<td>6 LT-COL BOTHA: Sorry, Sir -</td>
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<td>7  afternoon, as I understand it, of the operation. Were you</td>
<td>7 CHAIRPERSON: Who was in charge on the</td>
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<td>8  aware of that?</td>
<td>8 scene as far as you were aware?</td>
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<td>9  LT-COL BOTHA: Sorry, Sir, Colonel</td>
<td>9 LT-COL BOTHA: On the scene?</td>
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<td>10  Vermaak did what? I didn't hear.</td>
<td>10 CHAIRPERSON: Yes. Or at the JOC and</td>
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<td>11  CHAIRPERSON: As far as I can recollect,</td>
<td>11 then at the hill itself.</td>
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<td>12  in one of the documents we were given by IPID it was stated</td>
<td>12 LT-COL BOTHA: No, not the brigadier,</td>
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<td>13  that Colonel Vermaak was asking for video material that</td>
<td>13 Sir. I think on the scene it was Brigadier Calitz. At</td>
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<td>14  very afternoon, of what had happened. He called for it.</td>
<td>14 that moment, I haven't been in the JOC that day. The</td>
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<td>15  Did you know about that?</td>
<td>15 brigadier briefed me outside, so I don't know who was in</td>
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<td>16  LT-COL BOTHA: No Sir, I don't know</td>
<td>16 the JOC in charge.</td>
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<td>17  about that.</td>
<td>17 CHAIRPERSON: I see. Yes, Mr Mpofu, I</td>
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<td>18  CHAIRPERSON: Did I understand your</td>
<td>18 think you wanted to ask a question.</td>
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<td>19  evidence correctly that no-one actually asked you</td>
<td>19 MR MPOFU: Thank you, Chairperson. Yes,</td>
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<td>20  afterwards what you had recorded? You just, I understood</td>
<td>20 I just wanted to ask very non-contentious questions which</td>
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<td>21  you to say, downloaded what you'd recorded and it was put</td>
<td>21 might help us in the consultation to prepare for the cross-</td>
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<td>22  in the docket.</td>
<td>22 examination probably on a later occasion, just so that we</td>
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<td>23  LT-COL BOTHA: No Sir, afterwards I've</td>
<td>23 get rid -</td>
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<td>24  given a copy to the SA Police Service -</td>
<td>24 SPEAKER: [Inaudible]</td>
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1st to 31st October 2012

1. **MR MPOFU:** Thank you, Chair. Colonel,
2. there’s just a few issues briefly. How many helicopters
3. were operating on that day, at least at the same time as
4. yours?
5. **LT-COL BOTHA:** I think it was ours
6. included, four.
7. **MR MPOFU:** Four?
8. **LT-COL BOTHA:** Ja.
9. **MR MPOFU:** Thank you. The other
10. helicopters, to your knowledge were they also shooting
11. footage?
12. **LT-COL BOTHA:** No, I don’t know.
13. **MR MPOFU:** Don’t know, thank you. And
14. you’ve been asked many questions and you referred them to a
15. Brigadier Van Zyl, or rather you said those would be in
16. Brigadier Van Zyl’s knowledge, correct?
17. **LT-COL BOTHA:** Which questions are you
18. talking about, Sir?
19. **MR MPOFU:** No, I’m saying some of the
20. issues that you were asked about, you said were in the
21. knowledge of Brigadier Van Zyl. Remember that?
22. **CHAIRPERSON:** I’m not too certain he said
23. knowledge –
24. **MR MPOFU:** And that we should ask him.
25. **CHAIRPERSON:** I don’t think he said quite

1. in the knowledge. He was asked about the compliance with
2. Standing Orders, debriefing procedures and so on, and he
3. said, “Well, that’s a matter for the brigadier, not me.”
4. **MR MPOFU:** Yes, that’s correct. All I
5. want to establish at this stage is, Brigadier Van Zyl, is
6. it that gentleman? Please Brigadier [inaudible].
7. Brigadier, can you stand up? J a, is that Brigadier Van
8. Zyl?
9. **LT-COL BOTHA:** That’s correct.
10. **MR MPOFU:** Thank you, and then did you
11. have any interactions with any paramedics?
12. **LT-COL BOTHA:** No Sir, I did not.
13. **MR MPOFU:** No, and did the camera that
14. you were operating, was it able to zoom into the scene?
15. **LT-COL BOTHA:** At that moment I did not
16. know that that was a scene. I saw, I saw some bodies. I
17. think I did - ja, it can zoom, yes.
18. **MR MPOFU:** Okay, thank you. Finally -
19. I’m just running through a few issues - finally, there were
20. about 300 people who were made to lie down and were being
21. loaded into four, I think, awaiting vans at the second
22. scene. Did you observe any of that?
23. **LT-COL BOTHA:** Yes, I did.
24. **MR MPOFU:** And of the four choppers that
25. were there, what number was yours? Was it chopper 1, 2, 3,
LT-COL BOTHA: I don't know, Sir.

MR MPOFU: Thank you, Thank you, Chair.

CHAIRPERSON: I wonder if you can help me on one point. You were asked to come and make a film of the operation. You apparently left, the helicopter took off, it would seem something like two minutes before the shooting started. By the time you got there, we've agreed it was over. What would you say if I were to put to you it's my impression at this stage that whatever was planned to be the operation either took place too early, or something happened before the operation could actually be completed or start? In other words, what you were supposed to photograph had either happened by the time you got there, or never happened because of what happened, because of what took place? Do you understand the impression I have, that I'm putting to you? Are you able to comment on that at all?

LT-COL BOTHA: Mr Chair, what, if I had to video graph the operation, whatever happened before that was either the operation that, well it happened and I didn't video graph it. So it was either too early or something, I don't know.

CHAIRPERSON: - said we'd stop at 6. It's already after 6. I had hoped that we could finish your evidence today, Colonel. I'm sorry we haven't been able to do so. We will resume on Monday morning. There are various reasons why we can't continue over the next three days. The main one is this auditorium is not available. We're adjourning now until 9 o'clock on Monday morning, the 29th, when you will be able to continue with your evidence. The Commission adjourns.

[INQUIRY ADJOURNED]

[PROCEEDINGS ON 29 OCTOBER 2012]


Before we commence with the main proceedings this morning, there are three aspects that I think should be dealt with at outset. The first relates to the question of the transportation and accommodation of the deceased's families who wish to be present at the hearings of the Commission. The second issue relates to certain requests that were made in relation to legal aid and the third relates to the arrests of certain persons who were in attendance on Tuesday, by the police, which have led to complaints that the work of the Commission is being prejudiced and that certain action should be taken in consequence thereof.

Mr Madlanga, are you able to deal with those three aspects, that's beginning with the transportation and accommodation of the families first?

MR MADLANGA SC: Thank you Chairman, Commissioners. On the question of the funding of the attendance of the families, I was called by Mr JB Skosana of the Department of Justice at quarter past eight this morning. He advises that they are pushing for an amendment of the regulations to provide something that goes along the following line or lines – I'm paraphrasing of course. It will provide that the Department will fund those families that are willing to attend the Commission hearings.

I then asked him what the practical value of that would be because, in my view, I don't think any of the families were forced to attend, only those who wanted to would have attended in the first place. He said that there is no statutory basis as of now for the Department to fund the attendance of the families and that the amendment would serve the purpose of a statutory provision for the funding. He and said that they are pushing for this to be finalised today. I then asked him how soon would they be in a position to then fund the attendance of the families. He said that would happen soon after the amendment.

Then on the question of legal aid, I was contacted by Mlambo, JP who chairs Legal Aid South Africa and he raised certain questions with us, the evidence leading team. We responded to those. Those questions related to the funding of Mr Mpofu's clients. We responded to the questions that he was raising and he contacted me in the evening yesterday and said that they are going to have a teleconference as the board of Legal Aid South Africa and that they will revert to me either this afternoon or early evening today.

Insofar as the families of the deceased Lonmin security guards are concerned, he said that they want to treat those similarly as they have done with the families of the deceased people, the families that are being...
1. MR MADLANGA SC: Yes, yes, Chairperson.

2. It's something unrelated to the issues that the Commission has raised. Last, on the last occasion the Commission sat it was brought to my attention by one of my learned juniors, Mr Matthews Mojapelo behind me, that the gentleman standing there with a camera is recording or is doing a video recording of the proceedings on behalf of the South African Police Service. We spoke to him as soon as the matter had been brought to my attention and asked him to move away from where he is. We are not making a point that he should not do what he is doing, but the point is we turn to the back, we talk to our juniors at the back and some of what we're saying as counsel is confidential and he just refused to move. He said let me do my duty and you do yours. And despite us saying, do your job but do not do it here, he just would not budge and he even made a point which I think is quite ridiculous, that his microphone does not capture what we say here but that it only captures what comes through the speakers. And, and more importantly than what I've said thus far, my learned junior Mr Mojapelo said the day before, that is the day before I actually spoke to him, the gentleman doing the video recording, the day before he said to him, "I focused my camera on your screen and I videoed what you have or you had on your computer screen, I hope you don't mind." That, he said so according

3. MR MADLANGA SC: He has always been there.

4. But you said, and I emphasise this, what you said before Mr Mojapelo is not what he is doing.

5. CHAIRPERSON: Yes, certainly.


7. CHAIRPERSON: Yes, he is.

8. MR MADLANGA SC: And he's doing the same thing.

9. CHAIRPERSON: Yes, yes, Chairperson.

10. MR MADLANGA SC: He has always been there.

11. CHAIRPERSON: Yes, certainly.

12. MR MADLANGA SC: He always is.

13. CHAIRPERSON: Yes, yes, Chairperson.

14. MR MADLANGA SC: Yes, what you said is premised on the fact that you are holding to that view that this gentleman, Mr Mojapelo, is recording, and I said before, you must come to terms with the fact that he is there, and you must come to terms with the fact that he is recording and that his recording is being transmitted to somewhere. You can't ignore the fact that he is there, he is there, you have to accept it.

15. CHAIRPERSON: Yes, yes, Chairperson.

16. MR MADLANGA SC: We don't have any right of privacy.

17. CHAIRPERSON: Thank you.

18. MR MADLANGA SC: And we have no right to expect his not being there.

19. CHAIRPERSON: Yes, yes, Chairperson.

20. MR MADLANGA SC: But what you're saying is you think we should ignore the fact that he's there.

21. CHAIRPERSON: Yes, yes, Chairperson.

22. MR MADLANGA SC: And what you're saying is you think we should ignore the fact that he is recording.

23. CHAIRPERSON: Yes, yes, Chairperson.

24. MR MADLANGA SC: And what you're saying is you think we should ignore the fact that he is recording.

25. CHAIRPERSON: Yes, yes, Chairperson.
<table>
<thead>
<tr>
<th>Page 365</th>
<th>Page 367</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. where he is and that is why he was able to even video Adv</td>
<td>1. be used or be paid to them because there will be a great</td>
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<td>2. Mojabelo’s, what was showing on his laptop.</td>
<td>deal of costs to transport them here. And he implied that</td>
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<td>3. CHAIRPERSON: He is the gentleman in the</td>
<td>3. none of the families, including our client, actually wished</td>
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<td>4. blue coat? Is that -</td>
<td>4. to attend the Commission, which is why one can make, can</td>
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<td>5. MR MADLANGA SC: Yes, Chairperson.</td>
<td>5. understand what Adv Madlanga has stated, namely that they</td>
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<td>6. CHAIRPERSON: Well, Mr Semenya, he is</td>
<td>6. want now to effect this statutory amendment of the</td>
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<td>7. where he was before, in the position which is the subject</td>
<td>7. regulations.</td>
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<tr>
<td>8. of objection. I inasmuch as he is part of the staff of your</td>
<td>8. So our submission is that we are not able to</td>
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<td>9. client, would you tell him to do what you agreed is</td>
<td>9. accept the veracity of what Mr Skosana has said because it</td>
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<tr>
<td>10. appropriate and remove himself from where it is agreed it</td>
<td>10. is at odds with what he has stated publicly and therefore -</td>
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<tr>
<td>11. is inappropriate that he should be.</td>
<td>11. I don’t know whether Mr Chairman you wanted to – oh okay.</td>
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<td>12. MR SEMENYA SC: I see he is obliging.</td>
<td>12. [09:26] So we take the view therefore that, on our</td>
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<td>13. CHAIRPERSON: Thank you. Without</td>
<td>13. instructions – and we are in constant contact, my attorney</td>
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<td>14. anything being said by you, Mr Semenya, he has done what</td>
<td>14. throughout the weekend has been working with the families –</td>
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<td>15. you wanted to tell him to do. I think that the</td>
<td>15. we told you and your commissioners, with respect, that the</td>
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<td>16. representatives of the police should remember that the</td>
<td>16. families want to attend, that the families have never</td>
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<td>17. Police Service is in the frame as much as certain other</td>
<td>17. expressed a desire not to attend and that in any event, in</td>
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<td>18. organisations and parties are and it behoves them to behave</td>
<td>18. our submission, it would be their right to attend an</td>
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<td>19. appropriately. I hope it will never be necessary for this</td>
<td>19. inquiry that seeks to establish how their relatives were</td>
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<td>20. kind of problem to be dealt with again.</td>
<td>20. killed. It doesn’t have to be articulated in</td>
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<td>21. We now move, I think, to the first issue that was</td>
<td>21. constitutional rights terms, it doesn’t have to be</td>
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<td>22. the subject of report from Mr Madlanga, namely the</td>
<td>22. articulated in legal bases, it is just a natural thing that</td>
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<td>23. transportation and accommodation of the families and that I</td>
<td>23. one would expect should be happening. But if it is so that</td>
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<td>24. know is a matter with which Mr Sibizio - was involved. Is</td>
<td>24. we must articulate it on a legal basis, then we will notice</td>
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<td>25. there anything you wish to say in the light of what Mr</td>
<td>25. of dispute is that why, therefore, our submission Mr</td>
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<th>Page 366</th>
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<td>1. Madlanga has told us?</td>
<td>1. Chairman is that until the families are here, until they</td>
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<tr>
<td>2. MR NTSEBEZA SC: Yes thank you, thank you</td>
<td>2. are here because they have told us they want to be here, it</td>
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<tr>
<td>3. Chairman, thank you Commissioner. Mr Chairman, the first</td>
<td>3. would be improper for the Commission proceedings to</td>
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<td>4. thing that we would like to record is the mixed message.</td>
<td>4. proceed.</td>
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<td>5. First of all, I accept what Adv Madlanga has put before you</td>
<td>5. If, as Mr Skosana has indicated, the regulation</td>
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<td>6. on record. I accept it on the basis that he's telling us</td>
<td>6. will have been promulgated by today and that everything</td>
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<td>7. what he was told by Mr Skosana. What I am unable to</td>
<td>7. would have been done to enable and facilitate the presence</td>
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<td>8. reconcile is what he has told you on record here as</td>
<td>8. of the families tomorrow, then let's wait for tomorrow and</td>
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<td>9. emanating from Mr Skosana, with what Mr Skosana has been</td>
<td>9. see what happens tomorrow. I say so because on our</td>
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<td>10. reported throughout the weekend in the mass media to have</td>
<td>10. instructions, our clients were here when Mr, Colonel Botha</td>
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<td>11. been saying. It prompted a reaction from those who</td>
<td>11. was testifying. They are keen to know what it is that Mr</td>
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<td>12. instruct me, the Socio-Economic Rights Institute, and that</td>
<td>12. Botha is going to say further. He was cross-examined by a</td>
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<td>13. reaction was one of amazement and disgust because he is</td>
<td>13. whole range of people, he was cross-examined closely by</td>
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<td>14. reported to have said the following, 1. that the</td>
<td>14. some of those who represent AMCU, Adv Bruinders, very</td>
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<td>15. Department of Justice and Constitutional Development is</td>
<td>15. closely by Adv Bizos, very closely by the Chairman of the</td>
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<td>16. going to discontinue financial support aimed at enabling</td>
<td>16. Commission – indeed the Chairman of the Commission enquired</td>
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<td>17. the families of the deceased to attend the hearings at the</td>
<td>17. from me as to whether I want to cross-examine him and I</td>
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<td>18. Marikana Commission of Inquiry. That has been carried in</td>
<td>18. said, in view of the issues that have been raised by some</td>
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<td>19. the mass media throughout the weekend and it was attributed</td>
<td>19. of those who put questions, including the Chairman of the</td>
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<td>20. to him.</td>
<td>20. Commission, I would like to consider a process of</td>
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<td>21. What also hurt our clients was the fact that he</td>
<td>21. approaching his evidence.</td>
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<tr>
<td>22. is reported to have also stated that most or all of the</td>
<td>22. Now, we know because of the relationship that we</td>
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<td>23. families that they presumably contacted in this regard had</td>
<td>23. have with our clients, that they are interested in the</td>
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<td>24. stated that the money that would be used to transport them</td>
<td>24. developments that will ensure in the further cross-</td>
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<td>25. and accommodate here, accommodate them here, would rather</td>
<td>25. examination of Colonel Botha and they feel that they have a</td>
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right to be here, to hear for themselves how that is going
to turnout. I am not trying to be difficult, Mr Chairman,
we have tried everything in our power all the time to make
sure that something must be done, but this is critical. We
are seeking to establish from a witness who, in his
statement, says he was called by a brigadier to get onto a
chopper to go and record an operation. And that is the
operation from what happened, the deaths of our clients’
relatives.

CHAIRPERSON: Mr Ntsebeza, I just want to
interrupt you at this stage. It seems to me that the
question of a possible postponement may well arise in
respect of one or other of the other aspects as well, so
perhaps we can deal with the aspects in the absence of the
question of whether they lead to a postponement at first.
And then if there’s going to be a postponement application
or a series of postponements applications, they can be
dealt with conveniently together. So forgive me for
interrupting you but would you agree that that’s the best
way of going forward at this stage?

MR NTSEBEZA SC: Yes, I do. I just
wanted to indicate, Chairman, that we have a difficulty as
things stand to accept, certainly on our instructions, the
veracity of what has been said. We are now told that there
was no statutory basis for the funding of the families and
these families were here and the last time that they were
here, they were brought because we have said they ought to
be brought and we were made to believe that there is a
basis for them to be brought here. They were made to
believe that there is a basis – they even were told that
only one member per family will be allowed to come.

CHAIRPERSON: Yes, no, we know that, Mr
Ntsebeza. I don’t know that we need to spend time further
on that aspect of the matter. If the regulation is
forthcoming today or even early tomorrow, then what you
said in this regard will have been rendered academic.

MR NTSEBEZA SC: Yes.

CHAIRPERSON: But anyway, we can get
there when we get there, if –

MR NTSEBEZA SC: Yes.

CHAIRPERSON: Any of the other counsel or
representatives –

MR NTSEBEZA SC: Can I just say?

CHAIRPERSON: - finish.

MR NTSEBEZA SC: I thought I could say
something else also about – there are three aspects that
you wanted attention to be drawn to, the first one I’ve
just dealt with. The second one is legal aid and I think
whilst it is so that we have been, that Socio-Economic
Rights Institute have been provided legal aid by the Legal
1. Commission should enquire equality of alms.

2. Mr Dali Mpofu will deal with the other issues of

3. arrests and again to some extent -

4. CHAIRPERSON:  I think we will stay with

5. the first issue, namely the transportation and

6. accommodation of the families', before we move onto the

7. other issues. Do any of the representatives of any of the

8. parties wish to say anything about the transportation and

9. accommodation of the parties in the light of the statement

10. which, speaking for myself, I'm inclined to accept that Mr

11. Skosana told Mr Madlanga that he was busy with an amendment

12. to the regulations.

13. MR BIZOS SC:  Perhaps we should listen to

14. what Mr Mpofu has to say as well, because we want to

15. address the Commission on both issues and very briefly what

16. we want to say to the Commission is that we appeal to all

17. of us here to seriously consider that almost a month after

18. this Commission started, we have dealt with half a witness

19. and this is something which is -

20. CHAIRPERSON:  I'm sorry to interrupt you,

21. Mr Bizos, I thought you wanted to say it after Mr Mpofu has

22. spoken.

23. MR BIZOS SC:  Yes.

24. CHAIRPERSON:  Perhaps if you say it when

25. you say it and don't say it before you're going to say it,

---

1. yesterday.

2. MR BURGER SC:  Thanks very much, I just

3. wanted to put that on record.

4. CHAIRPERSON:  I think we can move on then

5. to the second aspect which was the subject of discussion,

6. namely the application for legal aid. It sounds as if

7. that's sub judice, if one remembers the Chairman of the

8. Legal Aid Board is a judge. We will only hear presumably

9. late this afternoon or we will hear tomorrow morning what

10. the outcome is in that regard, but does anyone wish to say

11. anything further on that at the moment while we are

12. stilling waiting to hear what the Legal Aid Board has

13. decided?

14. MR MPOFU:  Chairperson, as you know, we

15. are in a worse position than even Mr Ntsebeza's sorry state

16. and Chairperson, we want to emphasise just one thing here

17. which is the fact that, as you said, this Commission is not

18. essentially an adversarial process, it is a process of fact

19. finding and we cannot understand how it is that anybody

20. thinks that that, the establishment - or rather the

21. establishment of the truth, which is what we all seek, can

22. ever be attained by listening only to one side of the story

23. - because that is the logical outcome of what is now being

24. engineered by only funding the alleged perpetrators and not

25. the victims. Because -
1st to 31st October 2012  
Marikana  
Rustenburg

1 CHAIRPERSON: I’m sorry, Mr Mpofu, but it may be that the Legal Aid Board will come to your assistance –
2 MR MPOFU: Well –
3 CHAIRPERSON: So at this stage we don’t know what they’re going to do, so what I was suggesting to you was that we must surely wait to hear what the decision of the Legal Aid Board is going to be, before we take it further, otherwise you are shooting at a moving target which may not be in position by the time your bullets are expected to take effect.
4 MR MPOFU: No, unfortunately now our situation, Chair, the target is already dead because they have already shot at us. We received a letter last week that said in no uncertain words that they’re not going to fund us.

5 [09:46]  CHAIRPERSON: I understood that that’s the subject of what Mr Madlanga spoke to Judge Mlambo about and that’s what they’re going to have the conference about. As I understand, as of last week you’ve been –
6 MR MPOFU: Yes.
7 CHAIRPERSON: That’s the point I’m putting to you.
8 MR MPOFU: No, I accept that, Chair.
9 Then the only point I seek to make is that I don’t want this debate to be just about the Legal Aid Board.
10 Chairperson, you’ll remember that when we raised this initially, our point was that if there is what I now understand to be R75 million which was set out, set aside for this Commission, then that – the victims are equally entitled to be funded on the same basis as everybody else. I don’t think there’s a taxpayer worth his salt who would say that the taxpayers’ money should only be used for what I call the alleged perpetrators, and that – so the legal aid issue was always a fall-back position which as such was set by Mr Madlanga, but our primary complaint is that we should be treated like everybody else.
12 CHAIRPERSON: Yes, we hear you. Does anyone wish to say anything further on the second aspect and that is to say the legal aid aspect? I’ll give Mr Madlanga a chance to reply on all three aspects when we’ve finished. Right, we now move onto the third one and that’s the question relating to the arrests which Mr Madlanga dealt with. Do any of the representatives of the parties wish to say anything about that?
13 MR SEMENYA SC: Chair –
14 CHAIRPERSON: Mr Semenya, I see you’ve turned your microphone on.
15 MR SEMENYA SC: Yes. Chair, when the request was made, the nature of access requested was broader than what Mr Madlanga now says it is. Without conceding that they have a right of access to the docket, my instructions are that just so that we can dispel any thought that there is any form of impropriety, we will give access to the evidence leaders to view the contents of the docket and to satisfy themselves, also to talk to Brigadier Van Zyl, just so that they can authenticate the basis in law for the arrest of these individuals.
16 CHAIRPERSON: Thank you, Mr Semenya. Any of the representatives of the parties? I see Mr Bruinders has left his seat and is talking to Mr Mpofu. Do you wish to speak on this point, Mr Bruinders, or – it may be that both of you want to speak. Do you want a short adjournment so you can take instructions, so you don’t have to take instructions in front of everybody while we’re sitting?
18 MR MPOFU: Thank you, Chair. May I –
19 CHAIRPERSON: – thank you. Chairperson, I just want – let me start with this last aspect so that we get it out of the way. This is not about dockets. By the time we get to dockets, you know, all the damage has already been done. We happen to have access to some of the charge sheets and I will refer to them, but in any event I don’t see how a perception of impropriety which is held by our client can be cured by giving access to the docket to Mr Madlanga. The issue here is that these people are represented, the police know that they are represented and all these arrests have been effected without informing us, as much as just informing us, but even when we make enquiries we get sent from pillar to post.

This is the issue, Chair. Since, if you include the first break and this last short break that we’ve had, we have had not less than six and perhaps seven people arrested at different twists and turns. The last four came on Tuesday when we had called people to come here and, as they were leaving, they were stopped, manhandled, made to lie on the ground at night and then taken to – at least four of them were arrested and taken to four different police stations. So the perceptions that we have here are not unfounded and unreasonable.

We could not understand, we thought that this was intended to make us run from police station to police station, which we ended up doing anyway. As I’m speaking to you now, Chairperson, two of my attorneys are not here –

Page 377

Page 378

Page 379

Page 380
1. charged with murder that had occurred on the 12th of August.

2. **CHAIRPERSON:** Yes.

3. **MR MPOFU:** So that leaves it without doubt that those are matters that are covered by this Commission and we raised this issue in court. Also the bail application, or rather the people were brought to bail after the 48, the statutory 48 hours, and so we raised those two issues in the bail application.

4. The magistrate agreed with both submissions that we made there and her ruling was the following. “In terms of section 35(1)(d) emphasis to within 48 hours, not after expiry only, state advanced no reason for delay.” In other words for not doing it within the 48 hours. This is a cryptic note that she made. 2, she said, “The matter is stuck pending the outcome of Commission of Inquiry.” This was in response to the fact that we said that this matter was covered by the outcome of this inquiry. And 3, “All four accused to be released from custody without delay.”

5. So this was a court order from a judicial officer and this is what happened. Within minutes of this, when our attorneys went down to the cells to release, to take the people out, they were refused and the people were rearrested and we were told that this was on the instructions of the NDPP or rather the DPP. I’m not sure whether it was the national one or the provincial one. I hope it was the national one because if it was the provincial one, then this would mean it was the same geniuses who charged these people with the murder of their own colleagues.

6. So what we have here, Chair, is that – there are two major complaints that we have. Not only does this deprive us of the witnesses that we have brought there obviously because they are needed, but what it has done now is to instil a reign of terror among potential witnesses because I cannot now, with a straight face, say to other people in Ikaneng or the surrounding areas, “Oh, don’t worry, I’ve organised a Combi for you, you can come to the Commission next week” – because they’ll say, “Are you out of your mind? Must I go there and make myself cannon fodder for arrest like it happened to so-and-so and so-and-so?” So it’s much wider than the people who have been arrested.

7. It will literally hamper our participation in this Commission and that, Chair, happens in the background of the following facts and as I alluded to earlier – the people that we represent, Chair, are the only people who are capable of giving this Commission a version of what happened, other than the version of the police. There is no-one else. By definition, the mere fact that they were injured at the scene, they were arrested at the scene, then it means by definition they were eye witnesses to at least some of the things that happened there. As I pointed out last week, Mr Ntsebeza’s clients are deceased. So the arrested and the injured are the only people who can assist us.

8. Now, that is so much so that the evidence leaders, and I’m sure they won’t mind me saying this, had already approached us to say whether we would mind bringing our witnesses first after this, so that that perspective is put into the Commission. And we had not yet agreed but we were in negotiations because we understood why they asked us to do that, because it’s the only grouping that can provide that.

9. Now if, for a period of the time we were running from pillar to post making bail applications and not even able to use the non-existent resources at our disposal, then how are we going to be in a position to bring people here, firstly because of our own capacity but also because of their own fears of being brought here. That means our participation is being rendered completely blunt, Chairperson.

10. The second complaint which is the substantive matter of the issue of equality that we raised on the constitutional basis and I know I’ve raised this before but I just want to re-emphasise it. If these people are being...
1 charged for the murders that happened during the period
2 that is being investigated here, then there is no basis for
3 not arresting the policeman who did, who also did the – who
4 at least at a prima facie level shot our people and
5 committed what in our view, also a criminal act.
6 And I just want to make the following last point,
7 Chair. We must never be heard here –

| MR MPOFU: | I’m sorry, doesn’t it depend upon which murders are the subject of the arrests? |
| CHAIRPERSON: | The police say the other way round, these people were coming to attack them and they defended themselves. Now that, I can understand that’s very much a matter to be decided by the Commission. |
| MR MPOFU: | Ja. |
| CHAIRPERSON: | But if – and I don’t know whether this is so, I ask the question. |
| MR MPOFU: | Yes. |
| CHAIRPERSON: | If the murders in respect of which the arrests were taking place are different, for example there was a witness who pointed out spots at the inspection loco who has subsequently been murdered. Now this Commission is not going to decide whether his killing amounted to a murder or a justifiable homicide. That’s not one of the issues. |
| MR MPOFU: | Mm. |
| CHAIRPERSON: | And if the police have – if they have reasonable suspicion that someone has committed that murder, the fact that this Commission is sitting to decide what, other issues, wouldn’t prevent, if the circumstances were appropriate, an arrest. So we would have to know what the murders are that you’re talking about, in respect of which these arrests took place but perhaps we can get Mr Semenya to tell us that in a moment. |
| MR MPOFU: | I’m sorry to have interrupted you but – |
| CHAIRPERSON: | It seems to me to be a point that we just bear in mind. |
| MR MPOFU: | Thank you, Chair. No, you make a very valid point, Chair, and it will assist to focus what I’m saying. Of course, the murder of Mr Daluvuyo Bongo which you have alluded to is a matter, firstly, that falls outside of the terms of reference of this Commission. So it is distinguishable on that basis alone. What I’ve just said, Chair, is that the murder for which the four people have been charged, according to the charge sheet here in front of me, happened on the 12th of August 2012. So that’s a different matter. In other words these murders that are referred to here fall squarely within the terms of reference. I accept the fact that they did not happen on the 16th but the point I’m trying to make – |
| CHAIRPERSON: | I’m sorry to interrupt you. The point I’m making went further than that, that I’m not sure whether it is intended that killing him on the 12th, if someone was killed on the 12th – two people I think were killed – I’m not sure whether it can be contended that those killings were justifiable, didn’t constitute crimes. The question may well be, who committed the crimes, who killed the people? But that also is not necessarily a matter which this Commission will be called upon to decide on, so it’s not just that we’re confined to what happened on the 16th. If what was patently a murder took place on the 12th and if the police have evidence which gives rise to reasonable suspicion as to the identity of the murderer, then prima facie I don’t think the fact that this Commission is sitting would preclude them from making an arrest, provided it was a bona fide arrest and wasn’t in fact done for the ulterior motive which you’ve suggested. |
| MR MPOFU: | No, no, I think it’s a useful exchange, Chair, but the point of course is that the other side of the coin must also apply and that’s why I was raising an equality point. Nobody can tell me now that there is no reasonable suspicion that the police shot other people on the 16th and that those people who shot there should by now, are known. In fact, the only agency, government agency that comes out of this smelling like roses is the IPID because the IPID, to its credit, has taken statements, even in relation to the 16th and has even dubbed some of the people from whom it has taken statements, suspects, and I suppose that means murder suspects. But the issue is that those murder suspects are roaming the streets and they are working in the police and they have not even as much as been suspended and yet other so-called murder suspects, of issues that are covered by this Commission, are languishing for the past two weeks in the cells. That is the fundamental issue. I’m not saying that this Commission is going to find anybody guilty of murder but what I’m saying is that the basis upon which we got the long postponement of the 272 was exactly that these are some of the issues. |
| CHAIRPERSON: | Remember, Chair, that one of the terms of reference currently is that the Commission may recommend that people must be prosecuted. Now that is the nub of the
issue and the point I wanted to make further, it is clear,
we are not saying that the murders – what Mr Rampile was
saying – the murders of the people that happened before the
16th are equally reprehensible, like any other murder. So
that must be made clear. We must never be heard to be
saying there’s some murders that are bigger than others.
That is not what we’re saying, but what we’re saying is
that insofar as those murders can be called criminal
activities on behalf of the unknown murderers - and we
resist the temptation that is bandied about that it means
that those people who were killed by the 3 000 people who
were sitting at the kopje, or 300 of our clients who were
arrested – that we reject with the contempt it deserves.
But we are saying that – and we are not even saying, Chair,
that if the police know that Mr X who is one of the 270 was
involved in the murder of the 12, that they should sit and
do nothing.
[10:06] Surely there must be something that is less than
the drastic steps that are being taken which have a result
of hampering our participation in the commission of
Inquiry, ranking from informing us, of course not about the
details of the investigation, but that this person, we need
this person for fingerprinting because we think they had a
gun, or whatever it is, and then making arrangements that
those people are available for the Commission, and that
their treatment is not such as to terrorise other potential
witnesses. But while we’re sitting here, people know who
we are; nobody has engaged us, and as I say, even when we
try to engage we’ve been – Mr Semenya kindly on Tuesday
gave me the list of police stations where the four people
were held, but after that it was once again running up and
down at night and by lunchtime the following day we still
had not been able to locate the people, and that is the
gist of our complaint, Chair. I’m sure with all these
legal minds sitting here, some practical solution can be
found of how to balance the interests of the Police in
making sure that the evidence doesn’t disappear. They
can’t just sit and do nothing for six months or however
long the Commission is going to take, but at the same time
making sure that the interests of the Commissioner are also
safeguarded, and the interests of our clients.

CHAIRPERSON: Is that all that you propose to say on the second aspect?

MR MPOFU: No, Chair. The other issue is
that there has been allegations which –

CHAIRPERSON: I’m sorry, Mr Mpfou, I’m
reminded that what you said so far hasn’t been interpreted,
and in fairness to the interpreter, it might be helpful if
we stopped at this stage to give him an opportunity.

MR MAHLANGU: Thank you, Mr Chairperson.
1st to 31st October 2012

Mr Marikana, Rustenburg

1 I think we've already dealt with the first and the second, but Mr Bruinders, I beg your pardon, you indicated you wanted to speak next.

2 MR BRUINDERS SC: Only about the third aspect. The people who have been arrested are all members of AMCU, and as you know, we act for AMCU. We have, of the four who were arrested we have three incomplete statements and we were hoping to complete them certainly this week.

3 One of the reasons we were hoping to complete them was that at the end of last week the evidence leaders contacted us to ask us whether we would be prepared to lead in evidence some of the strikers, and they include Mr Mpofu's clients who happen to be our members. We gave an undertaking that we would, subject to their – because at that stage we knew that they were, they had been arrested – subject to their being released and subject to their being available here at the inquiry, so that we could take instructions from them for the purposes of preparing them for leading them, but secondly also as Mr Mpofu has already said, and I think we all now understand, the strikers are the only people with a different version than the Police. So we obviously also as AMCU, you will understand that Mr Mathunjwa left before the fatal shooting on the 16th and so he doesn't, he and his team were there, but I don't know either exactly how the shooting took place. But obviously AMCU's members do, and

4 CHAIRPERSON: I'm sorry to interrupt you.

5 MR BRUINDERS SC: That might be so, Chair. Of course one could do that, but it doesn't take a lot of adding up to conclude that this is a campaign of intimidation of our members and our witnesses. It really doesn't take a lot of adding up, and until they are released so that they can participate fully in this inquiry, as they should, the adding up won't stop. Now we don't want things to be postponed and we agree with our learned friend in the LRC that there's no need for a postponement, but we certainly believe that we should stand down now – I don't mean right now, I mean once you've heard from all of us we should stand down so that we can sort this out. You know, Commissioners, not all of us are criminal advocates or lawyers, but I would have thought –

6 CHAIRPERSON: That's not a happy way of putting it. I think we know what you mean.

7 MR BRUINDERS SC: No, but I would have thought, Chair, that what the Police might have done, because of course arrest is the last, it's the most extreme consultations with them away from the Police, out of earshot of the Police. So I wouldn't think one could conclude that it would be impossible to get instructions from them, and of course any evidence they give here could never be used against them in a criminal trial because of the provision in the regulations to that effect.

8 MR BRUINDERS SC: That might be so, Chair.

9 One of the reasons we were hoping to complete them was that at the end of last week the evidence leaders contacted us to ask us whether we would be prepared to lead in evidence some of the strikers, and they include Mr Mpofu's clients who happen to be our members. We gave an undertaking that we would, subject to their – because at that stage we knew that they were, they had been arrested – subject to their being released and subject to their being available here at the inquiry, so that we could take instructions from them for the purposes of preparing them for leading them, but secondly also as Mr Mpofu has already said, and I think we all now understand, the strikers are the only people with a different version than the Police. So we obviously also as AMCU, you will understand that Mr Mathunjwa left before the fatal shooting on the 16th and so he doesn't, he and his team were there, but I don't know either exactly how the shooting took place. But obviously AMCU's members do, and

10 Are they still in custody or have they been released?

11 MR BRUINDERS SC: Yes, they're still in custody.

12 CHAIRPERSON: So you could, if arrangements could be made for example to bring them here, you could consult with them here and presumably you would

13 MR BRUINDERS SC: Only about the third aspect. The people who have been arrested are all members of AMCU, and as you know, we act for AMCU. We have, of the four who were arrested we have three incomplete statements and we were hoping to complete them certainly this week.

14 One of the reasons we were hoping to complete them was that at the end of last week the evidence leaders contacted us to ask us whether we would be prepared to lead in evidence some of the strikers, and they include Mr Mpofu's clients who happen to be our members. We gave an undertaking that we would, subject to their – because at that stage we knew that they were, they had been arrested – subject to their being released and subject to their being available here at the inquiry, so that we could take instructions from them for the purposes of preparing them for leading them, but secondly also as Mr Mpofu has already said, and I think we all now understand, the strikers are the only people with a different version than the Police. So we obviously also as AMCU, you will understand that Mr Mathunjwa left before the fatal shooting on the 16th and so he doesn't, he and his team were there, but I don't know either exactly how the shooting took place. But obviously AMCU's members do, and

15 CHAIRPERSON: Never mind giving evidence when required to do so.

16 MR SEMENYA SC: Chair, I'm instructed that the individual is busy with a bail application.

17 CHAIRPERSON: Maybe during the tea adjournment it will be possible for you and Mr Mpofu to get together and exchange notes on that. It would seem from the way he's shaking his head that your instructions may not be correct. But anyway, let's not spend time on that now, but I understand to be implicit in what you said is that if he isn't involved in a bail application the necessary arrangements would be made to have him here so that Mr Mpofu can take instructions during the lunch hour.

18 Is that okay?

19 MR SEMENYA SC: Indeed, Chair.

20 CHAIRPERSON: Alright, okay. Anyone further wish to say anything on the three aspects that we –
1. form of apprehending a suspect. I would have thought that
2. in the context of this inquiry, what the Police would have
3. done is sought our assistance so that we can arraign people
4. and have them arraigned properly, get them there, get
5. whatever processes have to be followed for criminal courts,
6. get that done and that, as far as I understand, has already
7. been done. The Police have simply gone and unlawfully
8. rearrested our members, so that they’re acting in
9. contravention of an order by the Magistrate, but we can
10. come to a practical arrangement as to how to deal with
11. people whom the Police have identified and envisaged are
12. needed for other investigations. We can come to a
13. practical arrangement, and what we want to propose is that
14. we do that today before we proceed, so that we don’t have
15. the situation where we have this guerrilla warfare between
16. the Police and us where on every second day somebody is
17. arrested or they can’t be found or they won’t get here
18. because they feel intimated. Can we have that at least
19. sorted out before we proceed today, Mr Chair?
20. CHAIRPERSON: Mr Madlanga, in view of the
21. suggestion made by Mr Bruinders that we should give the
22. parties an opportunity to have discussions to where a way
23. forward can be reached by agreement, would it not be
24. appropriate for me to take the tea adjournment now and on
25. the basis that we would resume when told by you and the,

1. for instance the other parties, either that some
2. arrangement has been reached, or there’s no further point
3. in your having discussion?
4. MR MADLANGA SC: Chair, Commissioners,
5. it’s a practical suggestion and it’s acceptable to us.
6. Chair, there’s an issue that my learned friend, subject to
7. how the Commissioners feel, Mr Chaskalson would like to
8. raise. It relates to, as I understand, to the definition
9. of the issue which is –
10. CHAIRPERSON: Yes, I understand that
11. matter has been receiving attention, but perhaps we could
12. deal with that when we resume?
13. MR MADLANGA SC: As the Commission
14. please.
15. CHAIRPERSON: Is that in order?
16. MR MADLANGA SC: Thank you.
17. CHAIRPERSON: Very well. We will take
18. the tea adjournment now. I won’t say when we, for how long
19. it will be. It will be until I’m told by - I think we must
20. put the responsibility on Mr Madlanga - until I’m told by
21. Mr Madlanga either that an arrangement has been,
22. satisfactory arrangement has been worked out, or that
23. discussions have broken down and there’s no point in having
24. discussions further and we must carry on with the inquiry.
25. So we will take the tea adjournment now.

1. adjourned the meeting, the off-site meeting. It has since
2. transpired that – or maybe I can just summarise without
3. taking away from what Mr Semenya is going to say. Part of
4. the good news was that the police were prepared to release
5. the persons concerned upon certain conditions today and
6. hopefully be able to have them coming here today and we
7. indicated that in relation to the others, you know the time
8. didn’t matter except for one, the one person that we had
9. needed for the consultation.
10. Unfortunately, our attorneys on the ground at the
11. Ga Rankuwa court have now informed us that the first bail
12. conditions that were granted were quite onerous and
13. unacceptable, as it were. The amount of bail that has been
14. suggested is R5 000 per person. They are still engaging
15. there and obviously the possibility of raising that amount
16. of money, either at all or within the space of time that
17. would be required for us to continue seems quite remote at
18. the moment. I’m not very optimistic but we are still
19. engaging with Mr Semenya on trying to relax the bail
20. conditions, particularly in relation to the amount, and I
21. have pointed out to him that in relation to the –
22. CHAIRPERSON: I’m sorry to interrupt you,
23. MR MPOFU: Yes.
24. CHAIRPERSON: You’ve obviously been
<table>
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<th>Page 401</th>
<th>Page 402</th>
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<td>1 involved in these negotiations, you know what happened.</td>
<td>1 Service and the affected counsel who wished to call the</td>
<td>1 anything you wish to say at this stage?</td>
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<td>2 Those of us who were not involved don't know what happened.</td>
<td>individuals concerned and that this was a discussion that</td>
<td>2 MR SEMENYA SC: Chair and members of the</td>
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<td>3 I simply heard that an accord had been reached and it was</td>
<td>would go around facilitating access for the purpose of</td>
<td>3 Commission, the real sharp question is, we have been</td>
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<td>4 agreed that there would be a release of certain persons on</td>
<td>consultation. We thought it inappropriate for NUM to be</td>
<td>4 attempting to assist the Commission as best we can and bail</td>
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<td>5 bail, that's all I know. I know nothing more than that and</td>
<td>present at a discussion about consultations with</td>
<td>5 was finally secured for the affected individuals at R5 000</td>
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<td>6 the people sitting in the audience who are entitled also to</td>
<td>essentially AMCU members and so we remained out of that</td>
<td>6 per person. And the other contention on the other side is</td>
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<td>7 know what's happening, know even less than I do. So I</td>
<td>discussion.</td>
<td>7 that they must be released on warning. We're talking about</td>
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<td>8 think before you deal in detail with the problems, you</td>
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<td>8 people who are arrested for triple murders, possession of</td>
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<td>9 might give us a general outline so we can better follow</td>
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<td>9 firearms, intimidation of individuals – there is serious</td>
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<td>10 what you're going to tell us.</td>
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<td>apprehension about the possibility of continued violence</td>
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<td>11 MR MPOFU: Thank you, Chair. Once again</td>
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<td>with their release but that notwithstanding, we have</td>
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<td>12 I'm sure my colleagues who were part of the meeting,</td>
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<td>attempted to do the best we can and the odds are - on</td>
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<td>13 evidence leaders and Mr Semenya in particular, might want</td>
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<td>either side, we have a deep appreciation that this does not</td>
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<td>14 to add but my understanding was that at the meeting three</td>
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<td>necessarily fall within your province for the determination</td>
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<td>15 issues were addressed. One was the issue of giving access</td>
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<td>of bail, but at the point of stand down we were talking</td>
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<td>16 to the evidence leaders to some of the dockets in order to</td>
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<td>about four people. Now we're talking about nine people.</td>
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<td>17 satisfy them about the grounds for arrest and I think that</td>
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<td>It's just impossible to comply, Chair.</td>
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<td>18 matter was resolved.</td>
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<td>CHAIRPERSON: Yes, well, clearly -</td>
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<td>19 The second issue was the issue of the arrest of</td>
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<td>MR TIP SC: Mr Chairman –</td>
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<td>20 the persons and I must add that we, upon checking with my</td>
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<td>CHAIRPERSON: Yes, I'm sorry? Mr Tip?</td>
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<td>21 attorneys, the number of people involved is nine, nine</td>
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<td>MR TIP SC: Yes, may I just put something</td>
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<td>22 people. I had forgotten earlier but there were two people</td>
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<td>on record in respect of the position of NUM. When this</td>
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<td>23 who were denied bail last week on the basis that members of</td>
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<td>matter was adjourned early this morning or at about 10:30,</td>
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<td>24 NUM were demonstrating outside the court and they were</td>
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<td>we had understood very clearly that it was a question of</td>
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<td>25 denied for their own safety. I'm just putting that as an</td>
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<td>discussion between, essentially, the South African Police</td>
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** aside. So that's the issue that I was addressing. The third issue, Chairperson and honourable commissioners, was what we suggested from our side, that there should be some kind of protocol of dealing with this kind of issue in the future involving, for example, us being informed promptly if someone has been arrested and that was resolved - not completely resolved but we were happy with the suggestion that such a protocol will have to be crafted bilaterally between us and the South African Police Services. So to that extent that matter was also resolved. It would seem that of those three matters, the two are resolved subject to those qualifications and the third matter that we thought was resolved, was this issue of releasing people on bail and what – the rest of what I said then applies to that. Thank you. Chairperson before, if I may just interject for a second, maybe in terms of putting something concrete on the table, our proposition would be that it would seem that the attendance of the persons, even with the best will in the world, will not be secured now in the next couple of hours. Unfortunately we can’t – I cannot predict how long it will take before we can find each other with the police, so that's all I'm prepared to say at this stage. |

** CHAIRPERSON: Mr Semenya, is there |

** Now Mr Chairman, we are absolutely of the view |

** I now hear for the first time that there's talk about nine people. Now even Mr Semenya appears to be surprised at that. **
that this is not a matter that is really within the Commission’s jurisdiction but it has arisen and various facilitations have been attempted. From the perspective of NUM, though, we must place on record that the release of persons who have been arrested on charges of this nature is extremely prejudicial to other NUM members and officials and also to our already very fragile prospect of securing the witnesses who will be prepared to come and testify before this Commission. So I’d hoped, Mr Chairman, that whenever I had anything to address the Commission on, it would be positive and would readily advance the position of the Commission. In this instance unfortunately that’s not possible. It is a matter of very, very grave concern to us.

CHAIRPERSON: Yes, thank you. As you said, it’s not a matter within the province of the Commission. If there are bail applications and there are contentions as to what conditions would be appropriate, that’s a matter for the court in which the bail application is brought. It wouldn’t be proper for us as commissioners to express our views and try to influence the judicial officer concerned with the bail application in one way or the other.

The only reason it came here was that Mr Bruinders suggested when the matter was debated, that it might be possible if there was a meeting between the representatives of the various parties, for an accord or an agreement of some kind to be worked out and it’s for that reason that we adjourned and I indicated, if it became clear at any point that agreement would not be possible, that was to be reported to me so we could resume. And it was eventually reported to me that an accord had been reached, which is why we came back, but it would seem at the moment from what you said that there isn’t an accord and it doesn’t seem likely there will be one before the end of the hearing today, so we may as well proceed, subject to any application people may wish to bring. But Mr Bizos, you want to say something? You raised your hand.

MR BIZOS SC: Yes, Mr Chairman, we started almost a month ago and we are halfway through the first substantial witness. Your patience led you to adjourn the proceedings in the hope that there would be an accord. We all thought, when we dispersed before the lunch adjournment, that there was an accord.

I want to make a submission for your consideration, Mr Chairman. We know that there are difficulties and that Mr Dali Mpofu, Mr Mpofu has, but the witness is in the witness box, we are in the afternoon of the day that we thought that we would finish him. We are mindful of the difficulties of the would-be cross-examiner.

but surely he can proceed to cross-examine. If there is anything that he wants to check or cross-examine on, on which he is not ready, he will have the evening and early in the morning to get instructions. But we cannot, with the greatest respect, in a matter of such importance – not only to the parties but the country as a whole – to kick for touch so often that this Commission is going to last far beyond the envisaged period that anyone may have had, never mind the four months.

So what I would submit for your consideration is that we proceed this afternoon and sit late in order to make up for lost time so that the substantial portion of the cross-examination of the witness can take place during the time available and we are accustomed – I am sure as Mr Mpofu is – of getting instructions during non-court hours, so to speak. That is the submission that I make for your consideration.

CHAIRPERSON: Thank you, Mr Bizos. There is, of course, a further consideration that Colonel Botha was present at the inspection in loco, he pointed out points at the inspection in loco in the presence of counsel. Parties – other people who weren’t present at the time, came later. There would have been an opportunity for instructions to be taken then. My own instinct at the moment is along the lines that you suggest and to sit late.
1st to 31st October 2012

Marikana

Rustenburg

Page 409

if they're so minded, to ask further questions in the light of what is on the video and thereafter an opportunity would be afforded to the would-be cross-examiners to cross-examine. I am also minded to sit until six o'clock tonight to make up for some of the time that we've lost. Time – the time available to this Commission is not unlimited and it behoves us to make as much use of the time that's available to us and if, for whatever reason, time cannot be spent during the day on the main work of this Commission, then we must be prepared to sit longer hours in order to compensate, to some extent, for that. I think Mr Mpofu raised his hand and so did Mr Bizos. 

MR BIZOS SC: Yes.

CHAIRPERSON: But should we not get the statement read first, because I don't think that many people know what exactly the Minister has said and it's certainly important in respect of one aspect, so Mr Madlanga you've now got the document in front of you - would you be kind enough to read it to us?

MR MADLANGA SC: Thank you Chair, commissioners. It says, "Document issued by Mr Mthunzi Mhaga, the spokesperson of the Department of Justice and Constitutional Development." It reads as follows, “Minister of Justice, Jeff Radebe, has instructed the state law advisers to amend the regulations governing the Marikana Commission of Inquiry to ensure that the state makes arrangements to assist representatives of the deceased victims of the tragic incidents to attend and to remain in attendance for the duration of the inquiry or for such time as they wish to remain in attendance."

[14:09] The department has liaised with the Commission this morning to convey its intention to submit the proposed amendment to the President before the end of business. The Minister of Justice and Constitutional Development, Mr Jeff Radebe, regrets any confusion and misconception that may have been created by the decision taken by the Department this past Saturday. Government has the interests of the families of victims at heart, hence that we are working tirelessly to salvage the situation. It should also be noted that the interests of the families are safeguarded by the seasoned legal representatives currently participating in the inquiry which is underway." Thank you, Chair.

CHAIRPERSON: Before I call upon one of the seasoned legal practitioners who was referred to, I'd like to enquire from – I think it's Mr Budlender is the one I was asked the question of – whether it is correct, when I said that I'd been told that there had been a request that Colonel Botha's video be seen, the practitioners concerned nodded their heads. Is it possible for us to see that video this afternoon?

MR MADLANGA SC: It is possible, Chair.

Arrangements have already been made with the gentleman who takes, or rather who does the video recording for the Commission and copies are up there already. Thank you.

CHAIRPERSON: Thank you.

MR MPOFU: Yes Chair, if –

CHAIRPERSON: Sorry, I think that was recorded. It seems sensible we should watch the video and it can be seen – I just want to enquire from Mr Budlender whether there's anything, I don't know whether any members of the family are here. I know some of the local people may well be here. Is there anything which is likely to cause distress because if so, we should give that warning beforehand.

MR MADLANGA SC: Chair, commissioners –

CHAIRPERSON: Mr Madlanga, you are [indistinct] not Mr Budlender, forgive me.

MR MADLANGA SC: Thank you. Chair, commissioners, we have viewed Colonel Botha's video. I do not think there's any material that might be offensive in it but Chair, may I take this opportunity to make a request? Colonel Botha approached me and he assured me before saying anything that he was not going to discuss the case as he is under cross-examination. He said he's aware of the ethics around that issue but he insisted on talking to me and he made the request that, prior to anything relating to him taking place today, he would like to say something to the Commission. I do not even know what it is but he said he would really, really like to say something to the Commission. Thank you, Chair.

CHAIRPERSON: I suppose I must grant his request. Colonel? Before you speak, is this going to be part of your evidence because if so, I may as well remind you anyway, you're still under oath in respect of the oath you took last time. Mr Mpofu, what do you want to say now?

MR MPOFU: Mr Chair, I just wanted to address the issues that were raised in relation to what we said, but also touch on this issue of the cross-examination that you, the sequence that you have suggested. Chair, I just want to say that we are as keen as everyone to have the matter moved on and we don't take kindly to suggestions of kicking for touch. And also we cannot have people detained forever simply because a grouping of people will not like it. I mean that's not how it works.

CHAIRPERSON: Mr Mpofu, you don't have to tell me that. I've already indicated that as far as the bail is concerned, that's a matter for another court. It would be improper for us to say anything, so you don't have to make the speech you're making to me now because if you
1st to 31st October 2012 Marikana Rustenburg

1 want to make it, make it in the magistrate’s court when the bail application comes –
2 MR MPOFU: it has been made there, Chair.
3 CHAIRPERSON: Well, good. It’s not necessary to repeat it now, just carry on with your argument.
4 MR MPOFU: Yes. Chairperson, I’m sorry I have to insist on this - if remarks have been made regarding my clients about their ability to attend here, I have to correct them now. For example, it has been said here that we’ve said anything about four people. We never said anything about four people. This morning’s record will show that I said about six or seven people and all I did was to explain about another two, but two people have misrepresented what I said and therefore I have to make the speech. Thank you.
5 Thank you. The next issue that I wanted to talk about was the issue of the video that, Chairperson, you’ve touched on. We made the request this morning, since we were in the middle of the cross-examination, that the video should be prepared in order to be interposed in that cross-examination. So we would kindly request that the – or rather it’s two videos but I think the important one is the one that is ascribed to Colonel Botha. So we would kindly request that if anybody else is going to ask questions
6 regarding those videos, that that should be done after we have dealt with the issues that we wish to deal with, for which we asked for the video to be played in the first place.
7 CHAIRPERSON: Mr Burger, you look as if you want to say something?
8 MR BURGER SC: Chair, I just do not follow the process. Is the idea now that we will watch a video and then certain people will cross-examine and my learned friend Mr Mpofu will then ask for a postponement, or is the application for a postponement not there anymore or when does it come or when can we go on with this evidence, I would like to know?
9 CHAIRPERSON: I understand – I suppose I shouldn’t say that I understand, maybe Mr Mpofu will tell us but first I will say what I understand. My understanding is, we’re going to see the video of the Colonel after the Colonel has made the statement he wants to make. I had indicated that I would then allow further cross-examination based on the video and I would go back to where we started in cross-examination and allow counsel who’ve already cross-examined, to cross-examine if they wish on matters emerging from the video. Mr Mpofu has pointed out that he’s the one who requested the video to be shown. It being shown is really to be regarded as part of his cross-examination and he’d like to cross-examine on it before the others get a chance. It seems to be a reasonable suggestion in the circumstances.
10 I didn’t understand him to be saying he doesn’t want to cross-examine, he doesn’t want - he wants a postponement. I understood him to say he would like to cross-examine before Mr Bizos and Mr Semenya and you and Mr Tip get a chance to cross-examine, and Mr Bruinders, get a chance to cross-examine further. So it sounds to me, if I may say so - if I’m wrong, Mr Mpofu, I’m sure you will immediately hasten to correct me but that’s my understanding. Have I got it right, Mr Mpofu?
11 MR MPOFU: Yes, you’ve got it right, at least to the extent that I never mentioned the word “postponement” this afternoon.
12 CHAIRPERSON: No, you did mention it this morning but not this afternoon, right. No, I take what you said. Right, now Colonel, I’ve already reminded you, you’re still under oath. Oh sorry, Mr Ntsebeza indicated he wanted to say something. Have you still got something you wanted to say, Mr Ntsebeza?
13 MR NTSEBEZA SC: Yes, regrettably so, Mr Chairman and members of the Commission. I just wanted to place on record the fact that we also got to know about the reported statement of the Minister of Justice and Constitutional Development during the adjournment and we immediately consulted our attorneys and established as to what their instructions are. Our attorneys have asked us to indicate to you that there is a lack of specificity about what is intended to be done and your experience, Mr Chairman and members of the Commission, will testify to the fact that not everything that has been stated as being the intention has actually actualised.
14 The families were here when Mr Botha was cross-examined and since then have expressed a further wish of being present when further cross-examination of Mr Botha takes place. We now are told that that may be as soon as tomorrow or we do not know when it is going to be. Our request is that whatever arrangements are made to transport the families to be here, made by the Commission or by people on behalf of the Commission, should be done in liaison with the attorneys who are in constant contact with the families.
15 We keep on being told that the families have said this to representatives from the Department of Constitutional Development and Justice, that they have preferred money instead of being transported to here. When we –
16 CHAIRPERSON: Mr Ntsebeza, I don’t want to interrupt you but really, I don’t think that point is
<table>
<thead>
<tr>
<th>Page 417</th>
<th>Page 419</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 relevant at this stage. If you want to ask for a</td>
<td>1 broke and I didn't want to – I mean I couldn't inform</td>
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<td>2 postponement for the cross-examination to stand over till</td>
<td>2 anyone in the meantime because I was under oath, so I</td>
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<td>3 they come, you can make the application. I don't</td>
<td>3 didn't want to go that way. I decided this morning early</td>
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<td>4 understand the relevancy of what you're saying at the</td>
<td>4 that I would rather come and say it here than say it to</td>
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<td>5 moment. You correctly point out we don't know what exactly</td>
<td>5 someone else at some other place.</td>
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<tr>
<td>6 the regulations are going to say, so once we know that you</td>
<td>6 CHAIRPERSON: I understand you're going</td>
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<td>7 will obviously be in a position to address further</td>
<td>7 to show, we're going to see your video. By way of</td>
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<td>8 submissions to the Commission if, in the light of the</td>
<td>8 introduction I'd just like to ask you something about it.</td>
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<td>9 regulations say, you feel they fall short of what you</td>
<td>9 How many helicopters were there in the air at the time?</td>
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<td>10 consider appropriate. But I don't think we should spend</td>
<td>10 LT-COL BOTHA: Sir, according – as far as</td>
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<td>11 any more time on this aspect of the matter now. I think we</td>
<td>11 I can remember there were four, four choppers.</td>
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<td>12 should rather proceed with the Colonel's statement and</td>
<td>12 CHAIRPERSON: Four choppers. I think you</td>
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<td>13 viewing the video.</td>
<td>13 said you were in the air for about 41 minutes, I think</td>
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<td>14 MR NTSEBEZA SC: Well, if that's your</td>
<td>14 that's – that's either in what you said or it's in the</td>
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<td>15 ruling, Mr Chairman, that's your ruling, I cannot take it</td>
<td>15 statement that you made, which is part of the IPID trial,</td>
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<td>16 further but I was submitting that the families were here</td>
<td>16 is that correct?</td>
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<td>17 when the cross-examination of Colonel Botha started and</td>
<td>17 LT-COL BOTHA: It must've been in the air</td>
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<tr>
<td>18 they would like to be here when his cross-examination</td>
<td>18 for a bit longer than 41 minutes because the video is 41</td>
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<td>19 continues.</td>
<td>19 minutes.</td>
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<td>20 CHAIRPERSON: I understand that but on</td>
<td>20 CHAIRPERSON: I see. Right, can we now</td>
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<td>21 the other hand, as I pointed out earlier, the time</td>
<td>21 see the video? Do you want to say something further,</td>
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<td>22 available to this Commission is not limitless. We have to</td>
<td>22 Colonels, before we see the video?</td>
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<tr>
<td>23 make the best use of it. I could understand that the</td>
<td>23 LT-COL BOTHA: Sir, then I've got a</td>
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<td>24 families would want to be present when evidence is given</td>
<td>24 request. I'm going to ask the Chairman to make a ruling on</td>
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<td>25 about the actual killing of their loved ones, but it seems</td>
<td>25 that, that I just express myself better in Afrikaans, I</td>
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<th>Page 418</th>
<th>Page 420</th>
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<tr>
<td>1 to me that regard being had to the nature of the evidence</td>
<td>1 would prefer to testify further in Afrikaans although I</td>
</tr>
<tr>
<td>2 the Colonel is giving, it would be in order if that</td>
<td>2 started in English but I will stick to your ruling if you</td>
</tr>
<tr>
<td>3 evidence – if they wished to know what he says – could be</td>
<td>3 feel it's not appropriate.</td>
</tr>
<tr>
<td>4 interpreted to them from the transcript when they arrive.</td>
<td>4 CHAIRPERSON: We will have the difficulty</td>
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<td>5 They can also be shown the video. I'm not sure whether</td>
<td>5 that I think some of the people here don't understand</td>
</tr>
<tr>
<td>6 they'd be able to give any meaningful instructions on the</td>
<td>6 Afrikaans, so we'd have to have it interpreted twice, once</td>
</tr>
<tr>
<td>7 cross-examination, regard being had to the nature of the</td>
<td>7 into English and once into isiXhosa. I hope you'll forgive</td>
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<tr>
<td>8 evidence he's giving, but if they were to give meaningful</td>
<td>8 my saying that I found your English very good but I take it</td>
</tr>
<tr>
<td>9 instructions to counsel then an application could be made</td>
<td>9 you forgive me for saying that.</td>
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<td>10 for the recall of the witness and if it was considered</td>
<td>10 [14:29] May I suggest that you give your evidence in</td>
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<td>11 appropriate, the recall of the witness would be allowed so</td>
<td>11 English, but if at any time, you are at loss for a word, or</td>
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<td>12 that these meaningful instructions, if any, could be the</td>
<td>12 you feel you can express yourself on a particular topic</td>
</tr>
<tr>
<td>13 subject of further cross-examination. That is my ruling.</td>
<td>13 better in Afrikaans, then feel free to switch over to</td>
</tr>
<tr>
<td>14 Colonel, would you please make your statement?</td>
<td>14 Afrikaans, and then the interpreter can interpret what you</td>
</tr>
<tr>
<td>15 LT-COL BOTHA: Mr Chairman, I've got one</td>
<td>15 said in Afrikaans. Would that meet the thrust really of</td>
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<tr>
<td>16 thing to say and then I've got a request after that. The</td>
<td>16 your request?</td>
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<td>17 last remark on Tuesday afternoon, last Tuesday afternoon by</td>
<td>17 LT-COL BOTHA: Mr Chairman, I am fine</td>
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<td>18 Adv Mpofu was actually that he will bring someone that, or</td>
<td>18 with that, thank you.</td>
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<td>19 a witness that sounds to me that said that they were shot</td>
<td>19 CHAIRPERSON: Alright, okay.</td>
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<td>20 at from the chopper and it made me think what could or</td>
<td>20 MR MPOFU: Chairperson, just to try and</td>
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<td>21 could not have happened where I was which could've given</td>
<td>21 save time, I just wanted to indicate that there are two</td>
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<td>22 that impression. And just before we walked out of here, we</td>
<td>22 videos that we had asked for, this one, we would like it to</td>
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<tr>
<td>23 already broke, I remembered that two stun grenades were</td>
<td>23 be played in full, but to save time, the next one can just</td>
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<tr>
<td>24 released from the chopper while I was in the chopper. I</td>
<td>24 play even five minutes or so because it's more for</td>
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<tr>
<td>25 didn't remember it by then, I remembered it just as we</td>
<td>25 comparative purposes rather than the content.</td>
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1st to 31st October 2012
Marikana Rustenburg

Chairperson: It's the other video that you want to see?

Mr Mpolo: It's another, it's the same, a helicopter shoot, footage rather from a different helicopter.

Chairperson: Alright, that sounds alright. That sounds acceptable. Colonel, perhaps you can, if you consider it necessary, you might give us a little bit of commentary from time to time, for example, I take it what we have on the screen at the moment is the beginning of the video. Is that true? I will ask those who are responsible for the lighting to turn the lights off, so that we can see the screens better. Mr Bizos has said that we can start while the switch is being looked for. I think that's the problem. So shall we start? And if there's something that we can't see when the lights are turned off, we can perhaps go back to that point.

[Video being shown]

Chairperson: The Commission resumes.

[Video being shown]

Chairperson: Colonel, you were still under oath. U is nog steeds onder eed.

Mr Mpolo: Thank you, Colonel we left off where I was asking you a non-contentious issue. I am just going to continue with those for a while. It is so, isn't it, that you are a video, you have been a video camera operator for the past 26 years?

Lt-col Botha: Yes, I am a video camera operator.

Mr Mpolo: For 26 years?

Lt-col Botha: I did training 26 years ago, yes, let's say 26 years is correct.

Mr Mpolo: You are also a crime scene expert?

Lt-col Botha: That is correct, Mr Chair.

Mr Mpolo: And on the 16th at least you were asked to come and film a particular crime scene.

Lt-col Botha: I was requested to film the dispersal and disarmament of people, that should have taken place.

Mr Mpolo: Did you do that?

Lt-col Botha: Yes, I did.

Mr Mpolo: Is part of what you observed the fact that the particular scene was surrounded by Nyalas and dogs – the Dog Unit members, as well as members on horseback?

Lt-col Botha: Sir, I cannot say on the video who is there, are members on horseback or I didn't - or Dog Unit members or something like that.

Chairperson: I take it you saw the Nyalas. You can confirm there were Nyalas?

Lt-col Botha: Yes.

Chairperson: You can confirm they were Nyalas. Your inability relates to confirm what you saw, as it's put to you relates to Dog Unit handlers and what else?

Lt-col Botha: And people on horseback.

Chairperson: People on horseback.

Mr Mpolo: Alright, further it is when you still airborne or when you were grounded, you did see some policemen on horseback.

Lt-col Botha: Mr Chair, at no stage did I see policemen on horseback.

Mr Mpolo: What is known as the Mounted Unit, does that refer to police on horseback?

Lt-col Botha: That is correct, Mr Chair.

Mr Mpolo: And if someone says there were members of the Mounted Unit, would you be surprised or rather what would your evidence be?

Lt-col Botha: I cannot confirm or either deny that.

Mr Mpolo: And if I tell you that there were also members of the Dog Unit, what – would your response be the same?

Lt-col Botha: I cannot – well, if you say so, I'll either have to believe you or don't believe you.

Chairperson: What that means, I take it is that there could have been members of the Dog Unit, it's possible they were there. You can't confirm it, you also can't deny it? Is that correct? It is possible that they were there. Would that be a fair comment?

Lt-col Botha: It's possible that they were there, I did not see them at the specific scene.

Mr Mpolo: Well, I was asking you this, because I thought you might be helpful, having seen it from a vantage point but my last question in that line is, you also cannot deny that the two koppies were effectively surrounded by various units of the police.

Lt-col Botha: Sir, I cannot, I won't say they were surrounded, what I say is there was a lot of policemen, you could see them on the video.

Mr Mpolo: The question is, you cannot deny that they were surrounded.

Lt-col Botha: I cannot deny it, but I
1st to 31st October 2012 Marikana Rustenburg

1. MR MPOFU: Are you aware of people who were hiding at position K?
2. LT-COL BOTHA: No, Mr Chair, not evening.
3. MR MPOFU: But what can you confirm from the video can you – it is just too high up, you cannot see those people hiding there.
4. LT-COL BOTHA: What do you mean, you were too high up? Which helicopter were you in, of the two that we saw?
5. MR MPOFU: Your evidence earlier was that part of the activities of the people in your helicopter was to throw a stun grenade, two stun grenades if I am correct. Is that right?
6. LT-COL BOTHA: That is correct, Mr Chair.
7. MR MPOFU: At whom or at what? What was the target?
8. LT-COL BOTHA: Sir, it was a operation proceeding taken by Brigadier Fritz he just gave the instruction.
9. MR MPOFU: Well what will your comment be, I am going to argue at the end that if you were close enough to throw stun grenades, then you would have been close enough to see the people because you wouldn’t be throwing stun grenades from so high up, otherwise they could have gone anywhere.

1. LT-COL BOTHA: The kraal is J, Mr Chair.
2. MR MPOFU: Okay, yes, then H, if that is the case, would be the large koppie, isn’t it?
3. LT-COL BOTHA: That is correct, Mr Chair.
4. MR MPOFU: And K would be the small koppie.
5. LT-COL BOTHA: Mr Chair, Mr Mpfou just said K as the large koppie, is that what you confirm to as the small koppie or the large koppie?
6. MR MPOFU: No, my understanding is the first shooting happened near the kraal, is that correct?
7. LT-COL BOTHA: That is correct.
8. MR MPOFU: Okay, where in relation to B1 is that?
9. LT-COL BOTHA: Are we talking about Scene 2, not the small koppie next to the big koppie? You are talking about Scene 2, the one that’s further away?
10. MR MPOFU: Ja, if you go to B1 –
11. LT-COL BOTHA: Do you refer to number K?
12. MR MPOFU: Yes. I refer to number K as the large koppie.
13. LT-COL BOTHA: Mr Chair, Mr Mpfou just said K as the large koppie, is that what you confirm to as the small koppie or the large koppie?
14. MR MPOFU: No, my understanding is the first shooting happened near the kraal, is that correct?
15. LT-COL BOTHA: That is correct.
16. MR MPOFU: Okay, where in relation to B1 is that?
17. LT-COL BOTHA: The kraal is J, Mr Chair.
<table>
<thead>
<tr>
<th>Page 429</th>
<th>Page 430</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 I don't know, do you know what a radius is?</td>
<td>1</td>
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<tr>
<td>2 LT-COL BOTHA: Yes, Mr Chair.</td>
<td>2 But it is somewhere in B.</td>
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<td>3 MR MPOFU: Okay, if those two sets of</td>
<td>3 MR MPOFU: Thank you, Chair. Okay, do</td>
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<td>4 Nyalas were forming part of a circle, what would be the</td>
<td>4 CHAIRPERSON: Mr Madlanga, it's not on</td>
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<td>5 radius of that circle, the distance between the two points?</td>
<td>5 B2.</td>
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<td>6 LT-COL BOTHA: Mr Chair, let me just</td>
<td>6 MR MADLANGA SC: On B16, Chair. It's a</td>
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<td>7 confirm, I said there was Nyalas behind the people.</td>
<td>7 CHAIRPERSON: Mr Madlanga, I think the</td>
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<td>8 I cannot recall saying they were on the other side of the</td>
<td>8 problem is that the Ks, Js and Hs, on B16 are not the same,</td>
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<td>9 kopjie. I can remember that there was I think a water</td>
<td>9 do not denote the same positions, as they do on B1.</td>
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<td>10 canon, because it looks a bit different than an Nyla, on</td>
<td>10 MR MADLANGA: Perhaps, Chair, let me just</td>
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<tr>
<td>11 the other side of the kopjie.</td>
<td>11 he testifies. He drew the sketch at B16.</td>
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<td>12 MR MPOFU: Okay, sorry, Captain, no, you</td>
<td>12 CHAIRPERSON: Yes, I understand that. I</td>
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<td>13 did say, remember when I took you to the map, you did</td>
<td>13 think, I hope Mr Mpofu won't mind if I interrupt his cross-</td>
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<td>14 confirm that there were Nyalas behind position K. So I</td>
<td>14 examination.</td>
</tr>
<tr>
<td>15 don't want us to go back there.</td>
<td>15 MR MPOFU: No.</td>
</tr>
<tr>
<td>16 LT-COL BOTHA: So, can we just get where</td>
<td>16 [16:04] CHAIRPERSON: So you are busy trying to</td>
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<td>17 is behind, is it on J side, on let's say G's side of the</td>
<td>17 ascertain particular distance, presumably as a basis from</td>
</tr>
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<td>18 map?</td>
<td>18 which you’re going to proceed to the next point.</td>
</tr>
<tr>
<td>19 MR MPOFU: Well, where do you think it</td>
<td>19 MR MPOFU: Correct.</td>
</tr>
<tr>
<td>20 was when you said, yes, there were Nyalas.</td>
<td>20 CHAIRPERSON: So if the witness can’t</td>
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<td>21 LT-COL BOTHA: I thought on J side that</td>
<td>20 help you on the distance, then I’m afraid you’re going to</td>
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<td>22 you were talking about, on the eastern side.</td>
<td>20 have to proceed to the next point without it, but perhaps</td>
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<td>23 MR MPOFU: Okay, so that moves us right</td>
<td>21 MR MPOFU: Thank you, Chair. The water</td>
</tr>
<tr>
<td>24 back. Did you observe Nyalas way from J and K, and I</td>
<td>22 MR MADLANGA: Thank you, Chair. The water</td>
</tr>
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<td>25 suppose that’s the western side, in other words, behind the</td>
<td>22 canons that were there, they were about two of them, is</td>
</tr>
<tr>
<td>26 position K on the western side.</td>
<td>25 one that correct?</td>
</tr>
<tr>
<td>27 LT-COL BOTHA: There were Nyalas at the,</td>
<td>27 LT-COL BOTHA: Mr Chair, that’s correct.</td>
</tr>
<tr>
<td>28 let me, if you look at the video, can I just explain it in</td>
<td>27 MR MPOFU: One of them was right in the</td>
</tr>
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<td>29 that way? At some stage in the beginning of the video you</td>
<td>28 middle of scene 2, correct?</td>
</tr>
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<td>30 can see that there are Nyalas behind, let’s say to the</td>
<td>29 LT-COL BOTHA: Sir, if I recall the video</td>
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<td>31 eastern side of K. I did look at the video even now, and I</td>
<td>30 correct, there was a water canon in the middle at the end,</td>
</tr>
<tr>
<td>32 can’t recall now if there was any on the western side of K,</td>
<td>31 where we circled around the kopjie at some stage, yes.</td>
</tr>
<tr>
<td>33 but if the video shows that, then it’s obviously there.</td>
<td>31 MR MPOFU: And so the other that you</td>
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<td>34 MR MPOFU: Okay, what I am getting at is</td>
<td>32 referred to which was behind position K, would be the</td>
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<td>35 the following, and I am going to put it like this, between</td>
<td>32 second one?</td>
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<td>36 the position J where you and I agree there were Nyalas and</td>
<td>33 MR MADLANGA: Mr Chair, Commissioners -</td>
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<tr>
<td>37 position, behind position K, that distance would be about a</td>
<td>34 CHAIRPERSON: Yes, Mr Madlanga.</td>
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<tr>
<td>38 kilometre.</td>
<td>35 MR MADLANGA SC: If I must look at the map,</td>
</tr>
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<td>39 LT-COL BOTHA: I think it was measured at</td>
<td>36 MR MADLANGA SC: It was measured, except</td>
</tr>
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<td>40 6 - between 5 and 600 metres. It’s somewhere on the key.</td>
<td>40 that I cannot quickly go there, it is around 500 indeed.</td>
</tr>
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<td>41 MR MPOFU: No.</td>
<td>41</td>
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<td>42 LT-COL BOTHA: Not?</td>
<td>42</td>
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<td>43 MR MPOFU: - that's the one distance you</td>
<td>43</td>
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<tr>
<td>44 did not -</td>
<td>44</td>
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<tr>
<td>45 LT-COL BOTHA: Is it not there?</td>
<td>45</td>
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<tr>
<td>46 MR MPOFU: No.</td>
<td>46</td>
</tr>
<tr>
<td>47 LT-COL BOTHA: Okay, sorry.</td>
<td>47</td>
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<td>48 MR MADLANGA: Mr Chair, Commissioners -</td>
<td>48</td>
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<td>49 CHAIRPERSON: Yes, Mr Madlanga.</td>
<td>49</td>
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<tr>
<td>50 MR MADLANGA SC: It was measured, except</td>
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1st to 31st October 2012  
Marikana  
Rustenburg

**Page 433**

25 | MR MPOFU: Thank you. Right, and that –
24 | LT-COL BOTHA: Yes, Mr Chair.
23 | MR MPOFU: Okay.
22 | LT-COL BOTHA: Now the purpose of this is to
determine the scene? -
21 | LT-COL BOTHA: If you take it as that,
20 | yes, Mr Chair.
19 | MR MPOFU: Now the purpose of this is to
suggest to you that in the video that we observed for about
24 40 minutes, or 41 minutes, the time that you spent at the
25 scene, as you have now defined it, and this is not a

**Page 434**

1 | let's generously say it was a kilometre, that radius is
2 | what would define the scene, correct?
3 | LT-COL BOTHA: That is the radius of?
4 | MR MPOFU: Between the distances that you
have now said it was less than a kilometre.
5 | LT-COL BOTHA: That's correct, Mr Chair.
6 | MR MPOFU: Thank you.
7 | CHAIRPERSON: Sorry, I'm not sure that I
understand. If you join the water canon to the Nyalas, you
got a line.
8 | MR MPOFU: Yes.
9 | CHAIRPERSON: Now if you regard
Nyalas being the one end of the circle, and the water canon
the other, then the distance between the water canon and
the Nyalas would be diameter of the circle, not the radius.
10 | MR MPOFU: Correct, correct.
11 | CHAIRPERSON: Now do you mean the radius,
which is half the diameter, or do you mean the diameter,
12 itself?
13 | MR MPOFU: Okay, Chair, ja well, I
suppose I would have to guess the centre of the circle, and
14 then we get into geometry –
15 | CHAIRPERSON: No, if the distance between
14 the two is roughly a kilometre –
15 | MR MPOFU: And then it's the straight

**Page 435**

1 | line –
2 | CHAIRPERSON: Ja, then the straight line
between the two would be the diameter of a circle.
3 | MR MPOFU: Okay.
4 | LT-COL BOTHA: If you took the middle of
that line as being the centre, and got a compass and –
5 | MR MPOFU: Yes, and the equidistance –
6 | CHAIRPERSON: Ja, for the purpose of
clarity, when you talk about radius do you really mean
radius or do mean diameter of the imaginary circle?
7 | MR MPOFU: Of the imaginary circle, in
that sense I mean the diameter, Chair. In other words, the
distance, let's say the straight line - let's just simplify
it, let's forget the geometry. The straight line between
the Nyalas and the second water tank would be about a
25 kilometre or less?
8 | LT-COL BOTHA: That is correct, Mr Chair.
9 | MR MPOFU: And that straight line would
10 | determine the scene?
11 | LT-COL BOTHA: If you take it as that,
12 yes, Mr Chair.
13 | MR MPOFU: Now the purpose of this is to

**Page 436**

1 | scientific estimation, is in the region of 10 to 20% to be
generous, would that be fair?
2 | LT-COL BOTHA: Mr Chair, if I know at
that stage that that was a scene, I most probably would
have concentrated more on that, but there was the people
went into different directions and I video graphed that
also.
3 | CHAIRPERSON: Colonel, I understand your
answer, but you haven't really answered the question the
witness ask – the counsel asked you. Counsel said do you
accept that 10 to 20% of the total time of the video is
devoted to pictures of what he called the scene, by which
he means the scene which is covered by that imaginary
circle which we spoke about. Your answer, I understood,
implicated that the answer was yes, but you said the reason
was – and did what witnesses shouldn't do, is you thought
what the next question would be and you answered it in
advance, which is not always a smart thing for a witness to
do, but the point is you do concede, I take it, that
counsel is right when he says that about only 10 or 20% of
the video is devoted to, what he called the scene, would
that be right?
4 | LT-COL BOTHA: What we described as the
scene now, yes.
5 | MR MPOFU: Thank you.
1st to 31st October 2012

Marikana

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1 CHAIRPERSON: And then you went on to say, the reason for that was that you didn’t realise at the time that that was where most of the action was going to be, if you had, there would have been far greater percentage of video pictures of what was happening at that scene, is that correct?

2 LT-COL BOTHA: If we could fly there, and we were allowed to, Sir, most probably yes.

3 MR MPOFU: I take it that Brigadier Van Zyl, when he commissioned you to partake in this mission, did inform you that the activities would be taking place at the koppie?

4 LT-COL BOTHA: Brigadier Van Zyl informed me that they were going to disarm and disperse people. I cannot remember if he said the koppie, but that was the scene, yes.

5 MR MPOFU: But anyway, you knew that the people were at the koppie?

6 LT-COL BOTHA: I knew that.

7 MR MPOFU: Yes. And you knew that the people were not at the mine operations?

8 LT-COL BOTHA: That’s correct, Mr Chair.

9 MR MPOFU: And you knew that the people were not at the housing units, including the hostels, which are far away from there?

10 LT-COL BOTHA: That is not correct, Sir.

11 MR MPOFU: That’s enough isn’t it?

12 CHAIRPERSON: That’s enough isn’t it?

13 MR MPOFU: Yes. Thank you, I’m sorry about this Colonel, all I’m trying to establish is the statement which you confirmed under oath – maybe if I put it like that it will be better. In the statement that you confirmed under oath, you stated at paragraph 7, and I’m reading from it now, “On 16 August 2012, I made an aerial video recording of the SAPS operation at Wonderkop, Marikana.” Is it correct that you did not do anything of the sort?

14 LT-COL BOTHA: That is not correct, Sir.

15 MR MPOFU: So according to you, what we saw here is a video recording of the SAPS operation at Wonderkop?

16 LT-COL BOTHA: According to me, I was video graphing people that’s been dispersed – that are dispersing into the job into the area, into the living area also, and because you can see it on the video.

17 MR MPOFU: And the disarming, did you shoot any disarming of anybody?

18 LT-COL BOTHA: Sir, it’s too high up, you will not see if someone is disarmed, and if it was disarmed, then it could have shown on the video, but I don’t see anything like that on the video.

19 MR MPOFU: I’m also going to suggest that the – or let me put it this way, when did you first see the footage of your coverage?

20 LT-COL BOTHA: I cannot remember specifically when, but when it was downloaded. When I downloaded it.

21 MR MPOFU: Okay, I’m going to suggest to the Commission that the video footage that we saw does not accord with the evidence that you gave, and I’m now going to deal with that. And I’m going to suggest, in that light, that you were either in a different helicopter, or in the second one that we saw, but maybe in – the question is, your evidence is that you were sitting right next to Brigadier Fritz, correct?

22 LT-COL BOTHA: That is correct, Mr Chair.

23 MR MPOFU: And Brigadier Fritz was giving instructions or communicating with people on the ground?

24 LT-COL BOTHA: That is not correct, Sir.
LT-COL BOTHA: Sir, I knew he was communicating, it could have been with been pilot also. I cannot remember what he said. I did say that.

MR MPOFU: Was he communicating with the people on the ground?

LT-COL BOTHA: I know, at some stage, he tried to communicate with the people on the ground, but he had difficulty doing that.

MR MPOFU: Where does this come from now?

LT-COL BOTHA: On Tuesday you told us that Brigadier Fritz was communicating with the people on the ground? When was it just an attempt?

LT-COL BOTHA: I said that he tried to communicate with the people on the ground, or he did communicate with the people on the ground, but I cannot remember, and at some stage he tried to communicate there were the chopper hovered and he just couldn’t get hold of the people.

MR MPOFU: How do you know that? I thought your evidence was that you could not remember anything that Brigadier Fritz said, so how do you know that he tried to communicate with people and he couldn’t reach them?

LT-COL BOTHA: I cannot remember what he said, I can remember that he tried to communicate. It’s on the video. You can also hear him talk at some stage, that he tried to communicate with someone.

MR MPOFU: Well, that’s exactly the aspect that I wanted to query, Colonel, that if indeed you were sitting next to Colonel Fritz, as you explained, and he was communicating with people on the ground, then surely that audio material would have been audible on your video, inasmuch as the helicopter noise was audible.

LT-COL BOTHA: Sir, I was sitting next to Brigadier Fritz in the chopper.

MR MPOFU: Sorry, I did not get that answer?

LT-COL BOTHA: I said I did sit with the video camera next to Brigadier Fritz in the chopper.

MR MPOFU: No, that’s not what I’m asking. You heard on the second video that you could clearly hear the communication of the people talking in the chopper?

LT-COL BOTHA: Yes, Mr Chair.

MR MPOFU: In your video, or the one that you say is your video, there is none of that type of audio material.

LT-COL BOTHA: Mr Chair, I don’t what the technology was that was used in the second video. My video is a normal handheld video camera.
1st to 31st October 2012
Marikan
Rustenburg

LT-COL BOTHA: Is that when I went on the ground to the scene or in the air to the scene?
MR MPOFU: In the air to the scene at about 4 o'clock, sir.
LT-COL BOTHA: Mr Chair, in hindsight, if I look at the video, I mean then I can see it already happened.
MR MPOFU: And you said that somebody - that the shooting at scene 2 had not yet happened.
LT-COL BOTHA: I said that I wasn’t sure at what stage the shooting at scene 2 happened, so I’m not sure if it had happened or not.
MR MPOFU: Okay, I’ll look for the passage but my recollection was that you said the video - in fact, not my recollection, that’s what the transcript says. Mr Tip said to you, "As far as you able to tell, at that time did you capture the entire operation on your video recording?" And your answer was, "No, Mr Chair, definitely not. The video, we determined that the video actually started after the shooting at scene 1 had already happened." And then elsewhere, I think you - and in any event, you did not observe the shooting, the second shooting?
LT-COL BOTHA: No sir, I did not observe the second shooting.
MR MPOFU: But you said, "I was told" - I’m quoting again - "I was told that there was a shooting at scene 2." Do you remember that?
LT-COL BOTHA: I remember that.
MR MPOFU: Who told you that?
LT-COL BOTHA: Sir, when I arrived at scene 1, I was looking for my Captain and they told me that he is at another shooting. That’s when I learned that there was another shooting.
MR MPOFU: What’s his name?
LT-COL BOTHA: Captain McClarky.
MR MPOFU: And I think we established on Tuesday that you could not say whether, on the other three or four helicopters, there was video footage being taken?
LT-COL BOTHA: No, I did not know, Mr Chair.
MR MPOFU: Were you aware that there was a Lonmin chopper at the scene, also circling the scene?
LT-COL BOTHA: I know there was one chopper that was not a police chopper. I did not know that it was a Lonmin chopper.
MR MPOFU: Okay, I think it will be

LT-COL BOTHA: That is correct, Mr Chair.
MR MPOFU: In fact -
SPEAKER: - to be common cause.
MR MPOFU: Okay, according to the evidence that we will given, it might not be common cause.

LT-COL BOTHA: That is correct, Mr Chair.
MR MPOFU: This was a very sensitive operation, correct?
LT-COL BOTHA: Sir, I can’t really answer on it. It was a displacing and a disarmament operation.
MR MPOFU: It was a big operation.
LT-COL BOTHA: Yes, it was a big operation.

LT-COL BOTHA: I didn’t - yes, if that’s of the tactical response unit.
MR MPOFU: There was - there were members of the tactical response unit.

LT-COL BOTHA: No sir, I cannot dispute if they were there. I can only know the guys on their uniform. I’m not sure if they were national intervention people.
MR MPOFU: Okay.
LT-COL BOTHA: At that stage I wasn’t sure if they were there. In hindsight, I think they were there, yes.
MR MPOFU: Okay, I’ll make it easier.

LT-COL BOTHA: No sir, I cannot dispute that.
MR MPOFU: And at some point in your video I observed there was a group of Nyalas. I counted about 62 Nyalas clustered in one area. It is -
MR SEMENYA SC: That can’t be true.

LT-COL BOTHA: No, sir.
MR MPOFU: Do you remember that spot where there are - there’s a collection of Nyalas on the
25 LT-COL BOTHA: Mr Chair, although I was
24 made in the police or I’m in the police for 28 years, an expert
23 was involved and I’m not sure if it’s usual or not, I cannot
22 for 26 years, this was the first such big operation where
21 involved so many police choppers involved where I was
20 there were so many police choppers involved where I was
19 in the police or I’m in the police for 28 years, an expert
18 for 26 years, this was the first such big operation where
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16 say.
15 MR MPOFU: Okay, fair enough but you
14 yourself have never observed a private helicopter hovering
13 LT-COL BOTHA: Not in an operation where
12 other helicopters also released stun grenades?
11 MR MPOFU: You didn’t notice whether the
10 I was involved.
9 MR MPOFU: And you didn’t know whether, in addition, there were shots that were fired from one of
8 other helicopters?
7 LT-COL BOTHA: No, Mr Chair, I don’t.
6 MR MPOFU: I don’t know if you can help
5 Mr Mpofo –
4 Mr Mpofo –
3 anything close to 62 Nyalas on it, there never were.
2 CHAIRPERSON: I must say I thought Mr
1 Mpofu 

19 MR MADLANGA SC: I must have been
18 Chairman.
17 MR MPOFU: Terms and conditions, Mr
16 Chairman.
15 MR MADLANGA SC: I must have been
14 confused by the word “accepting”, thank you Chair.
13 LT-COL BOTHA: Mr Chair, I’m not a video
12 or a sound expert. I can presume that it’s because of
11 better quality. That is – but I’m not an expert in that
10 field.
9 MR MPOFU: Okay. I’ll just maybe amplify
8 CHAIRPERSON: He asked the question, as I
7 understood it, on the basis that the witness is an expert
6 and he was asking him, can you as an expert tell us the
5 reason why the clarity of the audio material on the other
4 video – even if one assumes it was higher up – is much
3 better than on your video. Can you tell us, is that due to
2 that opinion in your capacity as an expert? That’s what I
1 understood the question to be.

17 MR MPOFU: Thank you, Chairperson. I
16 think Mr Burger was not listening. The last time I
15 checked, the word “I” refers to me, Mpofu. So I said I
14 observed 62 Nyalas. Anyway, we agree it was a big
13 operation.
12 LT-COL BOTHA: Chair, if you look at the
11 amount of people there and the amount of vehicles, it is a big operation.
10 MR MPOFU: Is it usual in such
9 operations, big operations involving so many units of the
8 police, to allow a private helicopter concurrently with the
7 police helicopters to be hovering above the scene?
6 LT-COL BOTHA: Mr Chair, I cannot answer
5 the question. I am not sure, I cannot tell you if it is
4 usual or not usual. I don’t know.
3 MR MPOFU: But in your 26 years – in your
2 26 years’ experience, is it something that usually happens, not very often, never, or none of the above, as questioners
1 usually say?

17 MR MPOFU: Okay, fair enough but you
16 yourself have never observed a private helicopter hovering
15 with police helicopters.
14 LT-COL BOTHA: Not in an operation where
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4 MR MPOFU: I don’t know if you can help
3 us with this, maybe just as an expert – as accepting for
2 now that you’re not in the Lonmin helicopter or the other
1 helicopter, the audiovisual or rather the audio material
0 from that helicopter seems to suggest that the people,
- despite the higher altitude that they were flying at, that
- they were able to identify people and objects and vehicles

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1 in addition, there were shots that were fired from one of
0 other helicopters?

1st to 31st October 2012  
Marikana  
Rustenburg

1. the question and thank you for your assistance. In the
2. unscientific transcript that we have compiled of what was
3. said in the other helicopter, and no doubt that will be
4. debated at the time when it is properly identified, the
5. following, for example it had, “Go forward, go forward,
6. Nyala drive and the Casspir, papa 7 and I think 16.
7. Protection of the water cannon please. Okay papa 1, the
8. people is now moving out of the koppie, out of the koppie.
9. Water cannon come forward, come forward.” And then there’s
10. another part where it says, “Some of the vehicles in the
11. small koppie, there are several people in the small koppie,
12. hiding in the small koppie.” These are just examples.
13. Would you accept that that kind of comment would suggest
14. that the people were able to observe some of the minute
15. details such as this Nyala going forward and this person
16. hiding?
17. LT-COL BOTHA: Mr Chair, I don’t know who
18. made that comment, so I don’t know where the persons are at
19. that stage that made the comment, so I cannot answer the
20. question.
21. CHAIRPERSON: I think the question is put
22. to you on the assumption which you are asked to make and
23. which Mr Mpofu hopes to be able to prove later to be a
24. correct assumption, that that was what was said by someone
25. in the other helicopter from which the other video pictures

26. were taken. He says, and they have had, subjected that to
27. some kind of analysis, produced the transcript. He says if
28. that is what happened, it was what somebody said in the
29. other helicopter and it’s been correctly transcribed, would
30. you accept that even from the height at which the
31. helicopter was, they could see, amongst other things, that
32. people were hiding in the, at the koppie below? I think
33. that’s the question that you asked, is that correct, Mr
34. Mpofu?
35. [16:44] MR MPOFU: Yes, thank you Chair, for the
36. clarity. Is the question now clear?
37. LT-COL BOTHA: It’s clear. Mr Chair, I
38. cannot accept that the people can just see because I don’t
39. know if it’s a police radio talking to the chopper, or the
40. chopper, passenger in the chopper talking downwards. So if
41. I know where the person was that made the comment, then I
42. can answer it, but I can’t answer it before then.
43. MR MPOFU: Okay. Now, thank you,
44. Colonel, it was a little bit unfair, I was just hoping
45. you’d help us as an expert, but I accept that you were not
46. in that particular helicopter. In your helicopter, the
47. video equipment that you were using, was it of such a
48. standard and quality that you would have been able, had you
49. concentrated on the copy, you would have been able to pick
50. up the people there?
1st to 31st October 2012

Marikana
Rustenburg

1. LT-COL BOTHA: I cannot recall seeing
2. Brigadier Van Zyl at the scene at all.
3. MR MPOFU: And at the operation
4. afterwards?
5. LT-COL BOTHA: No, I haven’t seen him
6. there.
7. MR MPOFU: And at the JOC when you
8. returned the chopper?
9. LT-COL BOTHA: I found Brigadier Van Zyl,
10. I think we’ve confirm that on Tuesday, at the JOC.
11. MR MPOFU: And you reported –
12. CHAIRPERSON: I am sorry to interrupt,
13. you say you saw him at the scene, sorry, not the scene,
14. that’s misleading, you saw at JOC. Did you see him at the
15. JOC both before you left in the helicopter and also when
16. you returned or did you only see him when you returned?
17. LT-COL BOTHA: Before I left, and after I
18. returned, Sir.
19. MR MPOFU: Yes, just another issue of
20. clarity, please, Brigadier, have you got your statement in
21. front of you?
22. LT-COL BOTHA: No, Mr Chair.
23. MR MPOFU: Okay, I will just read out
25. attended at the processed” or rather, “and processed a

1. LT-COL BOTHA: That will be point G.
2. LT-COL BOTHA: Mr Chair, I’ve got it
3. different, that two – one policeman died on the scene, one
4. policeman died in hospital –
5. MR MPOFU: Correct.
6. LT-COL BOTHA: - and three civilians
7. died.
8. MR MPOFU: And three - so there was,
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19. different, that two – one policeman died on the scene, one
20. policeman died in hospital –
MR NTSEBEZA SC: The short answer will be that you were present at the inspection.

LT-COL BOTHA: I was present at the inspection.

MR NTSEBEZA SC: And on the second day, you did point things out, did you?

LT-COL BOTHA: The day of the inspection?

MR NTSEBEZA SC: Yes.

LT-COL BOTHA: Yes, I did.

MR NTSEBEZA SC: You would recall or perhaps you were still far back at that time, but you will recall if you were there you saw it, that relevant to body G, there was an explanation given by your colleague. Do you recall that?

LT-COL BOTHA: But Chair, that’s why I said I can’t just unequivocally say I was there, because I was way behind. When I arrived at the point this, on the, let’s call it the western side of the stream, Captain Moshwana and some people was on the other side of the stream, I never crossed the stream that day with the inspection.

MR NTSEBEZA SC: No one was brave enough to do so. I remember. Yes, we also wanted to cross the stream but we were quite content with Captain Moshwana going over and standing to where he said the body was. You recall that, that incident?

LT-COL BOTHA: He was already on the other side. I can’t say when he was there, that he showed the point of the body, because I didn’t hear a conversation beforehand, he was already there, I cannot remember if he was every on his way back already, when I arrived at that specific scene.

MR NTSEBEZA SC: Well, thank you very much, Colonel, I won’t pursue you the question relevant to that. I will reserve it for Captain Moshwana but you do confirm that he was where he went to, to indicate it as having been the place where the body was found of a civilian.

LT-COL BOTHA: Yes, I can confirm that.

MR NTSEBEZA SC: Were you also around when at some place this side of the stream he indicated the place to be where cartridges or casings were found from rifles?

LT-COL BOTHA: No, sir, I had not arrived on the scene when he showed that.

MR NTSEBEZA SC: Yes. Very well, now I’ve always wanted to ask you whether you made any report after you had gone to do the aerial video recording of the operation at Wonderkop Marikana, did you?

LT-COL BOTHA: With report, what do you mean, Sir?

MR NTSEBEZA SC: You will forgive me if I am ignorant, I would have thought that having been asked to come and do a particular task, you would then file a report with whomever had asked you. Is that not the process?

LT-COL BOTHA: Mr Chair, I normally, the video downloaded, then I give out a statement, and then whoever must receive the video, will receive the video in a statement.

MR NTSEBEZA SC: I see. And that would constitute your report? It would be the video, and the statement accompanying the video that you have downloaded.

LT-COL BOTHA: That is correct, Mr Chair.

MR NTSEBEZA SC: Now, you have been asked this, I just want to confirm it, the operation that you were to video record on the 16th, seems to have a culmination of at least a series of events that started with you attending crime scenes on the 13th of August 2012. Is that right? In other words, you had started on the 13th doing these video recordings in respect of various crime scenes which you have described in your statement which you made on the 22nd of October.

LT-COL BOTHA: Sir, I was called to process the crime scene of the CAS 117, 118, and 119. I actually called for help, for the other two on that, that was on the 13th. The 14th, I’ve also processed the scene of the -

MR NTSEBEZA SC: The body behind the koppie.

LT-COL BOTHA: - the body behind the koppie, yes, and on the 14th, I was not at the JOC, then I was called by Brigadier Van Zyl, then asked him to come to the JOC because they are going to need a videographer.

MR NTSEBEZA SC: Where were you called from?

LT-COL BOTHA: [17:04] I was called from the scene of the 13th. I did the - I attended to the post-mortems of six people that morning and I went back to the scene with ballistics. I was on the scene when the Brigadier called me.

MR NTSEBEZA SC: Maybe I was not very clear in my question. Where are you based at? In other words, when you say I was called, where were you called from? Where are you based? Where is your head -

LT-COL BOTHA: Mr Chair, I’m based at Phokeng police station.
MR NTSEBEZA SC: And how far is that from Marikana – from the crime scenes where you went to do work?
LT-COL BOTHA: I think it's more or less 40 kilometres.
MR NTSEBEZA SC: Would it be fair to say that on the 13th of August 2012 you had become aware that there was a joint operational centre that had been established at the Lonmin mine rescue section?
LT-COL BOTHA: That's correct, Mr Chair.
MR NTSEBEZA SC: So on the 13th, if we just start there, so on the 13th when you came to attend at and to process the crime scenes you describe in paragraph 4 of your statement, you understood the joint operations centre to be at the Lonmin mine in Marikana.
LT-COL BOTHA: No, Mr Chair, let me just explain it.
MR NTSEBEZA SC: Yes.
LT-COL BOTHA: When I went to the scene at Marikana on the 13th, I went straight to the scene. I was actually collected by, I think, a policeman of Marikana. I can't remember. After I processed the scene, I only became aware there's a joint operations centre at Marikana.
MR NTSEBEZA SC: I see. And you were aware, were you not, that there were several people from Pretoria who were in that joint operations centre? For instance, we have a statement by one, Duncan George Scott, do you know Duncan Scott?
LT-COL BOTHA: I came to know him afterwards.
MR NTSEBEZA SC: You came to know him as a person stationed at the special task force national office in Pretoria.
LT-COL BOTHA: I don't know where he's stationed but I do know he's from the special task force.
MR NTSEBEZA SC: You came to know of Brigadier Fritz, the section head of the special task force?
LT-COL BOTHA: I came to know of him. Let me just qualify that. I don't know, I can't tell you that he was there on the 13th but what I do say is, I came to know Brigadier Fritz during this whole process.
MR NTSEBEZA SC: Yes, because on the 16th he is the one with whom you went into the sky in the chopper, isn't it?
LT-COL BOTHA: That is correct, sir.
MR NTSEBEZA SC: But the one thing that you came to establish on the 13th was that there had been an unfortunate incident in which two policemen got killed.
LT-COL BOTHA: Sir, I processed the scene. It was two policemen and three civilians that died in the process.
MR NTSEBEZA SC: And in your processing of the crime scene, did you pay attention to the bodies of the policemen?
LT-COL BOTHA: There was one body of a policeman on the crime scene and at that –
MR NTSEBEZA SC: And the other one you got to know after he had died in hospital, was that your evidence?
LT-COL BOTHA: That is correct, Mr Chair.
MR NTSEBEZA SC: And did – yes. Both of those policemen - I’m asking you now about you as a photographer and a video camera operator of many years - did you take photographs of the bodies of those two police officials?
LT-COL BOTHA: I did, Mr Chair.
MR NTSEBEZA SC: Many photographs?
LT-COL BOTHA: I attended to their post-mortems.
CHAIRPERSON: You haven’t answered the question. You were asked did you take many photographs?
LT-COL BOTHA: Sorry Mr Chair, yes, many photographs.
MR NTSEBEZA SC: From various angles?
LT-COL BOTHA: Where are you referring to, on the scene or on –
MR NTSEBEZA SC: No, from various angles of the bodies. From various angles of the bodies - in other words, did you take detailed photographs of the bodies?
LT-COL BOTHA: Sir, I photographed the bodies from different sides and then I posed, I photographed the post-mortems in the mortuary.
MR NTSEBEZA SC: Did you take digital photographs of the bodies that depicted the injuries to the police persons?
LT-COL BOTHA: Yes, it was digital photos.
MR NTSEBEZA SC: And what did you do with the digital images?
LT-COL BOTHA: It was downloaded on a disk and then given to me so that I can compile an album.
MR NTSEBEZA SC: So you compiled an album of the photos.
LT-COL BOTHA: That is correct, Mr Chair.
MR NTSEBEZA SC: I am told that they were a gruesome sight. Would you confirm that?
LT-COL BOTHA: Sir, people were hacked to death, it didn’t look good and there was a person that was...
1 shot that, for the same reason, didn't look good.
2 MR NTSEBEZA SC: How did you feel? I'm
3 talking about an experienced photographer and video camera
4 operator of 26 years, how did you feel when you saw these
5 images of your colleagues hacked in the manner in which you
6 have described?
7 LT-COL BOTHA: Sir, we've just said it
8 didn't look good but after 28 years you learn to cut
9 yourself off from scenes like that because you've got a
duty to do, no matter if it's a civilian or a policeman.
10 CHAIRPERSON: I'm sorry, Colonel, you
11 haven't answered the question. Again I think you've
12 answered what you think will be the next question. The
13 question you were asked is how did you feel. Perhaps
14 counsel would like to elaborate on the question so you'll
15 understand it clearly and then when you've given your
16 answer, you've already given the answer to the next
17 question but answer that question first.
18 LT-COL BOTHA: It's going to be, it's
19 going to sound terrible to say that - I mean I can't say I
20 didn't feel anything because it's dead people lying there,
21 but I've got a job to do and I'm cutting myself off from
22 feelings at that stage.
23 MR NTSEBEZA SC: I understand, Colonel.
24 Sometimes it is easy to be philosophical about these things
25 but these were colleagues of yours. What was your - I see
26 you nod - what was your first reaction at seeing these?
27 It's one thing to see a dead colleague and it's one other
28 to see a colleague in the nature which you have left to our
29 imagination.
30 LT-COL BOTHA: I cannot answer it in any
31 other way. After 26 years of seeing dead policemen, dead
32 people, when you get to a crime scene, no matter how
33 gruesome it is, you know you've got to do a job and you cut
34 yourself off from that because otherwise if you get - nou
35 het ek nie die Engelse woord nie.
36 CHAIRPERSON: Gebruik maar die Afrikaanse
37 woord en die tolk -
38 LT-COL BOTHA: If you get emotional
39 you're not going to do a decent job.
40 MR NTSEBEZA SC: Can I just push you a
41 little bit and say, did it not cross your mind that whoever
42 was responsible for that must be brought to book?
43 LT-COL BOTHA: Can you qualify "brought
44 to book" please?
45 MR NTSEBEZA SC: To put it in colloquial
46 language, did it not cross your mind that whoever did this
47 must pay for it? That is, you -
48 LT-COL BOTHA: Whoa, whoa, I don't think
49 I want to answer the question.
50 to be punished. That's not the way that I do things.
51 MR NTSEBEZA SC: I do not recall that I
52 said so or I did so.
53 CHAIRPERSON: I think the witness is
54 saying that was the insinuation which he picked up.
55 Whether he was correct in picking it up is neither here nor
56 there, but that seems to be the answer.
57 MR NTSEBEZA SC: Yes. Colonel, let me -
58 right from the beginning or in the middle of my cross-
59 examination say to you that I do not enjoy to ask people
60 questions that would insult them, please accept that.
61 LT-COL BOTHA: Mr Chair, I accept it and
62 if I interpreted it like that, I'm sorry.
63 MR NTSEBEZA SC: Apologies accepted,
64 Colonel. Now, I want to push you a little bit on this
65 aspect. If many of your colleagues came it see those
66 images which you saw, which you took graphically and you
67 put on digital mode, do you think they would've felt – and
68 I'll use the word I noted – as revolted as what you were
69 because of what they saw?
70 MR SEMENYA SC: Chair, I really
71 appreciate where Mr Ntsebeza is seeking to go but it is not
72 in the province of this witness to tell what his other
73 colleagues would think of a similar image he's seeing.
74 CHAIRPERSON: Mr Ntsebeza, isn't that
1. objection well taken?
2. MR NTSEBEZA SC: It's a very sensitive area, Mr Chairman, I will not take it -
3. CHAIRPERSON: The objection is that you asked him what other colleagues would react and the question, the objection taken is that he can't speak for his other colleagues. That's the objection taken. Now if you persist with the question I may have to rule on it. If you're not going to go further on this issue, having made the points possibly that you set out to make, then I don't have to give a ruling.
3. MR NTSEBEZA SC: No, Mr Chairman, I don't always seek to have you make a ruling on everything that I say. No, I take the point that my learned friend - it's a touchy area we are working - Let me just ask one last question on this aspect and - do you know if these images were circulated widely among your colleagues?
4. LT-COL BOTHA: No, Mr Chair. I had my disk with me and images I downloaded, it's downloaded by Rustenburg LCRC. I get a working copy and they make a master copy that's sent to province, so it's not distributed widely.
5. MR NTSEBEZA SC: I accept that, but you wouldn't say that it wasn't circulated. You wouldn't know that?

1. your question say when he was aware. You started talking about - after the 13th. Now you're dealing with his awareness -
2. MR NTSEBEZA SC: Yes.
3. CHAIRPERSON: - of public order policing being involved. I think it only right that you should indicate from when you suggest or ask whether that awareness was present on his part.
4. MR NTSEBEZA SC: I understand, I understand, Chairman. Thank you very much. Maybe I should preface this by saying after your first operation which you talk about in your statement, 13th of August, is it fair for me to think that you became aware that at the joint operations centre they had assembled a number of units?
5. LT-COL BOTHA: That's correct, after the 13th.
6. MR NTSEBEZA SC: Yes.
7. LT-COL BOTHA: That is correct, Mr Chair.
8. MR NTSEBEZA SC: And those units were the ones that Mr Mpofu asked you about, tactical response teams, national intervention unit, special task force, air wing, dog unit.
9. LT-COL BOTHA: Mr Chair, I said that I'm not sure that everyone was there but I cannot dispute that they were there.
1. **MR NTSEBEZA SC:** Okay. Did you get a sense that these units had come from all over the country or from most provinces from the country?

2. **LT-COL BOTHA:** I’d say in the parking there were vehicles from different areas. I can recall for instance Bethlehem or – that’s the one I can recall now, so it’s normal to assume for me then that this is not only people from Rustenburg.

3. **MR NTSEBEZA SC:** The question, was Mthatha?

4. **LT-COL BOTHA:** No sir, I don’t know about Mthatha.

5. **MR NTSEBEZA SC:** Okay. Were you aware that there were armoured vehicles with barbed wire trailers at the joint operations centre?

6. **LT-COL BOTHA:** Yes, Mr Chair, I saw it in the parking.

7. **MR NTSEBEZA SC:** Now I know that you said you were not aware of any plan, but may I just ask you just in case you may remember, that part of the plan would be to use SAPS helicopters for conveying information to the JOCC in case you may remember, that part of the plan would be to make use of helicopters to obtain visual material and to the ground forces. Were you aware of this plan?

8. **LT-COL BOTHA:** No, Mr Chair.

9. **MR NTSEBEZA SC:** For instance, Lieutenant-Colonel George Scott in his statement explains what it was but I thought you might know what it was all about. Now, you do not say there was anticipated – or let me put the question differently. Was the South African Air Force, to you knowledge, part of the joint operation or was the South African Air Force helicopter on loan to SAPS or don’t you know?

10. **LT-COL BOTHA:** I don’t know, sir.

11. **MR NTSEBEZA SC:** So at some stage would the Oryx is an air force chopper. The other one was either blue or black, I can’t even remember the colour, I know it was a dark chopper.

12. **LT-COL BOTHA:** The air force meaning the South African Air Force?

13. **MR NTSEBEZA SC:** That was correct, Mr Chair. I was informed, sir.

14. **LT-COL BOTHA:** That was what I was informed, sir.

15. **MR NTSEBEZA SC:** Indeed. Now, you testified that there were four choppers on the 16th of August that were –

16. **LT-COL BOTHA:** That is correct, Mr Chair.

17. **MR NTSEBEZA SC:** I don’t know whether I’m correct in recalling, you seemed to be uncertain as to which they were, other than the one in which you were.

18. **LT-COL BOTHA:** Mr Chair, I said we were two police shoppers, the big White one, according to my information, was an Oryx. I’m not sure if – I think it’s an air force chopper – and then another one.

19. **MR NTSEBEZA SC:** I see. And the two others, you do not know who they belonged to or what – ja, who they belonged to?

20. **LT-COL BOTHA:** No, I found out later that the Oryx is an air force chopper. The other one was either blue or black, I can’t even remember the colour, I know it was a dark chopper.

21. **MR NTSEBEZA SC:** The air force meaning the South African Air Force?

22. **LT-COL BOTHA:** That was what I was informed, sir.

23. **MR NTSEBEZA SC:** Perhaps you can explain one of what Colonel Scott says was going to be the usage of the SAPS helicopters, he says one of the SAPS helicopters would become an aerial command post should the police need to mobilise outside of the planned activity. Now can you just explain in lay terms what that means, if you are able to?

24. **LT-COL BOTHA:** Sir, you’ll have to ask Colonel Scott.

25. **MR NTSEBEZA SC:** Indeed. Now, you testified that there were four choppers on the 16th of August that were –

26. **LT-COL BOTHA:** That is correct, Mr Chair.

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32. **LT-COL BOTHA:** Sir, you’ll have to ask Colonel Scott.

33. **MR NTSEBEZA SC:** Indeed. Now, you testified that there were four choppers on the 16th of August that were –

34. **LT-COL BOTHA:** That is correct, Mr Chair.

35. **MR NTSEBEZA SC:** I don’t know whether I’m correct in recalling, you seemed to be uncertain as to which they were, other than the one in which you were.
LT-COL BOTHA: I cannot confirm that, sir.

MR NTSEBEZA SC: Yes, okay. Your chopper - because this is something that I think you'll assist me with - I read through some of these documents that we received from the police, I don't know whether one uses "chopper" and "papa" interchangeably. Do you understand what I'm saying? When you say chopper 1 are you also saying the same thing as papa 1?

LT-COL BOTHA: Sir, normally call signs won't be confusing, so what I mean by that is you won't give me a call sign chopper 1 and papa 1. Does that answer the question?

CHAIRPERSON: I think the question is, do they mean the same thing? So a reference in a document to chopper 1 and in the same document or perhaps another document a reference to papa 1, will that be a reference to the same thing? I think that's what counsel wants.

MR NTSEBEZA SC: Yes. Yes, Mr Chairman, thank you.

LT-COL BOTHA: Sir, I don't know. It's not supposed to be, that's the closest I can come to the answer.

[17:44] MR NTSEBEZA SC: You see because I want

sir.

LT-COL BOTHA: But then I wasn't in the occurrence book, Mr Ntsebeza.

MR NTSEBEZA SC: The OB, okay, okay. It comes with your experience, Mr Chairman. Now, why I want
reminded me about occurrence books. In the old days, the
good old days, police officers used to have pocket books.
Do they still have those today?
LT-COL BOTHA: Yes, Mr Chair.
CHAIRPERSON: I don't know what you mean
by good old days, Mr Ntsebeza.
MR NTSEBEZA SC: Now did you have, on the
16th of August, a pocket book and did you record any of the
activities of the 13th and the 16th August 2012 in your
pocket book?
LT-COL BOTHA: Mr Chair, I've got a
diary. Officers in the South African Police Service have a
diary, it's not pocket books, and I did note some times. I
did not note the time of the chopper, I did note the time
that I arrived at the JOC and the time that I left the JOC
again. I did make an entry that it took aerial photos. I
did not note the times because my diary was in the vehicle,
not with me in the chopper.
MR NTSEBEZA SC: Right. Where is the
diary?
LT-COL BOTHA: The diary is at the
office.
MR NTSEBEZA SC: I'm sure you will make
it available to the evidence leaders if we request for it,
just to check.
LT-COL BOTHA: If I have to I will, sir.
CHAIRPERSON: I'm afraid you will have to
if we ask for it because I have to check what you say, the
accuracy of your memory for example, or your evidence, is
an appropriate reason for asking for your diary. So I
would be grateful if you'd make it available to us. Thank
you.
MR NTSEBEZA SC: Now there's one other
reason that I would seek to persuade you that you probably
are wrong about when you took off. You seem, other than
the statement which you made on the 22nd day of October
2012, to have made two other statements. There is one here
which is 813001120 and in paragraph 4 thereof you say the
following - I take it that if you need to prove, we'll put
it to you because you - this one was sworn to before a
commissioner of oaths, Mr Mosweu Paul Mohilwa. Now in that
statement in paragraph 4 you say the following, "On 2012-
08-16 at 15:49 I made a recording of a scene at Wonderkop,
Marikana. The duration of the recording is 41 minutes 18
seconds. The original CD of the recording is kept at
Rustenburg LCRC." Do you remember making this statement?
LT-COL BOTHA: Mr Chair, that's correct,
after I made the statement I compared my times with my
digital camera and the time of the video and I realised
that the video camera is - because my watch and the digital
camera's time was the same and I realised that the digital,
that the video camera's time is plus-minus eight minutes
out and in the statement that's in my docket - I can send
someone to go and collect it - I've rectified that.
MR NTSEBEZA SC: Now, if I proceed on the
basis that what you say in paragraph 4 is what it says and
I read what is logged in the occurrence book about how, at
15:45 there was a report from a chopper 1 that the people
are moving from the kopjie, isn't it most likely that it is
so, in fact, that at quarter to four chopper 1 was the
chopper in which you were when in fact you were recording
at 15:49 the scene at Wonderkop, Marikana?
LT-COL BOTHA: Mr Chair, I can just say
that I did say I'm not sure what the call sign of my
chopper was and I did realise after that statement go out,
went out, that the digital time on my video or the time on
my time on my video - and it doesn't show when you make the
video - and the time on my digital camera differs with
about eight minutes and my digital camera is correct with
my watch, so I presume that's the correct time.
CHAIRPERSON: Mr Ntsebeza it's now - Mr
Ntsebeza, it's now just after six o'clock. I'm not going
to adjourn until you tell me you wish me to adjourn because
you may be busy with a point. I don't want to interrupt
you but when you are, considerate it appropriate for us to
take the adjournment till tomorrow morning, I'll adjourn
but it's for you to say when.
MR NTSEBEZA SC: If I could just put,
just - I'm not very clear about these digital things but
I've seen in some videos an indication of the time and the
date on the footage itself. Does your camera not do that
kind of thing, because then I suppose it would put beyond
doubt any conjectures you are making.
LT-COL BOTHA: No, Sir, unfortunately
not.
MR NTSEBEZA SC: Mr Chairman, I'm going
to seek to explore this area in a bit more detail.
CHAIRPERSON: I put it to you that I'm
not rushing you. I understand sometimes counsel, where
he's busy with a point, wants to take it to the end before
the adjournment is taken.
MR NTSEBEZA SC: Yes.
CHAIRPERSON: So I'm not -
MR NTSEBEZA SC: No, I appreciate that.
CHAIRPERSON: It's for you to tell me
when you consider that you've dealt with the point
adequately and you're happy we adjourn till tomorrow.
MR NTSEBEZA SC: This point, I think I
will develop another aspect of the video camera and to the
1. extent – we could adjourn at this stage.
2. MR NTSEBEZA SC: Very well. The
3. Commission will adjourn until nine o’clock tomorrow morning.
4. CHAIRPERSON: Sorry, before the legal teams depart, we undertook that we’d revert to you with an attempt to define phase 1 more precisely. We formulated a document which we’ll distribute electronically. If anyone wants to pick up a hard copy now, I have approximately 50.

[COMMISSION ADJOURNED]

1. [PROCEEDINGS ON 30 OCTOBER 2012]
2. [09:05] CHAIRPERSON: Good morning, the Commission resumes. I understand from Mr Madlanga that he has received information from the Legal Aid Board regarding the decision which they were to make yesterday afternoon. Mr Madlanga, can you tell us about it please?
3. MR MADLANGA SC: Thank you, Chairman, commissioners. It’s an e-mail sent at 5:26 pm by the chief executive officer of Legal Aid South Africa and it reads as follows, “Further to your telephone discussion with the Chairperson of our board, Judge President Mlambo, and the e-mail addressed to him dated 28 October 2012 on the matter of Legal Aid South Africa providing funding for legal representation for the arrested and injured miners represented by the legal team Maluleke Msimang Attorneys, I wish to advise that the matter was once again discussed by the board executive committee and management this morning. Having considered the arguments advanced by the Commission’s evidence leading team, the board executive committee agrees that the arguments advanced did not persuade it to change its decision in this matter. We therefore confirm our earlier decision that, for the reasons presented in our e-mail to Adv Budlender, we have decided that we will not fund the arrested and injured miners, represented by Messrs Maluleke Msimang Attorneys.”
4. Thank you, Chairperson.
5. CHAIRPERSON: Do any of the representatives of any of the parties wish to say anything at this stage?
6. MR MPOFU: No, no, Mr Chair.
7. CHAIRPERSON: Thank you. I understand we also have a new party here this morning who wishes to put themselves on record, is that correct?
8. ADV MASEBE: Yes, it’s Adv Takarane Masebe from the Pretoria Bar. I represent the families of Warrant Officer Lepaaku and Warrant Officer Monene.
9. CHAIRPERSON: And you’re applying to be allowed to participate in the proceedings, I take it?
10. ADV MASEBE: That is correct.
11. CHAIRPERSON: The request is granted. The proceedings up to now have been transcribed and I take it that if you request copies of the transcripts, they will be made available to you. Colonel Botha, u is nog onder u eed wat u afgelê het om die waarheid te vertel.
12. MR CHASKALSON SC: Mr Chairperson, I’m sorry to interject but might I put two further matters on record before we get into the evidence of Colonel Botha?
13. CHAIRPERSON: I don’t know what the matters are. If you tell me that they are, I can consider your request.
14. [COMMISSION ADJOURNED]
Page 493

1 to be disclosed to any third parties or for it to be
2 published further. No opposition was expressed to this
3 principle at the pre-hearing meeting and we trust that this
4 problem will not arise again.
5 CHAIRPERSON: Thank you, Mr Chaskalson,
6 and what is the second matter that you wish to raise?
7 MR CHASKALSON SC: The second matter
8 concerns the definition of issues in relation to phase 1 of
9 these hearings. A concern was expressed or two concerns
10 were expressed at the pre-hearing meeting. The first was
11 that there had been insufficient precision in the
12 definition of issues for the first phase of the hearing,
13 theme 1 that we've come to know, to be described as. The
14 second was, some parties expressed opposition to the
15 principle that the Commission might make findings at the
16 end of theme 1 in advance of further hearings of the
17 Commission.
18 The evidence leaders have in the meantime
19 circulated a document which defines with more precision the
20 issues which they see as being the issues to be the subject
21 of theme 1 and the first phase of the hearings. The
22 parties only received that document yesterday. Our
23 submission is that the parties should be given time to
24 consider that document and that it may be convenient, as
25 the first item of business on, when we reconvene on Monday,

Page 494

1 to finalise this issue.
2 CHAIRPERSON: Thank you, Mr Chaskalson,
3 that seems to be a satisfactory suggestion, a satisfactory
4 way of approaching the matter which you have suggested. So
5 we'll do that, the first item of business on Monday, the
6 Commission has been made – as we indicated previously,
7 we're sitting today and tomorrow, we can't sit on Thursday
8 and Friday so we're resuming again on Monday and then as
9 you've said, the first item of business on Monday will be
10 the topic that you've just raised.
11 Is there any other preliminary matter which
12 anyone wishes to raise before we continue with the evidence
13 of Lieutenant-Colonel Botha? No. I've already reminded
14 him that he's under oath. You were cross-examining him, Mr
15 Ntsebeza. Would you – I take it you wish to proceed?
16 MR NTSEBEZA SC: Yes, Mr Chairman, I wish
17 to proceed. I won't be long and against the backdrop of
18 all the sad news that we heard in the preliminary stages,
19 if you will allow me just to lighten the atmosphere by
20 saying something which I've been told is a true story
21 relevant to Colonel Botha and that is that, spotting some
22 anxiety on the face of one of her many husbands, I'm told
23 Elizabeth Taylor told him that please don't worry, I don't
24 intend to keep you for long. So let's carry on, I don't
25 intend to keep you for long.
1st to 31st October 2012

Marikana

Rustenburg

1 Just to say, relevant thereto Lieutenant, it would assist
2 if you also brought the original, the diary and then the
3 copies.
4
5 LT-COL BOTHA: I do have it with me.
6 MR NTSEBEZA SC: Yes. Now is it correct
7 - or let me just ask you, are your SAPS helicopters fitted
8 with cameras?
9
10 LT-COL BOTHA: I know there are police
11 helicopters fitted with cameras, I do not know if that
12 specific ones on that day were fitted with cameras.
13
14 MR NTSEBEZA SC: I see. So you were not
15 using a camera affixed to the helicopter in your video
16 covering of the events on the day?
17
18 LT-COL BOTHA: I used the hand held
19 camera.
20
21 CHAIRPERSON: That's not a precise answer
22 to the question. We know you used your hand held camera.
23 Counsel established that certainly some, if not all, police
24 helicopters have cameras which are fitted to the helicopter
25 and so the thrust of the question is, was there a fitted
26 camera in that helicopter?
27
28 LT-COL BOTHA: I don't know, Mr Chair.
29
30 CHAIRPERSON: Thank you.
31
32 MR NTSEBEZA SC: Can I just ask a further
33 question? As an expert, would you not have or was it not
34 expected of you to check whether the chopper you were going
35 to go up into the sky and do the video covering, had or did
36 not have an affixed camera?
37
38 LT-COL BOTHA: No, sir.
39
40 MR NTSEBEZA SC: Let me ask another
41 question. In your experience have you ever had to go on a
42 crime scene in a chopper in which you also had to use the
43 camera affixed to the chopper?
44
45 LT-COL BOTHA: No, sir, not in my
46 experience.
47
48 MR NTSEBEZA SC: Would that be because
49 there is a specific skill that is required for one to be
50 able to do so?
51
52 LT-COL BOTHA: I'm not sure. I presume
53 someone must be trained to use it.
54
55 MR NTSEBEZA SC: So are you then saying
56 your own training has not extended that far?
57
58 LT-COL BOTHA: No, sir. That's what I'm
59 saying, sorry, yes.
60
61 MR NTSEBEZA SC: Okay. Now when you say
62 you arrived at more or less 3 o'clock, would it be safe to
63 say you arrived from Phokeng where you are based?
64
65 LT-COL BOTHA: No, sir, I did not arrive
66 from Phokeng. I arrived from the scene of the 13th.
67
68 MR NTSEBEZA SC: Are you saying that on
69 the 16th you went to the scene of the 13th?
70
71 LT-COL BOTHA: Yes, sir.
72
73 MR NTSEBEZA SC: So you – was it the
74 second time that you were visiting that scene?
75
76 LT-COL BOTHA: That's correct, sir.
77
78 MR NTSEBEZA SC: So would it be fair then
79 to say you were in the vicinity of the scene, Marikana,
80 that area, the joint operations and all of those areas or
81 the scene in the area, the Lonmin mines, the joint
82 operations centre, they are more or less in the same area?
83
84 LT-COL BOTHA: That's correct, sir.
85
86 MR NTSEBEZA SC: And can I assume that
87 because you were in the area on that day you would've been
88 aware that there were meetings of the top brass of the SAPS
89 that were going on, planning sessions, or am I assuming too
90 much?
91
92 LT-COL BOTHA: No sir, I wasn't – ja,
93 you're assuming too much, sir.
94
95 [09:25] MR NTSEBEZA SC: I think I'm making too
96 much of your expertise, Mr - Colonel Botha, but on that day
97 you were – let me ask the question, do you know Lieutenant-
98 General Mbombo?
99
100 LT-COL BOTHA: Yes, sir.
101
102 MR NTSEBEZA SC: He is the provincial
103 commissioner in this area, isn't it?
1st to 31st October 2012
Marikana
Rustenburg

1 which is why I asked the question whether you were aware
2 that there were goings on, on that day, but one of the
3 things that was decided there, according to this minute
4 A197/2, was that there should be enough video operators to
5 capture sequence of events as unfolds. Are you aware of
6 that?
7 LT-COL BOTHA: No, sir.
8 MR NTSEBEZA SC: The question was enough
9 video operators, not helicopters.
10 MR MUSHWANA: Oh, I'm sorry.
11 MR NTSEBEZA SC: And talking about your
12 mistake about your camera, Major-General Annandale also
13 went through, according to the minute, a check list to
14 ensure that everything was in place and the first thing
15 was, you must ensure adequate batteries for radios and
16 video cameras. Did you set your own radio and video
17 cameras for –
18 LT-COL BOTHA: My own video camera
19 battery was charged, so I did check it.
20 MR NTSEBEZA SC: Okay – digital camera?
21 LT-COL BOTHA: Both cameras had charged
22 batteries.
23 MR NTSEBEZA SC: Okay. Now on the day
24 when you were asked by Brigadier Van Zyl, had there been
25 any formal gathering of video operators who were addressed

2 by Brigadier Van Zyl or did he just call you aside?
3 LT-COL BOTHA: When I arrived I had a
4 conversation with him alone.
5 MR NTSEBEZA SC: I see. Now from your
6 evidence so far it doesn't appear as though there was much
7 conversation between the two of you, but let me explore
8 that. Did he tell you about this meeting that had been
9 held at 13:30 at which, amongst other things, the purpose
10 of the meeting was described as dealing with the protestors
11 on the koppie, what you referred to in your evidence as the
12 disarming and the dispersal thereof.
13 LT-COL BOTHA: Sir, he did not discuss
14 the meeting with me. He gave me my tasking, that I must
15 the video and the disarming of the people.
16 MR NTSEBEZA SC: Did you ask which
17 people?
18 LT-COL BOTHA: He did explain to me that,
19 the people that's at the koppie.
20 MR NTSEBEZA SC: So in the short
21 conversation you had, he contextualised what you were going
22 to do. It is people in the koppie, they're going to have
23 to be disarmed, they're going to have to be dispersed and
24 your task was to video that operation as it unfolded.
25 LT-COL BOTHA: That is correct, sir.
26 MR NTSEBEZA SC: Yes, I'm asking you

1 because according to this minute of the 16th of August of
2 the meeting that I said took place at 13:30, Brigadier Van
3 Zyl was there and one of the closing remarks, as they are
4 labelled in this minute, is that Major-General Annandale
5 wanted the operation to commence at 15:30. The minute
6 reads, “Major-General Annandale instructed Brigadier
7 Pretorius and Lieutenant-Colonel Scott to report back at
8 the JOC at 15:15 as he wants the operation to commence at
9 15:30.” Now, I'm again trying to see in what way you would
10 have left closer to four when Brigadier Van Zyl knew that
11 the Major-General, specialised high risk force commander,
12 had indicated that the operation should commence at 15:30.
13 Do you probably have an explanation?
14 LT-COL BOTHA: No, sir.
15 MR NTSEBEZA SC: Now let's just get a
16 picture of moments just before you took off. These
17 choppers that you say in total were about four, were they
18 all on the ground when you took off or some of them or all
19 of them were already in the air, other than the one you
20 were going to take off in?
21 LT-COL BOTHA: All of them were already
22 in the air except the one that we were taking off in.
23 MR NTSEBEZA SC: And in your chopper, who
24 were the crew? In other words, other than yourself, who
25 else was in the chopper?
1st to 31st October 2012          Marikana          Rustenburg

1  the Chairman has said but maybe let me get there. You do
2  say in your statement, the one statement that you gave,
3  that – I'll come to that at an appropriate time. So it's
4  Captain André, if that is who he is, and then there is
5  Sergeant Venter or Warrant Officer Venter, then there is
6  General, Brigadier Fritz and who else?
7  LT-COL BOTHA: Sir, next to Brigadier
8  Fritz there was a gentleman in private clothing, which also
9  had a camera and - which I saw had a camera with him.
10  MR NTSEBEZA SC: You wouldn't know his
11  name?
12  LT-COL BOTHA: I do not know his name, sir.
13  MR NTSEBEZA SC: Do you know why he was
14  in that chopper and having a camera?
15  LT-COL BOTHA: Sir, I did not. I didn't
16  ask. I presume if he's got a camera with him, he must take
17  photos.
18  MR NTSEBEZA SC: I see. I suppose
19  because the Brigadier, being of a higher rank and allowing
20  him to be on the aircraft, you didn't want to ask where is
21  this guy going to.
22  LT-COL BOTHA: I did not ask, sir.
23  CHAIRPERSON: Do you know if this person
24  was a member of the SAPS or was he a civilian?

25  If we find it difficult to accept it at the end of the day,
26  not proper for a cross-examiner to make comments like that.
27  The following order must be set out in columns. And then it says, "For the purposes
28  of the proper keeping of records and accurate reporting, a
29  video register must be drawn up. The following heads must
30  be set out in columns." And it then says, "Column A1
31  serial number beginning with 1 every year. Column B, date
32  of recording, time of recording, duration of recording.
33  Column C, title of and place at which recording was made.
34  Column D, video camera operator. Comments. Column E,
35  annual serial number of tape, format of tape. Column F,
36  CAS number if applicable." Are you aware of this order?

37  LT-COL BOTHA: Yes, Mr Chair.
38  [09:45] MR NTSEBEZA SC: Now 16.3 goes on to say,
39  “and the recordings of actions and incidents which are
40  related through POP actions may be used as evidence at a
41  later stage. The following information must be recorded on
42  the soundtrack before the actual recording begins. Bullet
43  1, day, date, time and place of the recording. Bullet 2,
44  the number, rank and name in full of the camera's operator
45  and of the commentator. Bullet 3, the name of the POP unit
46  to which the camera operator is attached. Bullet 4, what
47  the recording is about, for example, a meeting, gathering
48  or funeral. Bullet 5, how the recording is to be made, for
49  example, from a selected vantage point, from a moving Nyala
50  vehicle, or while moving on feet. Bullet 6, the length of
51  the tape being used. Bullet 7, if there is a break in the
52  recording, the reason for the break must be stated clearly,
53  for example, shielding from those throwing stones or a
54  fault in the camera, or tapes are being changed, or it is
55  the end of the first recording, or it is the beginning of
56  the second recording, etcetera. Next bullet, comments can
57  also be made regarding the weather conditions, for example,
58  that it is raining, overcast. The last bullet, remember
59  that the prime test for the evidence from the digital
60  recording on the memory card to be admissible is that of
61  relevance, that is the digital recording must be relevant
62  to the case brought before the court." Are you aware of
63  it?

64  LT-COL BOTHA: Yes, Mr Chair.
65  MR NTSEBEZA SC: There doesn't seem to
1st to 31st October 2012  
Marikan  
Rustenburg

10  

1  be, unless I've missed something in the evidence that you  
have given so far, you don't seem to have complied with,  
for instance, recording on the soundtrack before the actual  
recording begins, the day, the date, the time and the place  
of the recording.

1  LT-COL BOTHA: Mr Chair, I normally would  
do it, a normal still crime scene, I do it. What happened  
is, when I switched on - when we came over and I could see  
that there is - and I could see the policemen, I switched  
on the camera, and I immediately started taping. So yes, I  
omitted that, but that was in the spur of the moment that I  
switched the - you'll see that I switched the camera on,  
it's white, then I realised that the lens cap is not open,  
and I opened the lens cap.

1  MR NTSEBEZA SC: You had the camera on. One would have been forgiven to  
think that it's a National Geographic video of the  
landscape. Which people are these that - and what were  
they doing, the nature of which caused you to want to  
photograph them with such urgency that you didn't comply  
with a standing order of the nature that I've read to you?

1  LT-COL BOTHA: Sir, when I said, when I  
saw the people - what I said is, when I saw the people on  
the ground, I switched my camera on, and starting taping.  
I could - I mean, you can see on the tape that police  
vehicles are moving around, and I switched on the camera,  
and I immediately started taping.

1  MR NTSEBEZA SC: Forgive me, Colonel, I  
do admit that there were people. There doesn't seem to  
have been much or many people, for most of the time that  
you had the camera on. One would have been forgiven to  
think that it's a National Geographic video of the  
landscape. Which people are these that - and what were  
they doing, the nature of which caused you to want to  
photograph them with such urgency that you didn't comply  
with a standing order of the nature that I've read to you?

1  LT-COL BOTHA: Sir, when I saw the police  
vehicles moving, I switched my camera on, and starting  
recording.

1  MR NTSEBEZA SC: I don't want to be  
appearing to badger you, is that who you meant when you  
said you saw the people, and then you determined that it  
was urgent for you to switch on your camera? Were you  
referring to the police vehicles?
MR NTSEBEZA SC: Well, I would like you according to Brigadier Fritz also. I can't answer for him. I was recording what I was supposed to do, and I presume I understand. I was recording, there weren't anyone on the koppie anymore.

LT-COL BOTHA: Sir, according to me, I request that the particular area must receive your focal point of attention.

MR NTSEBEZA SC: You did not consider that Brig Fritz would not respond favourable to your request that the particular area must receive your focal point of attention.

LT-COL BOTHA: Sir, according to me, I was recording what I was supposed to do, and I presume according to Brigadier Fritz also. I can't answer for him.

MR NTSEBEZA SC: Well, I would like you to answer for yourself, and why then didn't you ask the pilot to go to those areas where you would have zoomed in and given a better content of the goings on, on the ground, than we have been able to gather from –

LT-COL BOTHA: Because I was under the impression that the people in the veld and the people that dispersed, the living area also is part of the dispersal, and that's what I also videoed that.

MR NTSEBEZA SC: I thought when the Chairman put a question to you last week, you estimated that there were about 3 000 people on that koppie. You were aware of that?

LT-COL BOTHA: I cannot remember confirming that, but the overall talk was that there were 3 000 people on the koppie.

MR NTSEBEZA SC: And I battle to recall from the video footage that was flighted after 41 minutes of recording, anything near the kind of numbers that reflect the number or the crowd that was there. I didn't anything approaching more than a hundred people in that video of yours.

LT-COL BOTHA: Mr Chair, there, if I remember correctly, you can see people moving. I was asked yesterday, by the Nyalas, when you look at the video, at some stage there were groups of people in the veld, there were people dispersing, I did not count them, I think there were many more than a hundred.

MR NTSEBEZA SC: It was put to you in cross-examination, I think by Mr Mpolu, that it seemed that more of the footage was of the surrounding areas. I am just battling to, if you will enlighten me, I am just battling to find where the 3 000 people went to that a 41 minutes video could only capture at its most liberal, the hundred people or more that you are talking about.

LT-COL BOTHA: Sir, when I started videographing, there weren't anyone on the koppie anymore.

I videographed the people on the ground that I saw.

MR NTSEBEZA SC: Would that include the –

LT-COL BOTHA: I am not sure if they appear on the video, we will have to look at the video again.

MR NTSEBEZA SC: They were not – I suppose I was trying to say to you, it doesn't seem that your video does capture most, or most of the events that seem to matter that would be the content of your operation.

LT-COL BOTHA: Sir, I’ve included police vehicles in my video. I have included people running, you can clearly see them, we can’t dispute that on my video. I included people standing around on my video, and I’ve included people walking around in the video. That is all people in the veld, which I presume came from the koppie.

MR NTSEBEZA SC: Now, when did you realise that there was a fault in the camera? I’m just moving on to something else now.

LT-COL BOTHA: Did you talk about the fault in the camera?

MR NTSEBEZA SC: Yes.

LT-COL BOTHA: What camera?

MR NTSEBEZA SC: The digital camera. You remember you were explaining that there had been –

LT-COL BOTHA: The timing fault?

MR NTSEBEZA SC: Yes.

LT-COL BOTHA: Okay, so after I gave – I think my statement is given out on the 1st September, and because we – I obviously were late, I mean there’s no two things about it, for – I think we’ve concluded last Tuesday, the chairperson asked me, “What happened is you were either late, or it happened to early.” I think that was the last statement that before left. And I asked myself the question but why? I mean if I was in the air, according to the video camera, at 15:49, I don’t whenever what happened, but then something doesn’t make sense, and I had a look at my digital camera and it was the same as my watch time, and I take that as the correct time, so it looked like my video camera was 8 minutes out.
1st to 31st October 2012  
Marikana  
Rustenburg

1 Mr NTSEBEZA SC: I’m concerned about you
2 having an impression that you and the chairman concluded
3 that there could have been – you could have been late, or I
4 think the chairman was debating with you in much the same
5 way as I’m debating just to
6 LT-COL BOTHA: Then the word concluded is
7 not the right choice.
8 Mr NTSEBEZA SC: Yes. Now, I’m asking
9 because there is this – would have regarded that as a break
10 in the recording, what happened there, that now accounts
11 for the minutes that you cannot explain?
12 LT-COL BOTHA: No, that’s not the break
13 in the recording.
14 Mr NTSEBEZA SC: I see, okay. Now, if we
15 look at your statement which you just referred to, the one
16 you made on the 12th of September 2012, 001075, you say this
17 in paragraph 6, “On 2012, 08 16, I was in an SAPS chopper
18 at Wonderkop, Marikana during an SAPS operation.” That
19 would be relevant to what we are debating about.
20 LT-COL BOTHA: That’s correct, Sir. Is
21 that the statement that was given in here at the –
22 Mr NTSEBEZA SC: The one that you was –
23 no, no, not the one that was handed in on Tuesday, it’s the
24 one that you commissioned, or you were commissioned, as a
25 Commissioner of Oaths by Mosweu Bolmulwa.

1 CHAIRPERSON: I think this is the
2 statement that was part of IPED file.
3 Mr NTSEBEZA SC: Yes.
4 CHAIRPERSON: What was made available to
5 the evidence leaders and the parties, and also the
6 Commission, was the files of IPED, which contain all sorts
7 of statements and so forth, included a statement which you
8 had made – at least one statement, there may be another but
9 I only saw one, and the one that I saw, I think is the one
10 that counsel is referring to. So it’s not the statement
11 that was handed in when you gave evidence, which was
12 confirmed as being correct, it’s an earlier statement which
13 you made, I think, as part of the IPED Inquiry. So is that
14 correct, Mr Ntsebeza?
15 MR NTSEBEZA SC: Yes, it is.
16 LT-COL BOTHA: Is that the same one that
17 you referred to yesterday?
18 MR NTSEBEZA SC: Yes.
19 LT-COL BOTHA: Okay.
20 MR NTSEBEZA SC: Can I correct that?
21 There seems to have been, including the statement
22 yesterday, there seems to be three statements that you
23 made. I mean, including the statement that you made on the
24 basis of which you testified on the Tuesday last week.
25 There’s that statement, which you swore should be accepted

1 CHAIRPERSON: The passage in it that you
2 want to put to him, I suppose you want to give him
3 opportunity to read it first, before you put –
4 Mr NTSEBEZA SC: Ja, it’s a very short
5 statement, Mr Chairman.
6 LT-COL BOTHA: Sir, I’ve read it. Sorry,
7 is there a question? I have read it.
8 MR NTSEBEZA SC: No, no, we were talking
9 –
10 CHAIRPERSON: He’s now read it, so you
11 can proceed with the question.
12 Mr NTSEBEZA SC: Alright, okay. I take
13 it we are okay, it’s your statement?
14 LT-COL BOTHA: Sorry, let me just ask Ms
15 Pillay, how do I scroll down, I can’t see the bottom of the
16 statement?
17 Mr NTSEBEZA SC: You can’t be as bad as I
18 am in electronics, Colonel. I just wanted you to just
19 elucidate. You will see in paragraph 6 you say, “As I was
20 busy making a video recording, I handed my digital camera
21 to Warrant Officer A Venter, the co – I suppose that was
22 suppose that was supposed to be co-pilot of the chopper.
23 Warrant Officer Venter photographed the SAPS operation on
24 the ground. When we landed, she handed my camera back to
25 me. I had the emails she downloaded, and I compiled the
attached photo album," and I don’t have an attached photo
album. Now, firstly, so it’s part of what took place there
on that day that, whilst you were doing the video
recording, the digital camera photographing was being done
by Warrant Officer Venter.

LT-COL BOTHA: Yes, Sir.

MR NTSEBEZA SC: And I’m not making an
issue about it, but you didn’t think that she was a co-
pilot, but here, under oath, you say she is a co-pilot?

LT-COL BOTHA: I thought was she was a co-
pilot, but apparently I promoted her into a co-pilot,
she isn’t a co-pilot.

MR NTSEBEZA SC: Well you -

LT-COL BOTHA: She’s a crew.

MR NTSEBEZA SC: Oh.

LT-COL BOTHA: I said previously she’s a
crew, I don’t think she’s a co-pilot.

MR NTSEBEZA SC: Oh, I see. Chairman, I
won’t take it further, but it now raises a question.

CHAIRPERSON: Look, obviously he made a
mistake about her rank and whether she’s a co-pilot, I’m
not sure that it’s necessary for us to decide either of
those issues for the purposes of the work that this
Commission has got. The real question is what sort of
photographer was she? Did she take good photographs? What

CHAIRPERSON: But – sorry, yes carry on.

LT-COL BOTHA: So we did consider it.

MR NTSEBEZA SC: I would consider that
there were other video material that was conceded having
come from the other choppers in which you were not?

LT-COL BOTHA: I cannot recall any other
video material from any other choppers.

MR NTSEBEZA SC: You know sometimes when
a witness says “I don’t remember,” it can be either of two
things, it could have happened, except that the witness
doesn’t remember, or I do not remember, because it never
happened. Which of the two would you –

LT-COL BOTHA: Sir, I can’t remember if
we looked at any other video material than my video
material.

MR NTSEBEZA SC: Okay. Was your video

CHAIRPERSON: Was there any other video
material? From the standing order that was read, there’s
reference to video material possibly being obtained from
Nyalas, maybe, I don’t know whether the water canon, you
can get video material from the water canon, so there would
have been – presumably, if everything had been done
according to the standing order, there would have been
video material, not only from the helicopters, but also
from other sources. I can take that’s a fair assumption
one can make?

LT-COL BOTHA: Yes, Sir.

CHAIRPERSON: Now, what I think counsel
is after and he will forgive me if I interrupt him, was any
other video material, apart from helicopter video material,
shown or seen by you during that week long meeting?

LT-COL BOTHA: Yes, Sir.
1st to 31st October 2012

Marikana

Rustenburg

Page 525

1 MR NTSEBEZA SC: Yes, now I think you got
2 interrupted when I was seeking to find out whether your
3 video, the one that was shown here, whether it was shown
4 there and was it discussed?
5 CHAIRPERSON: He answered the question.
6 He said he couldn't remember whether his video was shown,
7 that's as I understood his evidence.
8 LT-COL BOTHA: That's correct, Sir.
9 CHAIRPERSON: So it was at that point,
10 because the concentration was on helicopter video material,
11 I endeavoured to ascertain whether there was any other
12 material – video material, other than helicopter video
13 material, and he gave the answer that you heard and if you
14 want to take it further, you may, or you may not.
15 MR NTSEBEZA SC: Now, can I just ask the
16 question, you may or may not know? Are you aware of any
17 other video recording material by SAPS, whether it was from
18 Nyalas or from helicopters or from photographs, that is in
19 the possession of the SAPS?
20 LT-COL BOTHA: Of the day of the 16th, of
21 when?
22 MR NTSEBEZA SC: Particularly the 16th.
23 LT-COL BOTHA: I'm not aware of anything
24 like that, Sir. Sorry, you specifically asked videos?
25 MR NTSEBEZA SC: Yes.

Page 526

1 LT-COL BOTHA: Okay.
2 [10:25] MR NTSEBEZA SC: Is there any other
3 material, photographic material, digital camera material?
4 LT-COL BOTHA: I am aware that there were
5 photos taken, yes.
6 MR NTSEBEZA SC: Colonel, it's not your
7 fault that there doesn't seem – you've said what you can,
8 but maybe there's other evidence, there will be other
9 people who will come to tell the Commission about what they
10 have by way of video material but given what I told you
11 about the planning meeting at 13:30 on that day, everything
12 else, wouldn't it be remarkable that the only material that
13 would be available is the one that was shown here?
14 LT-COL BOTHA: Mr Chair, the only video
15 material, SA Police video material that I know of is my
16 video material.
17 CHAIRPERSON: That's not an answer to the
18 question. What counsel asked you, speaking I imagine as an
19 expert, knowing what the standing instructions say or
20 standing order says, knowing how important it is for
21 police, public order policing operations to be covered by
22 video material, so if there are arguments later that the
23 police misbehaved it can be refuted by reference to the
24 video material – it's against that background that counsel
25 asks you, is it not remarkable that – whether it's true or

Page 527

1 not, I don't know, I'm just repeating his question – is it
2 not remarkable that the only material that appears to be
3 available is your material which, frankly, doesn't help us
4 very much, as we've all seen. Is that a fair summary of
5 your question, Mr Ntsebeza?
6 MR NTSEBEZA SC: Indeed, indeed.
7 CHAIRPERSON: What's your answer?
8 LT-COL BOTHA: Well, I can only say yes.
9 MR NTSEBEZA SC: It's remarkable –
10 CHAIRPERSON: Mr Ntsebeza, it's nearly
11 half past 10. I'll do again what I did last night. When a
12 suitable stage arises for the adjournment, please indicate
13 and we can take the adjournment. I don't want to stop you
14 at this stage if you want to ask further questions before
15 the adjournment, but when it's appropriate please tell me.
16 MR NTSEBEZA SC: Mr Chairman, I should
17 keep to my word of not keeping the Colonel for long. Can I
18 just take instructions from – Mr Chairman, can we take the
19 adjournment now?
20 CHAIRPERSON: The Commission will adjourn
21 for 15 minutes.
22 [INQUIRY ADJOURNS INQUIRY RESUMES]
24 Ntsebeza, you were cross-examining the witness. I assume
25 you wish to ask further questions.

Page 528

1 MR NTSEBEZA SC: Yes, Mr Chairman, thank
2 you very much.
3 CHAIRPERSON: Warrant Officer –
4 MR NTSEBEZA SC: Lieutenant-Colonel.
5 CHAIRPERSON: Lieutenant-Colonel, you are
6 still under oath.
7 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):
8 Thank you, Mr Chairman. The witness jocularly told me that
9 I had not kept my promise and I told him that Elizabeth
10 Taylor did keep Richard Burton more, longer than any other,
11 Chair.
12 CHAIRPERSON: She married him twice.
13 MR NTSEBEZA SC: Now, just a couple of –
14 the pilots and their logs, do they keep any logs that you,
15 are you aware whether the pilots, whenever you go on that
16 kind of mission, whether they keep any logs or logbooks?
17 LT-COL BOTHA: No sir, I don't know.
18 MR NTSEBEZA SC: Now, yesterday I think
19 there was an uncompleted question I wanted to pursue. The
20 post-mortems of what you did on the 13th and the 14th, which
21 did you do and which do you have records of?
22 LT-COL BOTHA: Sorry, sir I did the post-
23 mortems - can I quote the CAS numbers?
24 MR NTSEBEZA SC: Yes and the dates.
25 LT-COL BOTHA: All the post-mortems were
1st to 31st October 2012

Chips

1st to 31st October 2012

Marikana

Rustenburg

Page 529

1 done on the 16th, okay.
MR NTSEBEZA SC: Yes.
LT-COL BOTHA: It's the five post-mortems of the people that died in Marikana CAS115-119/8/2012.
MR NTSEBEZA SC: Yes, did you –
CHAIRPERSON: Those five are the five bodies – no, it's the four bodies that were found by you at the scene on the 13th, is that correct? Plus the person who, the policeman who died in hospital thereafter, do I understand it correctly?
LT-COL BOTHA: It is the two bodies that I found on my scene CAS117 and 118, Marikana CAS117 and 118. The two bodies of Captain Moshwana, 115 and 116 and then the body of the policeman that died in hospital, CAS119.
CHAIRPERSON: Those all relate to the incident of the 13th, is that correct?
LT-COL BOTHA: That's correct, Mr Chair.
MR NTSEBEZA SC: Now did those post-mortems include the person who was found just across the river? You remember we had a debate yesterday about the person who, whose body was found across the river?
LT-COL BOTHA: Sorry, I didn't complete the answer. There's one outstanding because I've only mentioned five now.

Page 530

1 MR NTSEBEZA SC: Oh, okay.
LT-COL BOTHA: Then CAS121, that's the person that was found behind the kopje on the 14th.
MR NTSEBEZA SC: Yes.
LT-COL BOTHA: To answer the second question, that included the person that died in CAS115 on the other side of the river.
MR NTSEBEZA SC: And in each of those cases would you know why physically performed the post-mortems?
LT-COL BOTHA: Yes, Mr Chair.
MR NTSEBEZA SC: Tell us?
LT-COL BOTHA: A gentleman by the name of Dr Nkosi.
MR NTSEBEZA SC: Dr Nkosi, all of them?
LT-COL BOTHA: All six of them. Thank you, Colonel. Now, I think indeed to – I think the Commission would like to know a little bit more about the week long meeting that you said was held at Potchefstroom.
I understood that the purpose of the meeting – and you'll correct me if I'm wrong – was to make a presentation, to prepare a presentation for this Commission, or am I wrong?
LT-COL BOTHA: It was to prepare a presentation for the National Commissioner and then eventually for this Commission.

Page 531

1 LT-COL BOTHA: Sir, there were a lot of officers. I can't really say who convened the meeting.
MR NTSEBEZA SC: Yes, or who then attended the meetings at which you were present? We'll come to the meetings in a moment. For instance, let me just give you a sense of probably who would have attended the meeting. You remember that I told you there was a meeting on the 16th of August at the special, a special JOC COM meeting at the centre where I said the operation, stage 1, stage 2, stage 3 of the operation was going to be embarked upon was discussed and I indicated to you, you were not there. Now these are the people who were in attendance, according to this minute A197/1. Lieutenant-General Mbombo, Major-General Annandale, Major-General Mpembe, M-P-E-M-B-E, Brigadiers Van Zyl, Fritz, Silwane, Pretorius and then Colonel Isaacs from crime intelligence and Adv Moolman from legal services. Were any of these people in attendance at the nine day meeting that you attended?
LT-COL BOTHA: Yes, Mr Chair.
MR NTSEBEZA SC: Now I would assume that there was an agenda –
CHAIRPERSON: We haven't got clarity yet on the last point that you covered. A list of names was read to you of people who were at the JOC meeting on the
16th and you were asked whether any of them were there at the nine day meeting and you said yes, but you didn’t tell us whether they were all there or, if all of them weren’t there, which of them were there at the nine day meeting.

So that point is left in the air, so can you perhaps help us on that before counsel proceeds to his next point?

LT-COL BOTHA: Sorry, sorry – no, I’m fine sir, thank you. I can recall General Annandale. I cannot say that General Mpembe was there the whole time, I know he was there. Brigadier Pretorius was there, Adv Moolman was there, Brigadier Fritz wasn’t there. What’s the other - I maybe missed some names now.

MR NTSEBEZA SC: Mbombo?

LT-COL BOTHA: I’ve commented on that.

MR NTSEBEZA SC: Annandale you have said.

LT-COL BOTHA: Sorry, sorry – no, I’m us on that before counsel proceeds to his next point?

LT-COL BOTHA: Brigadier – I cannot recall that Brigadier Van Zyl was there all the time but I can recall seeing him there. I do not, I don’t know all the people that were there by their names, so I cannot say if Brigadier Silwane was there or wasn’t there.

MR NTSEBEZA SC: Okay, perhaps so that we don’t get lost, let’s start – you do have your diary with you, don’t you? You said you do.

LT-COL BOTHA: Yes, I do have it with me.

MR NTSEBEZA SC: Would you tell us who, on the first day, chaired the meeting and who, in your knowledge other than you, attended the meeting?

LT-COL BOTHA: Sir, there were a lot of people. I – I’m going to be difficult now to say who attended the meeting. There were a lot of people. I know that General Annandale was there, Brigadier – the names that I have now known. I cannot recall – on the first day Brigadier Van Zyl for instance, he might’ve, he might not have been there. I cannot recall Brigadier – General Mbombo, I do not think she was there the first day. So it’s going to be very difficult for me to say out of my head and I did not note that.

CHAIRPERSON: Mr Ntsebeza, I don’t want to interrupt you. I’m not sure if this is the best witness to obtain this information from. I would imagine that in the course of the inquiry it’ll be fairly easy for you to obtain the information you now seek. I wonder, unless you’ve got a particular reason for asking the question, in which case I won’t stop you, but if you are in effect endeavouring to lay a foundation for things that will follow, it may be that - if you’re wasting your time with this witness on this issue, but you will be able to get the information later. But if you have a reason for asking the
1st to 31st October 2012

Marikana

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LT-COL BOTHA: Sir, there was a lot of people talking and there was a lot of people present and I mean we all know that we were there to make a representation for the National Commissioner, so the discussion was obviously what happened.

MR NTSEBEZA SC: Surely, Colonel, the meetings were structured. I don’t gainsay what you’re saying but you must remember something of the nine days that caught your attention.

LT-COL BOTHA: We discussed the happenings of the 16th, so it’s general discussions. I can’t remember specific things that were said.

MR NTSEBEZA SC: Were there any written reports that were handed in that you are aware of?

LT-COL BOTHA: Not that I am aware of, sir.

MR NTSEBEZA SC: Were there times when there were footages of what happened on the 16th flighted?

LT-COL BOTHA: Yes, Sir.

MR NTSEBEZA SC: And were those only SAPS footage.

LT-COL BOTHA: I can recall SAPS footage, like my photos for instance or the photos taken by Warrant Officer Venter. I can’t recall that we looked at any other footage.

MR NTSEBEZA SC: And would your answer be that, except only for the half a day that you were not there, in the nine days that you gathered in Potchefstroom, all footage that would have been shown is the one that was shown to this Commission from the SAPS?

LT-COL BOTHA: Just repeat the question?

MR NTSEBEZA SC: The question is, unless something else was shown in the half a day that you were not there, in the eight and a half days that you were in attendance, on one or more days of which footage was shown, all footage that was shown is the one that you presented to us here at this Commission. Am I correct in saying so?

LT-COL BOTHA: Maybe you must rephrase the question. Sorry, I’m not trying to be difficult –

MR NTSEBEZA SC: Okay.

CHAIRPERSON: As I understand the question, what counsel is asking you is, this video that you showed us yesterday or was shown yesterday that you took, was that the only video which was seen while you were there during the eight and a half days at the meeting?

LT-COL BOTHA: That’s counsel’s question, as I understand it. I think you can – I hope you can understand it now.

MR NTSEBEZA SC: Thank you, Mr Chairman.

LT-COL BOTHA: But you asked of the 16th, the happenings on the 16th of –

CHAIRPERSON: Yes, I take it he’s talking – yes, I think that was in, that was part of the question, but there may have been earlier footage about the 13th which would possibly form the subject matter of another question but as far as the events of the 16th are concerned, what counsel wants to know from you is, the footage that we saw yesterday which you took from the helicopter, was that the only video footage which was shown in your presence at the meeting over the eight and a half days.

LT-COL BOTHA: Of the 16th. Sir, I did say previously that I cannot recall that this, my video was shown there, but there were aerial photos of the 16th that were shown or that we looked at.

CHAIRPERSON: Yes, that’s what I understood you to say earlier, that you couldn’t recall your footage, your video footage being shown. What you do recall is that the pictures taken on your camera by Sergeant or Warrant Officer Venter were shown and I understood you to say that they were the only visual material which you saw at these meetings. Did I understand correctly?

LT-COL BOTHA: No sir, that’s not – there were other, I did say there were other aerial photos also.
1st to 31st October 2012 Marikana Rustenburg

1. video material –

2. CHAIRPERSON: I just asked, rephrased your question. The witness said yes, so it’s the witness’s remark.

3. MR NTSEBEZA SC: Yes indeed, Mr Chairman.

4. I think that’s where we should leave it. Oh ja, my junior always wants to make sure I do the right thing. My learned friend is not going to like this. Was there anyone from Lonmin at that meeting, at the end of those meetings?

5. LT-COL BOTHA: Sir, as far as I can recall there were only policemen at that meeting.

6. MR NTSEBEZA SC: Okay. May I just place on the record also, Mr Chairman, that Adv Budlender educated me a little bit yesterday. He told me that papa refers to Nyalas, it has nothing to do – remember I asked the question, is papa the same thing as the – he said no, no, papa, Dumisa – except that he calls me “Mr Ntsebenza”.

7. So papa, I now accept to be a reference to Nyalas. Thank you, Mr Chairman, no more questions.

8. LT-COL BOTHA: Before I give the counsel for some of the parties the opportunity to ask further questions arising from the extra material, particularly the video, is there anyone representing any of the parties who hasn’t yet had the opportunity to cross-examine and wishes to do so? A hand is being raised at the back, yes? Please put yourself on record and then ask the questions you want to ask.

9. MR RAMPHELE: That is correct, Chair. My name is Tshepiso Ramphele, I’m representing the families of the two security officers that perished on the 12th. Just to make clear, I’m an attorney, not an advocate.

10. CHAIRPERSON: I take it you have what is known as “verskyningsbevoegdheid”, but there’s no reason why you shouldn’t participate in these proceedings. Please carry on without any sense of inadequacy.

11. MR RAMPHELE: Colonel, just because you’re not involved in the issues around the 12th, my questions will just basically relate to clarity so I should understand the workings in your area of expertise. Tell me, under what circumstances would you normally have video recordings of incidents?

12. LT-COL BOTHA: Sir, that’s a call made entirely by the expert when he gets to a crime scene, he will decide if he’s going to make a video or not. Me personally, in serious cases I will make videos.

13. MR RAMPHELE: And in your 26 years or so of experience, ordinarily if you have continuous marches in an area and the area is volatile there would be a need for some sort of recording.

14. LT-COL BOTHA: Sir, LCRCs only record relevant to the issues before us at this stage, not merely passive crime scenes, not active crime scenes, so I don’t know.

15. MR RAMPHELE: If you could explain that?

16. LT-COL BOTHA: That’s not my field of expertise, I don’t know.

17. MR RAMPHELE: Now Colonel, even if it’s not your field of expertise, on the 10th of August there were two cases that were reported at Marikana police station of shooting and there were marches. Would you – I’m just giving you this information – and on the 11th of August there were a further two cases of shootings reported at Marikana police station and there were marches. So just in terms of your experience, would this kind of incident not require some sort of police attention?

18. LT-COL BOTHA: If there are shootings and marches, it does require police attention.

19. MR RAMPHELE: And in this particular case the reports were that it was the security of Lonmin that were involved in the shooting at first and, secondly, it was the warring unions that were involved. So that, you would agree with me, required some sort of police attention.

20. LT-COL BOTHA: Sir, if the case was reported at the police they must give attention to it.

21. MR RAMPHELE: And ordinarily in these kinds of instances you would agree with me that the police would have to do some sort of probing, that the police would find out what the situation is in Lonmin, would you agree with me?

22. LT-COL BOTHA: If you say probing into the case, they investigate the case. The rest I can’t comment on.

23. MR RAMPHELE: I see. Colonel, I am referring to a situation where you have shootings in a march and that is reported to the police. Would the police, say public order policing, not have an interest in this kind of matter?

24. LT-COL BOTHA: Sir, again, it’s not my field of expertise. I’m not a POP, public order policeman.

25. MR RAMPHELE: I’ve been a fingerprint expert or criminalistic expert for 26 years.

26. CHAIRPERSON: Mr Ramphele, I don’t want to unduly interfere with your cross-examination but it occurs to me that – I take it there will be public order policemen, policing people here and if these questions are relevant to the issues before us at this stage, not merely attention.

27. LT-COL BOTHA: Sir, if the case was reported at the police they must give attention to it.

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40. CHAIRPERSON: Mr Ramphele, I don’t want to unduly interfere with your cross-examination but it occurs to me that – I take it there will be public order policemen, policing people here and if these questions are relevant to the issues before us at this stage, not merely attention.
1 to a possible claim that your clients may have against somebody else, then I’ll the questions then but I think - I hope you’ll forgive me if I say that I don’t know if the inquiry is being advanced very much at the moment by asking questions of this kind to this witness. As I say, there may be other witnesses to whom you can fruitfully ask the questions but I wonder whether you shouldn’t be -

MR RAMPHELE: I appreciate, I accept, sir Judge. Let me just then move on to the other areas.

Colonel, in a situation of a big organisation like Lonmin, would you be aware that they would have some sort of surveillance that could assist in your investigation?

CHAIRPERSON: Sorry Mr Ramphele, again is this the kind of question we can expect a meaningful answer from the Colonel? I don’t mean any disrespect to the Colonel but it’s not his field of expertise either. I can understand why you’re asking the questions, where you’re coming from. I’m not sure that they’ll necessarily help us at this stage of the inquiry but in any event I don’t think this is the right witness to ask the questions of but – unless you wish to address me on that, I’m proposing to disallow the question.

MR RAMPHELE: Yes, let me address you - thank you, Chair, let me address you on that. My understanding is that the Colonel is the most senior in his experience - I mean he’s got 26 years’ experience, he’s indicated that in the unit where he was operating he is the most senior, so in terms of the protocols I think he would be the most appropriate official to give an indication of what would be practice in the operation.

CHAIRPERSON: You should first ask him what his field of - to define more precisely what his field of expertise is, to see whether he's able to give meaningful answers on the points that you want to cover. Colonel, can you deal with that point?

LT-COL BOTHA: Sir, my field of expertise, I’m a criminalistic expert in the South African Police Service. I videograph, photograph crime scenes and I also lift fingerprints and do comparisons, filing and identifications of fingerprints. I’m a bloodstain pattern analysis, trained bloodstain pattern analysis and also footprints. That’s my – in short, I might miss one or two but that's my field of expertise.

CHAIRPERSON: Now how can any -

MR RAMPHELE: Thank you, Chair. Now the reason why I’m asking is because the surveillance is part of video material that may actually be relevant to the investigation by the police and I’m trying to establish, with respect Chair, the interaction between the police and probable available material in areas where they operate.
1st to 31st October 2012
Marikana
Rustenburg

Page 549

1 What I do when I type my statement, I open the video camera, then at the bottom it shows the time when I started
2 - it doesn’t show when you film – and I take that time and then afterwards I realised but this time is wrong, but if you even look at my video the properties will not be correct. There’s some glitch in the programme and I’m not a computer expert.

MR RAMPHELE: But would I be correct if I say that the slides as they appear in your, the photos that you’ve provided follow one another?

LT-COL BOTHA: Sorry, if you spoke about the properties of the photos, that is correct. I thought you talked about the properties of the video, there’s a glitch in the programme but the properties of the photos will be correct, that will give you the actual time.

MR RAMPHELE: Now I would like to, and Chairperson with your guidance because there are some – we received some photos that I wanted to just establish from the Colonel in terms of times they were taken and the order in which they actually are placed, that maybe this could be shown so that the Colonel could respond to some of the questions.

CHAIRPERSON: Are these photographs of something that happened on the 13th or the 12th or on the 16th?

MR RAMPHELE: The 16th, Chair.

CHAIRPERSON: Are these –

MR RAMPHELE: And this is on the –

CHAIRPERSON: Are these supposed to be Sergeant or Warrant Officer Venter’s photographs?

MR RAMPHELE: These are from the folio that is Colonel Botha’s folio.

CHAIRPERSON: Colonel Botha provided a photo album which is in the bundle of documents.

MR RAMPHELE: Yes.

CHAIRPERSON: It’s not been handed in yet, I don’t think, but it’s the photographs taken, as I understand it, by Warrant Officer Venter using the Colonel’s digital camera. Is that what you’re asking about?

MR RAMPHELE: Yes.

CHAIRPERSON: Mr Madlanga, you look puzzled. Do you want to say something at this stage?

MR MADLANGA SC: Well Chair, no arrangement, as far as I’m aware, was made for the photographs to be shown but I believe those photographs are on the SAPS hard drive. So if an arrangement could have been made, could have taken them up there to Mr Rice for them to be shown or to be viewed.

CHAIRPERSON: Yes, well obviously you’re not able to do it now –

MR MADLANGA SC: We can’t do it now.

CHAIRPERSON: So it’s possibly appropriate then, I’m not quite sure what point Mr Ramphele is making but perhaps the sensible way to do it is to stand this, down this part of his cross-examination and when you’re ready to show the photographs then we can get the Colonel back perhaps and Mr Ramphele can ask his questions.

Would that be acceptable, Mr Ramphele?

MR RAMPHELE: The arrangement has been made, Chairperson, with I think - we spoke to Adv Chaskalson and then we were referred to someone who’s operating –

CHAIRPERSON: Are you telling me – well, let’s find out from Mr Madlanga. If the photographs are available and they can be shown now – I don’t know about all of them but - do you want all of them shown or just one or two?

MR RAMPHELE: No, just about three, four, just to understand how –

CHAIRPERSON: Okay. If the photographs are available it will probably save time, we’ll just see the three, the first three now and then Mr Ramphele can carry on.

MR MADLANGA SC: May I ask the Chairperson to ask the gentleman upstairs whether he's got those ready and whether everything is set up for that viewing, Chair.

CHAIRPERSON: He is standing up and raising his thumb, which I take it is an indication of yes. So would you please proceed to show us the first three photographs? Just to put on record, what we’re now going to see is presumably the first three photographs in the photo album which the Colonel prepared of the photographs taken on his digital camera by Sergeant or Warrant Officer Venter.

MR RAMPHELE: Chair, let me just indicate, the photographs that I would like the Colonel to just respond on are photographs 5131, 5132 and 5134.

CHAIRPERSON: And have you arranged that those are the photographs that we will now see?

MR RAMPHELE: Yes.

CHAIRPERSON: Alright, let’s see those three photographs. They may not be the first three but we know, we can – they have been identified, but please show them to us, please?

[PHOTOGRAPHS ARE SHOWN]

MR RAMPHELE: These photographs, Colonel, the time that will appear in the properties you said will be the correct time at which the photograph was taken.
20th, 20 – yes, 201208, the date the 16th and the time 4.17.

I can confirm that, sir.

That's evidence given by the interpreter who hasn't been sworn in but Colonel, can you confirm that, Colonel?

Sir, I can see a line of people there. I cannot comment on who it is. I mean maybe we see there, are these police officers on that day?

LT-COL BOTHA: I can't really –

MR MAHLANGU: The date seems to be the –

LT-COL BOTHA: Correct.

That's the small koppie, I know there was an incident. I don't know if it was before or after the incident on the 16th?

LT-COL BOTHA: Sir, I will have to give some light, would you say this was before or after the incident of the 16th?

LT-COL BOTHA: Sir, I can see a line of people there. I cannot comment on who it is. I mean maybe we see there, are these police officers on that day?

LT-COL BOTHA: I can confirm that, sir.

LT-COL BOTHA: Sir, I can most probably say it's policemen. I wasn't on the ground so I can't swear to that, that it's policemen.

MR RAMPEHE: Would you say that this was before the incident or after?

LT-COL BOTHA: Sorry, just repeat the question?

MR RAMPEHE: Would you say that this line of police officers happened before the incident or after?

LT-COL BOTHA: Well, now I can say it happened after the incident if I look at the time.

MR RAMPEHE: Can we then go to 5134?

LT-COL BOTHA: That is correct.

MR RAMPEHE: And if you were to sort of enlarge, so that we can see it more clearly?

MR RAMPEHE: Yes. This also was taken at 14, at 15:18:10 would you agree with that?

LT-COL BOTHA: That is correct.

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MR RAMPEHE: Would you say that this was before the incident or after?

LT-COL BOTHA: Sorry, just repeat the question?

MR RAMPEHE: Would you say that this line of police officers happened before the incident or after?
LT-COL BOTHA: Sir, video will not happen, if you have video recording, Colonel, is to prevent the shooting happened between these two periods then it means that at that time you were actually in the helicopter.

LT-COL BOTHA: Sir, I think we have to - yes, I was in the chopper, sorry.

MR RAMPHELE: Yes. So you can safely say that of the evidence that you will provide, there will always be unclarity on some aspects. 

LT-COL BOTHA: I don’t know how to answer the question, Mr Chair.

MR RAMPHELE: Because you’ve just said you could’ve been in the helicopter when the shooting happened but you say that you did not capture it.

LT-COL BOTHA: I didn’t say that. I think we established here at some stage that I did not know even that there was a shooting at the koppie until I got back onto the ground.

MR RAMPHELE: Now part of the reason why you have video recording, Colonel, is to prevent emergencies or tragedies from happening. Would you agree with me?

LT-COL BOTHA: Sir, video will not prevent a tragedy from happening.

MR RAMPHELE: Chairperson, I believe that this interaction is very important to make because it is our case that if – and the Terms of Reference of the Commission are clear, whether there’s any commission or omission on the part of persons that will appear, amongst others the Police, before the Commission, that led to, in my case, the death of a security officer on the 12th, and I’m, it is important, Chair, that I make it clear these are the Standing Order, that this Standing Order is not being regularly complied with –

CHAIRPERSON: The Standing Order that was read is a POP Standing Order, which will be for POP members, which means POP video person will speak to the POP commander.

MR RAMPHELE: With your permission, Chair, let me just read the colonel the relevant –

CHAIRPERSON: It’s been read already, Mr Ramphele. It’s on record. Again, the purpose of this questioning isn’t to have a debate with him to persuade him he’s wrong; it’s to put information before us which helps us to find the answer to the difficult questions submitted for us to answer. May I suggest that you move on to the second photograph you wanted to take, and then let’s see what comes from that?

MR RAMPHELE: Chairperson, I believe that this interaction is very important to make because it is our case that if – and the Terms of Reference of the Commission are clear, whether there’s any commission or omission on the part of persons that will appear, amongst others the Police, before the Commission, that led to, in my case, the death of a security officer on the 12th, and I’m, it is important, Chair, that I make it clear these are the Standing Order, that this Standing Order is not being regularly complied with –

CHAIRPERSON: The Standing Order is already before us and can be put before us more fully.
<table>
<thead>
<tr>
<th>Page 561</th>
<th>Page 562</th>
<th>Page 563</th>
<th>Page 564</th>
</tr>
</thead>
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| 1 later. The photographs that you’re asking him about relate to what happened not on the 12th, but on the 16th. It already appears from answers that were given in response to earlier cross-examination that the Standing Order doesn’t appear to have been complied with. So I don’t know whether, you know you can go on asking questions as long as you like, but I have the power and in fact the duty under the regulations to regulate the proceedings to make sure that time isn’t unduly waste. I rule this line of questioning, I disallow this line of questioning. Would you like to move on to the next photograph? You made the point that they don’t always comply with the Standing Regulations. That’s what you want. That fact is a fact you want to use for the purposes of your submissions in relation to what happened on the 12th, but if you made the point once, you don’t have to make it again and again. So move on now please to the next photograph. **MR RAMPHELE:** Chairperson, I think that in view of your acceptance that the Standing Orders are not usually complied with and it seems to be the finding, I will not take this matter any further. **CHAIRPERSON:** I don’t accept anything, and I make no findings. I’m merely indicating what evidence is already before the Commission. It may be that we’ll have other evidence to the effect that the Standing Order is not being complied with. It may be difficult for that case to be presented in the light of what we’ve already been told, but I certainly am not going to make any findings until the appropriate time to do so comes, and I don’t accept anything either again until the appropriate time for that is there. So, but anyway, so now that I have disabused your mind of that misapprehension, would you like to carry on with further questioning? **MR RAMPHELE:** Okay, Chairperson, I rest my case because I am satisfied that even though you’ve not made a finding, you have a provisional inclination and I don’t have to take this matter any further. **CHAIRPERSON:** I am not even prepared to concede I have a provisional inclination, but I have summarised to you the evidence that’s been given and I think we can leave it there. Anyway, I think it’s clear that you don’t propose asking anymore questions of this witness. So thank you very much. Let me now go to the other counsel. Mr Semenya, are there any further questions you’d like to ask in the light of the extra points that arose particularly in relation to the video that was shown? **MR SEMENYA SC:** Chairperson, not. **MR GUMBI:** Yes Chairperson, before you could even allow Mr Semenya to ask any question, I wanted to ask few seeking clarity question from colonel. | 1 Order is complied with. It may be difficult for that case to be presented in the light of what we’ve already been told, but I certainly am not going to make any findings until the appropriate time to do so comes, and I don’t accept anything either again until the appropriate time for that is there. So, but anyway, so now that I have disabused your mind of that misapprehension, would you like to carry on with further questioning? **MR RAMPHELE:** Okay, Chairperson, I rest my case because I am satisfied that even though you’ve not made a finding, you have a provisional inclination and I don’t have to take this matter any further. **CHAIRPERSON:** I am not even prepared to concede I have a provisional inclination, but I have summarised to you the evidence that’s been given and I think we can leave it there. Anyway, I think it’s clear that you don’t propose asking anymore questions of this witness. So thank you very much. Let me now go to the other counsel. Mr Semenya, are there any further questions you’d like to ask in the light of the extra points that arose particularly in relation to the video that was shown? **MR SEMENYA SC:** Chairperson, not. **MR GUMBI:** Yes Chairperson, before you could even allow Mr Semenya to ask any question, I wanted to ask few seeking clarity question from colonel. | 1 policemen in and, with and without uniform. **MR GUMBI:** But the majority of the police officers, were they in uniform? **LT-COL BOTHA:** Yes. **MR GUMBI:** You testified before this Commission that there were different units of the police officers who were there on that day before you captured those video images. **LT-COL BOTHA:** I think I said that I cannot dispute the list that was read to me. **MR GUMBI:** As an experienced police officer, Colonel, would I be correct that each and every unit has his, its own commander? **LT-COL BOTHA:** It’s supposed to be like that. **MR GUMBI:** When one looks at the footage you captured on that day in question, would I be correct, Colonel, that those video images captured the uniformed police officers, it also captured the marked police vehicles? **LT-COL BOTHA:** Chair, if I look in hindsight now, there are policemen on the, uniformed policemen on the scene and there are marked police vehicles on the scene. **MR GUMBI:** The police officers you
observed on that day in question, would I be correct,  
Colonel, that they were armed with ammunition that are used  
to disperse crowds? That's correct?  
LT-COL BOTHA: Sir, I did not inspect any  
policeman. I cannot give any comment on what they were  
armed with.  
MR GUMBI: While you were inside the  
chopper taking those video footages you displayed before  
this honourable Commission, would I be correct that you  
observed police officers dispersing crowds there?  
LT-COL BOTHA: Sir, I saw police vehicles  
move and, I, and as on the video, you can see people  
walking, running in a bundle, standing around, and  
according to me that is dispersement.  
MR GUMBI: But you testified that at  
certain occasions you observed one of the police officers  
while you were there releasing a stun grenade. You  
remember that?  
LT-COL BOTHA: No Sir, I did say the stun  
grenade was released from my chopper – from the chopper,  
not my chopper – from the chopper that I was in.  
MR GUMBI: And that stun grenade is used  
to disperse crowds. Is that correct?  
LT-COL BOTHA: Sir, I'm not a OPS member,  
I'm not operational member. It was used.

MR GUMBI: Thank you, Chairman, I don't  
have any further questions.  
CHAIRPERSON: Thank you very much. Mr  
Semenya? Oh sorry, Mr Mogagabe, do you wish to ask  
questions?  
MR MOGAGABE SC: Tell us, you said that  
the object of you, I mean getting airborne in the chopper  
was to video record the disarming and dispersal of the  
people on the ground. Is that correct?  
LT-COL BOTHA: That is the information  
that was given, yes.  
MR MOGAGABE SC: What did you understand  
by dispersal of the people on the ground to mean?  
LT-COL BOTHA: That people will be  
dispersed. I, that's my understanding.  
MR MOGAGABE SC: What does it entail?  
What does it mean?  
LT-COL BOTHA: So what is that, what is  
entailed, what it does entail I don't know. I wasn't with  
any planning or anything like that. I was informed that  
the people will be dispersed and disarmed and I need to get  
into the air to make an aerial video.  
MR MOGAGABE SC: The next question is,  
what did you understand by the disarming of people?  
LT-COL BOTHA: I understand that arms
LT-COL BOTHA: I’m not sure. I don’t know. I can’t answer on that.

MR MOGAGABE SC: You also testified that, I mean when the other two shooting incidents occurred, you were airborne but didn’t capture the incidents. May I ask you then, who was in control of the pilot as to which direction the chopper should fly, to which spot and location?

LT-COL BOTHA: Can I just ask you to repeat the statement and then the question?

MR MOGAGABE SC: I said, you testified that in fact at the time that the two incidents which happened which resulted in the killing of the protesters or strikers had occurred, you were airborne at the time in the chopper.

LT-COL BOTHA: Yes, I was. Let me just say that in hindsight I know now that the first incident obviously took place because I can see it on the video. When the shooting in the koppie took place, I don’t know, so I can’t say that I did or did not videograph it.

MR MOGAGABE SC: Colonel, my next question is, I mean at the time who was giving the pilot orders as to in which direction to fly the chopper? Was it you or was it brigadier Van Zyl?

[12:11] LT-COL BOTHA: Sir, it wasn’t me. As far as I know, the chopper pilot flew where he see, where he saw things happen, where people walked, where police vehicles were driving, where people ran, where people were standing, and that’s how we videographed it.

CHAIRPERSON: It follows then from your answer that nobody, while you were there in the helicopter, actually gave an oral instruction to the pilot as to where to go?

LT-COL BOTHA: No, Sir.

CHAIRPERSON: I think the answer that I put to you [inaudible] no-one gave him instructions to where to fly. Is that right?

LT-COL BOTHA: No Sir, at some stage, you will see at the last part of my video, it does not really concentrate on any area, to the koppie or that area. Then Brigadier Fritz made a call and said we are going to die here, there, because you’ll hear if you listen closely on the video I at some stage said to the pilot, “Check the white chopper,” and he said we must move away and then that’s where I photographed the people regrouping at the side of the road and stuff like that. According to me that was part of the dispersed people and I videographed it.

CHAIRPERSON: The answer is that generally speaking the pilot wasn’t given instructions as to where to fly, but at one point he was by Brigadier Fritz. Is that correct?

LT-COL BOTHA: That’s correct, Sir.

CHAIRPERSON: Thank you.

MR MOGAGABE SC: Colonel, the next question is, I will assume that during the whole period that you were encircling the area, that you were in constant contact with JOC?

CHAIRPERSON: I’m not sure how an assumption can be a question. If you want to ask whether he was in contact, you can ask him, but you can’t just preface your remarks by making an assumption.

MR MOGAGABE SC: Let me rephrase the question, Mr Chairperson. During the whole period that you were airborne and circling the area, were you in constant contact with JOC, either you, Brigadier Van Zyl or the pilot?

LT-COL BOTHA: Sir, I cannot remember if we were in contact with the JOC. I can remember speaking, people speaking on the radio. If it was, and it was the JOC, I can’t remember if we were in constant contact with the JOC.

MR MOGAGABE SC: Who gave the order that the chopper should return to the ground?

LT-COL BOTHA: Brigadier Van Zyl contacted the chopper and said that I must come back to the ground.

MR MOGAGABE SC: Can you recall what time was that?

LT-COL BOTHA: Sir, I think I said under my evidence, if you take when I started making the video and I, and when I switched the camera off, it should have been in the area of 17:40.

MR MOGAGABE SC: My last question is, who gave the order to release the two stun grenades from your chopper?

LT-COL BOTHA: Brigadier Fritz.

MR MOGAGABE SC: Do you know for what purpose was that order given?

LT-COL BOTHA: No Sir, he’s the operations person, he made the call and he instructed the - I’m not sure is it Warrant Officer or Sergeant Venter, to release the stun grenade.

MR MOGAGABE SC: Thank you, Mr Chair, no more questions.

CHAIRPERSON: Thank you. Mr –

MR SEMENYA SC: Sorry Chair, can I just...
1st to 31st October 2012

Marikana Rustenburg

1 tidy one aspect?
2 CHAIRPERSON: I thought you were, Mr Mogagabe was dealing with the matter on your behalf, but obviously if there's a further point you want to deal with you may.
3 MR SEMENYA SC: He represents a different team.
4 CHAIRPERSON: Oh, I see. I'm sorry.
5 MR SEMENYA SC: Alright. Colonel, can we tidy up one aspect? The document called Standing Order, firstly it is a POP document. Am I correct?
6 LT-COL BOTHA: The one that was read to me was a POP document, yes.
7 MR SEMENYA SC: Secondly, the document is a draft document, is it not?
8 LT-COL BOTHA: Sir, no I don't know if it's a draft. If you told me it is, it might be.
9 MR SEMENYA SC: Well I can show you that. That's how it is indicated at the top. At page 649 you will see it's a draft, but I'm merely putting it to you. Can you accept that?
10 LT-COL BOTHA: I can accept it.
11 MR SEMENYA SC: Thirdly, it is not a standing order. Would you dispute that, Colonel?
12 LT-COL BOTHA: No, Sir, I cannot really say if it's not - well, if it says Standing Order whatever the number is, then it must be a Standing Order. If it's a draft, then it's a draft. I'm not sure, Sir.
13 MR SEMENYA SC: It is merely being used by POP as a guide, correct? Would you know?
14 LT-COL BOTHA: I won't know, Sir.
15 MR SEMENYA SC: Can I just read what the heading of the document is? It reads, “A divisional directive 20,” in Roman figures - I'm told it's XX, not 20 in Roman figures, “2012 POP Operational Standards.” You can accept that reading to be correct at least?
16 LT-COL BOTHA: If that's the official document of the SA Police Service, I can presume that it's correct.
17 MR SEMENYA SC: Thank you, Chair.
18 CHAIRPERSON: No further questions?
19 MR SEMENYA SC: No.
20 CHAIRPERSON: Mr Burger, have you got any questions?
21 MR BURGER SC: Yes, thank you, Chair.
22 Colonel, my colleagues and I represent Lonmin in this inquiry and with the permission of the Chair I want to probe two issues with you in some more detail. One is the chopper flight on the 16th and the second is the Potchefstroom nine-day conference. Can I start with the first subject? Would it be correct for the Commission to accept that on the 16th of August there was constant radio communication between the JOC, the units in the area of the koppie, and the SAPS helicopters?
23 LT-COL BOTHA: Just ask the question again, sorry.
24 MR BURGER SC: Let me put it again. May we assume that on the day of the 16th during the operation, take it from 3 o'clock in the afternoon, there was constant radio communication between the JOC on the one hand, the operational units in the area of the koppie on the other hand, and the helicopters in the air, operated by SAPS?
25 LT-COL BOTHA: Sir, if you say we must assume it, then I cannot think that we can dispute it because I don't think we can have such a big operation without radio communication. I did say that I cannot remember that we had constant comms, or my chopper had constant comms with the JOC. I can't remember that.
26 MR BURGER SC: Colonel, I'll probe your memory presently. I'm just trying to get the facts before the Commission. We know for example that there was direct contact between the JOC and your chopper because there was an instruction given by Brigadier Van Zyl that you should return. That was given by radio, I accept.
27 LT-COL BOTHA: Yes, that was given by radio.
LT-COL BOTHA: No, I did not say that I cannot hear what is coming back to him.

MR BURGER SC: So you could also hear what was said to him, what instructions he got or information he got from the other side?

LT-COL BOTHA: I could hear everything that was said on the radio. We had, I did say also we had difficulty with radio communication but I could hear what was said.

MR BURGER SC: I see. So you could hear what the brigadier was saying and the response he got, I take it both from the units around the koppie and from the JOC.

LT-COL BOTHA: Sir, I cannot recall that Brigadier Fritz spoke specifically to the JOC or specifically to people on, to specific people on the ground. I know that he spoke on the radio. I cannot remember whether it was, what was said.

MR BURGER SC: The function of Brigadier Fritz is to direct the operation from the helicopter?

LT-COL BOTHA: I did say I don’t know what the function of Brigadier Fritz was.

MR BURGER SC: Colonel, you’re a lieutenant-colonel in the South African Police Service. You’ve got 26 years service. What do you think was the function performed by Brigadier Fritz on that day in the helicopter?

LT-COL BOTHA: Mr Chair, I already said I do not know what the function of Brigadier Fritz was in the helicopter.

MR BURGER SC: I will make two submissions on that answer to the Commissioner and if you think it’s unfair or incorrect, this will be the opportunity to say so. My first submission will be that you did not know what Brigadier Fritz was doing in the helicopter, is not a reliable answer.

LT-COL BOTHA: Just say again? Sorry.

MR BURGER SC: I will submit at the end of this proceeding that your answer to the Commission that helicopter was on the 16th of August 2012, is an unreliable answer.

LT-COL BOTHA: Sir, I can just stick to my point. I do not know what the role of Brigadier Fritz was next to me in the chopper.

MR BURGER SC: Who gave the order for the stun grenades to be fired?

LT-COL BOTHA: Brigadier Fritz.

MR BURGER SC: In what capacity did he give that order?

LT-COL BOTHA: As a capacity of the brigadier in the chopper.

MR BURGER SC: Colonel, I was thinking about the role of a chopper in this situation and I could think of three roles to be played. Let me put them to you and if there are more, will you assist the Commission and identify the additional ones. The first role of a chopper will be to record events by video camera, by camera, very much in the fashion that you have done, and that would be a role of a chopper in the situation on the 16th of August. Can we accept that?

LT-COL BOTHA: Yes Sir, because that was why I was in the air.

MR BURGER SC: May we also accept that in performing that role, radio communication is pivotal because if you don’t have radio communication, the chopper wouldn’t know what to look for?

LT-COL BOTHA: That is correct, Sir.

MR BURGER SC: The second role of a helicopter in this situation is to act as an aerial command post.

LT-COL BOTHA: Sir, I’m not an
MR BURGER SC: Do you accept, Colonel, that it could have been a role performed by the chopper in which you were on the 16th of August to act as an aerial command post to give directions and strategic input to the ground forces? Do you accept that?

LT-COL BOTHA: I cannot accept it because I don't know what the role of Brigadier Fritz was and I don't, I went into the air to go and make a video.

MR BURGER SC: Colonel, do you tell the Commission that you're in the helicopter; the first thing you see is a number of dead bodies on the ground. You're in a helicopter for 40 minutes and the trip ends when there's a command to say we must get out of here, we're going to get killed, and you don't have any idea of what the brigadier next to you is saying in taking part in the process?

LT-COL BOTHA: Sir, I said when I started the video I did not see any dead people on the ground. I saw police vehicles moving. What I also said is I cannot, there was a lot of talking, I cannot remember what Brigadier Fritz or anyone else said. I just can't remember.

MR BURGER SC: I want to put the third function of a helicopter, because I want to, trying to explore to what extent these functions were performed on the day. The third function is that of crowd control performed by a helicopter, and I put it in the context that if you put a helicopter above a crowd of people, that might well be inhibiting them to do what they're busy with and it might also serve as a place to launch a stun grenade from and to do crowd control from the helicopter, would you accept that?

[12:31] LT-COL BOTHA: I can accept it but I'm not an operational person to say that yes, I can use a chopper for crowd control.

MR BURGER SC: Can you think of any other function to be performed by a helicopter on that day or can we stay with these three functions?

LT-COL BOTHA: I cannot think of any other function.

MR BURGER SC: Now let us just decide how this helicopter performed its functions on the day in question. The first function, that of recording events, we know in your evidence that the first incident at scene 1 was not recorded.

LT-COL BOTHA: In hindsight we can say that it was not recorded, yes.

MR BURGER SC: We know that the second scene was not recorded because you didn't know about it.

LT-COL BOTHA: As I have said, that I've recorded the koppie at some stage. I do not know at what stage the scene happened, so it could've been recorded, it could not have been recorded. We look at the video, I can't say.

MR BURGER SC: Colonel, does the Commission have to understand, in view of your evidence, that you did not know what was happening on the ground, that the Brigadier did not tell you that people were being killed at scene 2 while you were in the chopper?

LT-COL BOTHA: Sir, as far as I can remember there was no conversation on the radio that anyone, that there's a shooting or a second scene or killings at the koppie.

MR BURGER SC: Were you made aware while you were in the helicopter that some 16 people had been killed at scene 1?

LT-COL BOTHA: I became aware of dead people on the ground when Colonel Vermaak said he can see two people, two dead – two bodies on the ground at the kraal. Then I realised there was a shooting on the ground. I did not, there was – according to me, I can't remember any conversation that said that people were killed.

MR BURGER SC: Colonel, does that mean you're in a police helicopter on the 16th of August during a period when some 31 people lose their lives on the ground and the people in the helicopter are blissfully unaware of what's happening on the ground?

LT-COL BOTHA: That is what I'm saying, I did not now.

MR BURGER SC: And may we assume that it is inconceivable that Brigadier Fritz and/or the pilot would know about these tragedies and not telling you about it?

LT-COL BOTHA: They definitely would've told me about it.

MR BURGER SC: Just before I want to put to you what we will argue on behalf of the performance of the first function, that is the observation function on the day in question, can I just get clarity? You arrive at the JOC at three o'clock that afternoon.

LT-COL BOTHA: Sir, I said I can't confirm it. It can be a bit before, a bit after three, but it must be more or less at three o'clock.

MR BURGER SC: I accept that. We know from documents produced or read to you by my learned friends on my left that the plan was to commence the operation at 3:30 that afternoon, you heard that?

LT-COL BOTHA: I've heard that.
1st to 31st October 2012

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1. MR BURGER SC: What did you do between three o'clock and 3:30 that afternoon at the JOC?
2. LT-COL BOTHA: Sir, I wasn't at the JOC.
3. LT-COL BOTHA: I met Brigadier Van Zyl outside, then I went - I stood outside. I could have had a cool drink, then I went to the chopper and I waited because the instruction was, when the chopper goes into the air you must go with it.
4. MR BURGER SC: And was the chopper ready to fly when you came to it shortly after three o'clock?
5. LT-COL BOTHA: No sir, the chopper was standing on the parking, I think if we can call it a parking ground, landing strip, whatever. The pilot and the co-pilot were there.
6. MR BURGER SC: Let me ask you the obvious question. There's a major operation starting at 3:30, there's a chopper, there's a pilot, there's a substitute for the pilot, you're ready, why doesn't the chopper fly?
7. LT-COL BOTHA: I cannot answer that, sir.
8. MR BURGER SC: We will submit at the end of function in recording the events on the ground as it was supposed to do. If you want to comment, you may. If you do not have a comment it's your free will not to respond.
9. LT-COL BOTHA: Sir, according to my duty I feel that I did what I had to. I videographed what I could see on the ground. I videographed the people being dispersed, people in informal settlements regrouping, people running, people walking. According to me, that was what I was supposed to do. People were dispersed.
10. LT-COL BOTHA: I cannot comment on that.
11. MR BURGER SC: Now the facts I will rely upon for that submission are briefly the following. There are two tragedies happening, you don't record either of them and you take about 80% of your time to film what is, with great respect, irrelevant.
12. LT-COL BOTHA: I cannot comment on that.
13. MR BURGER SC: We will also submit that, to the extent that there was an aerial command post function, that was not performed because on the facts before the Commission, Brigadier Fritz did not know about the killings on the ground.
14. LT-COL BOTHA: If that's your - sorry, if that is your submission, I'm not going to comment on that.
15. MR BURGER SC: And on the third possible function, namely that of crowd control, we do not have enough facts yet to make a submission so may I ask you, why was it necessary to fire stun grenades at the crowd when it was done?
16. LT-COL BOTHA: Sir, that's an operational call that was made by Brigadier Fritz. I don't know, you'll have to ask him.
1st to 31st October 2012

Marikana
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LT-COL BOTHA: I did not ask any such question at Potchefstroom.

MR BURGER SC: I want to deal with Potchefstroom separately but let me just ask you this. The format during the nine days, would that be a meeting of all the policemen together in a room?

LT-COL BOTHA: There were a lot of policemen together, yes. Some sub-meetings, some big meetings, there were a lot of policemen.

MR BURGER SC: Did you attend all the big meetings?

LT-COL BOTHA: Sir, most – yes, let’s say yes.

MR BURGER SC: Now I’m paraphrasing but you’ll forgive me. You’re for nine days in big meetings, do you ever hear anybody asking whether there was a chopper with a camera or a video apart from your one?

LT-COL BOTHA: Sir, I did not hear that anyone asked if anyone else than me made a video.

MR BURGER SC: Colonel, as there was no Lonmin representative at Potchefstroom, I must put to you there was no Lonmin helicopter in the air on the 16th of August in the area of the kopjie, so you accept that?

MR BURGER SC: And I also put to you one then I will accept it.

LT-COL BOTHA: It was quite disturbing.

MR BURGER SC: It was quite disturbing. I have difficulty understanding the evidence, bear with me. You get off a helicopter and you’re told by a senior police officer that there has been killing of many people. You find that a most disturbing piece of news to receive, I take it, correct?

LT-COL BOTHA: That is correct, because I saw – remember I sat in the chopper, I did not record it. The second one I did not know about. The first one I know now and then something must’ve happened, I did not record it. The second one I did not know about.

MR BURGER SC: I have difficulty understanding the evidence, bear with me. You get off a helicopter and you’re told by a senior police officer that there has been killing of many people. You find that a most disturbing piece of news to receive, I take it, correct?

LT-COL BOTHA: It was quite disturbing.

MR BURGER SC: Absolutely. You then tell the Brigadier that you have some film footage in your camera.

LT-COL BOTHA: The Brigadier did not ask me if I did see or videograph killings.

MR BURGER SC: Colonel, as I understand the sources of your information in this case, information which you use to tell the Commission what you know, the first would be Warrant Officer Opperman and that’s about the killing of the two security officers on the 12th of August, is that correct?

LT-COL BOTHA: What do you mean by sources, sorry?

MR BURGER SC: People would tell you what had happened on the scene.

LT-COL BOTHA: No, why I know there were people killed on the 12th is because I had to make an aerial or a Google map for the evidence leaders and Inspector – Warrant Officer Opperman took me to the scene so that I can get a GPS reading.

MR BURGER SC: And then we know you were invited to the Potch nine day seminar.
1st to 31st October 2012
Marikan

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1
LT-COL BOTHA: Yes, I was there, sir.

2
MR BURGER SC: What was the format of the
presentations during the day - and let us first understand
the big meeting, the plenary session. What would typically
happen in a day’s plenary session at Potchefstroom?

3
LT-COL BOTHA: Sorry, you’ll have to
explain plenary to me.

4
MR BURGER SC: A big meeting, the big
meeting where everybody is present, die algemene
vergadering.

5
LT-COL BOTHA: Sir, as I’ve said, there
was a lot of discussions around what happened, to see what
footage is available, all that stuff. So that was
literally the - I want to say what happened in all the
meetings.

6
MR BURGER SC: Yes. Colonel, and just
before the luncheon adjournment can I just ascertain this
from you, am I correct to think that the two main events
being discussed during that nine day period would be the
killing of 16 people at scene 1 and the killing of 13
people at scene 2?

7
LT-COL BOTHA: That made out part of the
discussions, yes. Can I just say it’s 14 people at scene
2.

8
MR BURGER SC: Yes, I think in the end it
was 16 and 18 but certain people died afterwards, so don’t
hold me to the number. Chair, is it convenient now -

9
[INQUIRY ADJOURS INQUIRY RESUMES] 14:02

10 CHAIRPERSON: Is it a convenient stage to
take the adjournment? The Commission will adjourn for
lunch. In view of the fact that it’s five to one by my
watch, we’ll start at five to two.

11 [INQUIRY ADJOURS INQUIRY RESUMES]

12 CHAIRPERSON: The Commission resumes. Mr
Burger, you were still cross-examining. Kolonel, u is nog
steeds onder eed. Yes, Mr Burger.

13 MR BURGER SC: Thank you, Chairman.

14 Colonel, before the luncheon adjournment we were discussing
the events at Potchefstroom and that nine-day event, and
you and I agreed that two of the matters pivotal to the
debate were the two incidents on the 16th of August, to
which we’ve referred to as scene 1 and scene 2 - 16 August
2012 – and I think we ended off by your answer to say that
was part of the discussion. Can I pick it up from there
and ask you what else in general terms were discussed
during that period?

15 LT-COL BOTHA: Sir, in general terms the
whole situation that became, that led to the incident, let me
call it the incidents that took place, what happened,
what the police did, stuff like that. That was what was
discussed.
<table>
<thead>
<tr>
<th>Page</th>
<th>1st to 31st October 2012</th>
<th>Page 597</th>
<th>Page 598</th>
<th>Page 599</th>
<th>Page 600</th>
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<td>1</td>
<td>specifically interrogated or asked me about the video. My,</td>
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<td>2</td>
<td>the aerial photos that was taken by Warrant-Officer Venter</td>
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<td>3</td>
<td>was actually a discussion point, but not the video.</td>
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<td>MR BURGER SC: Did you go forward and give a lecture, or were you asked by people in a hall questions, or how did your debriefing take place?</td>
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<td>LT-COL BOTHA: I did not go forward to give a lecture. If I was asked about crime scenes and the processing of crime scenes, then I gave feedback.</td>
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<td>6</td>
<td>MR BURGER SC: Were you asked, Colonel?</td>
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<td>LT-COL BOTHA: About what members of the LCRC did at the crime scenes?</td>
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<td>MR BURGER SC: No, about you in the helicopter taking a video. Were you asked anything on that?</td>
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<td>9</td>
<td>LT-COL BOTHA: As far as I recall, no.</td>
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<td>MR BURGER SC: In that nine-day period were questions asked about the first shooting at scene 1?</td>
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<td>11</td>
<td>LT-COL BOTHA: It was a discussion point, yes.</td>
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<td>12</td>
<td>MR BURGER SC: And what was discussed?</td>
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<td>LT-COL BOTHA: Mr Chair, I’ve already said that a lot of things were said, a lot of things happened afterwards, and there was a lot of people talking, there was a lot of commanders with. I cannot remember specifics and what was said and who made specific points and statements and stuff like that.</td>
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<td>14</td>
<td>MR BURGER SC: Colonel, just give us the gist of what was said by the top brass of the Police about scene 1 when 16 people were killed, at Potchefstroom. What was said?</td>
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<td>15</td>
<td>LT-COL BOTHA: Just give me the, the gist of what?</td>
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<td>MR BURGER SC: What was said, just in general terms, about scene 1?</td>
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<td>17</td>
<td>LT-COL BOTHA: Sir, I can’t remember what was said about specific scenes, who said what. There was a lot of people talking, members make, made statements.</td>
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<td>MR BURGER SC: There were legal representatives, and there was a lot of things that happened in between. I can’t remember.</td>
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<td>MR BURGER SC: Now scene 2 would really have made you very inquisitive because you were not aware that scene 2 was playing out while you were in the helicopter. Is that correct?</td>
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<td>20</td>
<td>LT-COL BOTHA: No, I was not, Sir.</td>
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<td>21</td>
<td>MR BURGER SC: By the time you get to Potchefstroom you know that 13 people lost their lives at the Klein Koppie.</td>
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<td>22</td>
<td>LT-COL BOTHA: That’s correct, Sir.</td>
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<td>MR BURGER SC: May the Commission assume that you as a citizen of the land would now like to understand what happened there? Not as a policeman, but as a concern citizen.</td>
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<td>LT-COL BOTHA: Sir, that was obviously part of the discussions, and again, I’m not trying to be difficult, I cannot remember everything that was said. I cannot remember all the things that was done. I was there to brief the, or not to brief, to give feedback on what processes was followed by the members of the LCRCs, if they have to I’ll phone them and ask them and the processing of the scenes. I, it’s not that I wasn’t interested. It was obviously discussed.</td>
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<td>LT-COL BOTHA: od, you into your confidence. I don’t want detail. Tell us anything that was discussed about scene 2 during that nine-day period, anything you remember.</td>
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<td>LT-COL BOTHA: Sir, I can remember that people had to determine who was at scene 2, what happened at scene 2, stuff like that. I mean I cannot remember that the guys said well I was here and I was here, because I don’t even know the members that were there.</td>
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<td>LT-COL BOTHA: Can I jog your memory and see whether you - you have a memory which becomes clearer.</td>
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<td>MR BURGER SC:</td>
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<td>29</td>
<td>LT-COL BOTHA:</td>
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<td>LT-COL BOTHA:</td>
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<td>31</td>
<td>LT-COL BOTHA:</td>
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 MR BURGER SC: If it is led into a version. I’m asking you to have a look at page 19 of 30 of the opening statement by SAPS in this matter. Have you got that in front of you? Now Colonel, to orientate you, you’ll see on page 1 this is part of the opening statement on behalf of the South African Police Service. It was addressed to the Commission at the beginning of these proceedings, and on page 19 in paragraph 45 we are told what we are likely to hear about the events at scene 2. I want to read it to you and ask you whether you remember that this was discussed at Potchefstroom. 45,4, in fact to lead in I start three lines earlier, “Water canons were used to disperse the protesters. Some dispersed westwards and through the TRT line led by Captain Kidd, without incident.” Does that jog your memory? LT-COL BOTHA: I know that Captain Kidd was there. I can’t remember that someone had said that water canons were - we, I saw the water canons on the ground when I was in the chopper. I can’t remember that someone said well water canons were brought in and they were dispersed, but I mean I saw them on the video. MR BURGER SC: “Others remained obdurate and police officers heard shots being fired from inside the koppie crevices and bushes. Believing this to be fire from the protesters, some of the police officers returned fire with sharp ammunition. Other police officers returned fire...
1 What's your - what do you take away from that nine-day course?
2 LT-COL BOTHA: Sir, what I take away from the nine-day thing is, that course, is that it was an unfortunate incident that happened, 34 people were killed. The Police were involved in it. I cannot say that we felt we did right or we did wrong. I, it's just not my decision.
3 MR BURGER SC: You seem to be unable to tell us whether your video was shown, but you told the Commission that other video material was shown. Can you particularise that, what other video material was shown during that period?
4 MR SEMENYA SC: Chairperson, that's the photos the witness spoke about, not another video.
5 CHAIRPERSON: Yes, the evidence is that - Mr Semenya is right. What he said was what was seen were, was other visual material, namely the photographs which Sergeant, or Warrant-Officer Venter took with his digital camera. He did not say, as far as I can recall, according to my notes, that any other videos were shown. So perhaps you could reformulate the question.
6 MR BURGER SC: My notes stand to be corrected then. I recorded it differently, but then we immediately accept that's the position. Can I ask you was any other video material shown during that nine-day period?
7 [14:22] LT-COL BOTHA: Yes, I can at least recall one. There might be more, but I can recall one. 
8 MR BURGER SC: I thought so. Tell us what it was.
9 LT-COL BOTHA: It was the video footage of the - I don't want to call it strikers, but of the miners that, on the Monday the 13th, that were next to the railway line where General Mpembe - I cannot say negotiated with them because I don't understand the language - had a conversation with them and that was it. I can recall that video being shown.
10 CHAIRPERSON: Are we to understand that video material was shown, at least two items of video material were shown, one being your video of the events of the 16th, as far as one can see them on your video, the other being the video of the events or incident on the 13th by the railway line in that field were you found certain -
11 LT-COL BOTHA: Mr Chair, I cannot recall that we looked at my video. I do recall clearly -
12 CHAIRPERSON: Sorry, you didn't look at your video.
13 LT-COL BOTHA: No, I can't recall that.
14 CHAIRPERSON: Yes, I'm sorry, I'm wrong.
15 LT-COL BOTHA: We, I can -
Chairman asked you questions last Tuesday that you were puzzled, you drove back and the penny dropped and you discovered that your video camera’s timing mechanism was eight minutes out.

LT-COL BOTHA: No Sir, that wasn’t my evidence.

MR BURGER SC: Do we have to deduce from that evidence that you had your video camera in Potch?

LT-COL BOTHA: Yes, I had my video camera in Potch.

MR BURGER SC: And the film?

LT-COL BOTHA: It’s not a film, it’s a CD, yes.

MR BURGER SC: And the CD. Can I ask you this, at Potchefstroom do you remember any debate about the role of the Department of Mining & Energy Affairs in the events between the 6th and the, the 9th and the 16th of August?

LT-COL BOTHA: No Sir, I cannot remember such a debate.

MR BURGER SC: Do you remember any debate about the role of Lonmin in the events of the 9th to the 16th of August?

LT-COL BOTHA: No Sir, I cannot recall something like that.

just in conclusion, we are puzzled by the fact that in Potchefstroom your recollection is that the photographs taken by Sergeant Venter are used, but not the main piece of evidence, the video recording made by Lieutenant-Colonel. Can you give an explanation for that?

LT-COL BOTHA: Yes, Sir. If you have a look – and I think you’ve all got my photos – if you have a look at the photos, the photos clearly show where the police vehicles are situated on the scene and where the, or you can even see policemen behind vehicles on those photos and why I remember that is I was requested to go and enlarge them for members, A1-size, so that they can have a look at it and discuss it in smaller meetings. I know that they broke up and in smaller meetings they had a look at it.

MR BURGER SC: And that despite the fact that the main area of interest was and should have been scene 1 and scene 2, not the parking of police vans.

LT-COL BOTHA: No, you misunderstood me. The vehicles that you can see in the photos are around koppie number 2. There are aerial photos of that. You can see that, I think it’s available to all the parties, and I was requested by General Naidoo to enlarge it A1-size so that the people can have a look at it and that they, then they can discuss it.

MR BURGER SC: Thank you, Chair.

CHAIRPERSON: Mr Tip, would you like to –

MR TIP SC: Yes, thank you, Chair.

CHAIRPERSON: - do you have further cross-examination, essentially arising from the video?

MR TIP SC: Arising from the video, purely that, and one aspect only. Colonel, I want to pursue with you your evidence that you can’t recall whether or not this video that we’ve seen here was shown during the session at Potchefstroom.

LT-COL BOTHA: Sir, I cannot recall that we looked at it. It’s, I just cannot remember it.

MR TIP SC: Now let us just establish when that session took place, from when to when?

LT-COL BOTHA: I think it is from the last Monday in August till the, I’m not sure if it is then the first Friday or the second Friday in September. I’m not sure.

MR TIP SC: Yes, very well. But that is in recent time, isn’t it? Not a long time ago.

LT-COL BOTHA: Yes, Sir.

MR TIP SC: You told us earlier that this video that you had produced from the helicopter was the very first time in your 26-year career of taking a video of...
LT-COL BOTHA: That is correct, Sir.

MR TIP SC: It wasn't a minor piece, it was 41 minutes long.

LT-COL BOTHA: That is correct, Sir.

MR TIP SC: A few weeks later you are at a session in Potchefstroom with, as my learned colleague Mr Burger put it, with the top brass of the South African Police Services in attendance.

LT-COL BOTHA: That is correct, Sir.

MR TIP SC: Now I should have thought, Colonel, that if you displayed your 41-minute video to the top officers of the South African Police Service, that that would have been something that you would most certainly have recalled in detail.

LT-COL BOTHA: Sir, I do recall that I gave the video to Lieutenant-Colonel Scott. If it was showed in the, in my absence or not, I’m not sure. I cannot recall that we looked at the video. That means we looked it or we didn’t look at it. I cannot recall that we looked at the video.

MR TIP SC: Yes, I am challenging the credibility of what you say about that, and I’ll repeat that it is to me inconceivable that a person in your position who is in the company of the most senior officers of the country and who shows a video, would not remember it, and that when you say you can’t recall whether or not it was shown, you are not being frank with this Commission.

LT-COL BOTHA: Sir, I cannot say something that I cannot remember. If I can’t, if I don’t remember, I don’t remember.

MR TIP SC: The evidence was given yesterday, and a number of questions were put around it and you fully agreed that the very purpose of making a video of this nature of an operation scene was so that there would be a reliable audiovisual source of information for a review that would be subsequently taken. Do you remember that?

LT-COL BOTHA: I can remember that I said I had to make the video. I cannot remember that we said it must be for a review.

MR TIP SC: Colonel, I’m not going to spend time debating my recollection of your evidence with you on that point. I’m just going to put it to you that it is very clear from the evidence as a whole that the purpose of making such a video is to have it available for scrutiny when an evaluation is undertaken of the event subsequently.

Do you disagree with that?

LT-COL BOTHA: No, I don’t disagree with it.

MR TIP SC: And let me remind you that Brigadier Van Zyl specifically requested you to go and make that video, presumably for that very purpose. Is that not correct?

LT-COL BOTHA: He asked me to make a video and if we then have to presume it’s for that purpose, then it might be correct.

MR TIP SC: Brigadier Van Zyl was at Potchefstroom?

LT-COL BOTHA: Yes, Sir.

MR TIP SC: He knew very well that you had made this video.

LT-COL BOTHA: Yes, Sir.

MR TIP SC: Did he offer it for the attention of the senior officers of the Police?

LT-COL BOTHA: Not as far as I can recollect. I gave the video to Colonel Scott.

MR TIP SC: And I want to suggest to you that the senior officers of the South African Police Service are also well aware of the need for video material to be made of operation scenes, and for that material to be scrutinised in a subsequent review of what took place. Do you agree?

LT-COL BOTHA: Sorry, just repeat the question?
<table>
<thead>
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<th>Page 613</th>
<th>Page 615</th>
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<td>produce it for their scrutiny and attention?</td>
<td>I cannot remember if they were on the ground when I got there, if some of them were still - or already in the air.</td>
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<td>LT-COL BOTHA: Sir, I don't know if he</td>
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<td>showed it to them at another stage or in my absence or</td>
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<td>whenever. I don't know what, I mean I gave it to him.</td>
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<td>MR TIP SC: You know, Colonel Botha, from</td>
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<td>time to time you appear to seek an escape by saying well</td>
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<td>perhaps it wasn't in my presence that something happened,</td>
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<td>but I'm going to suggest to you that that can't possibly be</td>
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<td>the case here. You were the person who made the film, correct?</td>
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<td>LT-COL BOTHA: That's correct, Sir.</td>
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<td>MR TIP SC: And you are suggesting that</td>
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<td>perhaps it was played in a sub-room to a sub-group without</td>
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<td>anybody telling you or inviting you to come along and to</td>
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<td>give whatever commentary you could to elucidate it?</td>
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<td>LT-COL BOTHA: Sir, that is not what I'm suggesting. What I'm saying is I cannot recall that the video was played. If it was played in my absence, that is a possibility, but I don't think that's an escape route.</td>
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<td>MR TIP SC: You can give us an insight into the thinking of senior police officers, I'm sure. If they had a 41-minute video of a highly controversial event, are you suggesting that they'd be content to look at it in a viewing without the person present who had filmed it and who could give them commentary and explain what was being shot?</td>
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<td>LT-COL BOTHA: That's correct, sir.</td>
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<td>MR TIP SC: Well, Mr Chair, that really concludes the points that I wanted to raise in any event, the central propositions have been put. Colonel Botha, I just want to take a sideways step and to go back to the 16th of August. We know that you were in the last chopper to go into the air.</td>
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<td>LT-COL BOTHA: That's correct, sir.</td>
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<td>MR TIP SC: And that you were in the vicinity of that helicopter for a good length of time before you took off at about 15:53.</td>
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<td>LT-COL BOTHA: That's correct, sir.</td>
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<td>MR TIP SC: Can you give us an indication of when the other three helicopters took off?</td>
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<td>LT-COL BOTHA: Sir, no, I can't remember.</td>
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<th>Page 616</th>
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<td>1 Potchefstroom?</td>
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<td>2 LT-COL BOTHA: The first time I've seen the video was here, sir.</td>
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<td>3 MR TIP SC: And finally, as far as you know, news coverage, news video footage, that also was not called for or produced at the deliberations in Potchefstroom?</td>
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<td>4 LT-COL BOTHA: I do think that we did look at the news footage and now again – I'm not sure. We could've or we couldn't have. I really am not sure.</td>
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<td>5 MR TIP SC: We will leave it at that rather uncertain note, Colonel. Thank you, Mr Chair.</td>
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<td>6 CHAIRPERSON: Thank you, Mr Tip. Mr Bruinders, have you got any further cross-examination arising from this new video material that came out during the cross-examination?</td>
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<td>7 FURTHER CROSS-EXAMINATION BY MR BRUINDERS SC: Colonel, the video that you say you saw of the 13th, was that a video that showed an encounter between the SAPS and strikers?</td>
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<td>8 LT-COL BOTHA: Sir, if you say encounter do you mean we – okay, let me explain what I saw. I saw a video where General Mpembe is with a group of miners on a side road next to the railway line and having a discussion with them. That is the video that I saw.</td>
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<th>MR BRUINDERS SC:</th>
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<td>That's why I say one of the things. I also answered a lot of other questions and in spare time I was doing my own work on my laptop.</td>
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<td>LT-COL BOTHA:</td>
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<td>MR BRUINDERS SC:</td>
<td>So besides answering questions, watching somebody else’s video, presenting photographs and working on your laptop, what else did you do in those eight and a half days?</td>
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<td>LT-COL BOTHA:</td>
<td>That is what I did in the eight and a half days, sir.</td>
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<td>MR BRUINDERS SC:</td>
<td>No further questions.</td>
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<td>6</td>
<td>CHAIRPERSON:</td>
<td>Thank you, Mr Bruinders.</td>
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<td>7</td>
<td>MR BIZOS SC:</td>
<td>Mr Bizos, are you going to ask any more questions relating to these matters or are you going to get someone -</td>
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<td>8</td>
<td>MR BIZOS SC:</td>
<td>My learned friend Mr Ngcukaito -</td>
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<td>9</td>
<td>MR NGCUKAITOBI:</td>
<td>I’ll announce myself.</td>
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<td>10</td>
<td>MR BIZOS SC:</td>
<td>I wanted to spell it for the record, but he will do the -</td>
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<td>11</td>
<td>CHAIRPERSON:</td>
<td>He will put himself on the record, spell his name and then cross-examine.</td>
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<td>12</td>
<td>MR BIZOS SC:</td>
<td>Yes.</td>
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<td>13</td>
<td>MR NGCUKAITOBI:</td>
<td>In that order, Mr Chairperson. The surname is Ngcukaitozi, N-G-C-U-K-A-I-T-O-B-I. I'm told by my learned friend on the right that it’s too fast.</td>
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<td>Page 621</td>
<td>Page 623</td>
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<td><strong>CROSS-EXAMINATION BY MR NGCUKAITOBI:</strong></td>
<td><strong>Brigadier Van Zyl said at the bail hearing is true, there</strong></td>
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<td>Right Mr – Colonel Botha, can I start off with the</td>
<td><strong>would be CCTV footage and monitors belonging to the SAPS</strong></td>
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<td>transcript of the bail hearing? It appears at – I can’t</td>
<td><strong>that captured the incident live. Where is that material?</strong></td>
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<td>remember the bundle. It’s a marked bundle, it’s with the</td>
<td><strong>LT-COL BOTHA:</strong> I do not know about any <strong>CCTV footage or CCTV cameras of the SA Police Service and I</strong></td>
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<td>bundle C at page 195 to 196. I wonder if someone can help</td>
<td><strong>do not know of such footage.</strong></td>
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<td>you. Alright, I’ll read out to you – this is the evidence</td>
<td><strong>MR NGCUKAITOBI:</strong> Do you think Brigadier <strong>Van Zyl was telling the truth when he spoke about the CCTV</strong></td>
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<td>that was given by Brigadier Van Zyl as to how the people</td>
<td><strong>footage and the monitors belonging to the SAPS?</strong></td>
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<td>who were arrested on the 16th were identified. Now, he had</td>
<td><strong>CHAIRPERSON:</strong> Is it a permissible <strong>question to ask a witness –</strong></td>
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<td>spoken about a monitor belonging to the SAPS and a CCTV</td>
<td><strong>MR NGCUKAITOBI:</strong> No – I’ll proceed. I’ll <strong>leave the question.</strong></td>
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<td>camera in the mine premises. He didn’t say who it belonged</td>
<td><strong>CHAIRPERSON:</strong> It would be better <strong>withdrawn.</strong></td>
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<td>to. He said there was a CCTV camera in the mine premises.</td>
<td><strong>MR NGCUKAITOBI:</strong> Yes, I’ll leave, I <strong>withdraw the question.</strong></td>
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<td>The question that was asked to him, of him, was “Now, if</td>
<td><strong>LT-COL BOTHA:</strong> I said I do know that <strong>in SAPS. I just said I don’t know about any CCTV</strong></td>
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<td>you can just explain for the purposes of everybody’s</td>
<td><strong>footage and I do not know that the SAPS own CCTV cameras.</strong></td>
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<td>understanding, where was this monitor?” His answer was,</td>
<td><strong>MR NGCUKAITOBI:</strong> Yes, alright. And the <strong>aerial communication that belonged to the SAPS, that’s</strong></td>
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<td>“They have got CCTV cameras n the mine premises and we also</td>
<td><strong>apart from the CCTV footage – he said you relied on two</strong></td>
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<td>had access to aerial communication as to what happened on</td>
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<td>the ground.” So then there’s a further question asked, “So</td>
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<td>the observation you made is after the incident?” And then</td>
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<td>he says “That is correct.” Then he talks about the opening</td>
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<td>of the docket, have you got that? It’s at page 195.</td>
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<td><strong>LT-COL BOTHA:</strong> Got it, yes.</td>
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<td><strong>MR NGCUKAITOBI:</strong> You’ve got it. And</td>
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<td>you’ve seen the words I’ve just read out to you. Okay, if</td>
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<td>you go then to the following page at 196 you’re then asked</td>
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<td>at line 5, “Now it is common knowledge also that there was a</td>
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<td>shooting that took place on the 16th. Did you observe this</td>
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<td>on the monitor?” What is his answer? What did Brigadier</td>
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<td>Van Zyl say? Is the answer yes? Look on your transcript.</td>
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<td><strong>LT-COL BOTHA:</strong> Yes.</td>
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<td><strong>MR NGCUKAITOBI:</strong> Now, then he’s asked a</td>
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<td>further question. “Tell us what you observed with regard</td>
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<td>to the shooting and then he says, “There was a group of</td>
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<td>people who broke through and the police fired shots at</td>
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<td>them.” Can you see that? So according to Brigadier Van</td>
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<td>Zyl, there were at least two video footage sources that</td>
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<td>were presented to him by the 27th August showing a group of</td>
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<td>people breaking through and the police firing shots at</td>
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<td>them. Now in these nine days that you spent with him at</td>
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<td>Potchefstroom, did he mention this in your presence?</td>
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<td><strong>LT-COL BOTHA:</strong> No, sir.</td>
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<td><strong>MR NGCUKAITOBI:</strong> Did he make any</td>
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<td>presentation at all in your presence?</td>
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<td><strong>LT-COL BOTHA:</strong> No, sir.</td>
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<td><strong>MR NGCUKAITOBI:</strong> So could he have made it</td>
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<td>in your absence, maybe when you were looking at your</td>
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<td>laptop?</td>
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<td><strong>LT-COL BOTHA:</strong> If I was looking at my</td>
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<td>laptop I definitely would have known about it. In my</td>
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<td>absence, that’s always a possibility.</td>
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<td><strong>MR NGCUKAITOBI:</strong> Yes. Now if what</td>
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LT-COL BOTHA: I was requested to make an aerial view. I did not even think that the chopper can or cannot have a camera. I assume at that stage that I thought, well, it doesn't have a camera because otherwise why will I be on the chopper?

MR NGCUKAITOBI: Colonel Botha, what do you think is the purpose of video recording a crime scene, particularly a live crime scene? Isn't it to eliminate disputes of fact?

LT-COL BOTHA: That can be one of the reasons.

MR NGCUKAITOBI: The primary reason.

LT-COL BOTHA: It can be.

MR NGCUKAITOBI: Now, why don't you check whether the helicopter that you are flying in has a camera or not, because I'm told by an expert that the LRC will bring that those cameras are very powerful and capture the incidents clearly.

LT-COL BOTHA: Sir, I did not check if the chopper had a camera. I'm not a camera expert, I don't know how powerful they are. I was placed on the chopper to go and make an aerial view and for that reason I assumed, well, there is no camera. I didn't even ask if there's a camera on the chopper. I mean they - if it was there, I'm not - no, I don't know if the chopper had a camera.

MR NGCUKAITOBI: Will you give us the details of this chopper that you were in, so that we can inspect whether it had a camera or not?

LT-COL BOTHA: Details as in?

MR NGCUKAITOBI: Well, the only way to identify it - how do you identify that chopper that you were in?

LT-COL BOTHA: It was an SAPS chopper.

MR NGCUKAITOBI: And it's got no registration number?

LT-COL BOTHA: I did not take note of the registration number. I do know the type of chopper, it was a Squirrel.

MR NGCUKAITOBI: So you would not be able today to identify the specific chopper that you were in?

LT-COL BOTHA: No, sir.

CHAIRPERSON: I don't want to interrupt you but I assume that this is the kind of information which the SAPS should be able to provide you. I imagine there must be logs -

MR NGCUKAITOBI: Yes.

CHAIRPERSON: - and other records installed in front and at the back. Now at the subsequent debriefing session in Potchefstroom did no-one who operated these water cannons produce any video footage taken from the water cannon?

LT-COL BOTHA: Sir, I have not seen any such video footage.

MR NGCUKAITOBI: Were there no enquiries made by any official in the eight and a half days in Potchefstroom about what happened to the footage that should have been contained by the water cannons?

LT-COL BOTHA: I'm not sure if it was made. If it was made it was not - I didn't hear it, I can't recall something like that.

MR NGCUKAITOBI: Because at the meeting held, at the JOC meeting at half past one on the 16th of August 2012 there was an explicit reference to checking that the water cannons work and are capable of being - of deployment during the incident.

LT-COL BOTHA: I was not at the meeting, I don't know.

MR NGCUKAITOBI: Yes. Now finally, we know that Brigadier Van Zyl has spoken about a CCTV, about aerial communication, we know that the possibly water cannons that you confirm having seen on the ground potentially had cameras and out of all of this, all we have
is the 41 minutes that does not record any of the
shootings. What is your comment to that?
CHAIRPERSON: That's not quite correct.
There is other footage which we saw after we saw the
Colonel's footage yesterday, remember.
MR NGCUKAITOBI: Yes.
CHAIRPERSON: So, well, he said he saw it
for the first time yesterday but the fact is it's not
correct to put to the witness that the only footage we have
is his footage because we know there's the other footage as
well. So perhaps you should reformulate the question.
MR NGCUKAITOBI: Yes. The only
footage of the 16th that was shown at the Potchefstroom
meeting for nine days was the footage that you took?
CHAIRPERSON: No, no, he didn't say that.
On the contrary, he said the opposite. He said he can't
recall his footage being shown at all. In fact all he can
remember of footage being shown relates to the 13th –
MR NGCUKAITOBI: Yes.
CHAIRPERSON: And the visual material he
recalls being shown were, consisted of the photographs
taken on his camera by Sergeant or Warrant Officer Venter.
I don't think that question is correct either -
MR NGCUKAITOBI: Yes.
CHAIRPERSON: - reformulate that one
also.
MR NGCUKAITOBI: Let me put it another
way then, Mr Chairperson. The only footage that you are
aware of is the footage that you personally took.
LT-COL BOTHA: Video footage, yes.
MR NGCUKAITOBI: And can you eliminate
the possibility that other video footage actually recording
the shooting does exist in the light of what I've put to
you?
LT-COL BOTHA: I cannot dispute that but
I also can't say it does exist.
MR NGCUKAITOBI: Those are the questions,
Mr Chair.
CHAIRPERSON: Thank you very much. Mr
Madlanga, do you have any re-examination of the witness?
RE-EXAMINATION BY MR MADLANGA SC: Yes
Chair, thank you. Colonel, you referred under cross-
examination to a correcting statement, a statement that was
correcting what you had recorded or observed as the time at
which you commenced videoing on the 16th. Where is that
correcting statement? You mentioned in your evidence that
it's in a docket. Which docket is that?
LT-COL BOTHA: Sir, it is in the video
docket.
MR MADLANGA SC: And that video docket,
1 state again what your response to that question was.
2 LT-COL BOTHA: Sir, if I can remember
3 correctly I said that we did, it was discussed – sorry – it
4 was discussed and obviously I wanted to know what happened
5 there but I didn’t specifically ask and then were
6 inquisitive because of that.
7 MR MADLANGA SC: In quite a number of
8 your –
9 CHAIRPERSON: Sorry, are you moving on to
10 another point now, Mr Madlana? I’m not sure that you
11 quite understood the question perhaps. Inquisitive doesn’t
12 necessarily mean you ask questions. You know, in your mind
13 you wanted to know the answer to certain questions but you
14 don’t have to actually ask them to be inquisitive. I think
15 nuuskierig is probably the correct – the interpreter nods
16 his head – is probably the correct Afrikaans translation.
17 MR MAHLANGU: That’s the correct
18 Afrikaans, Chair.
19 CHAIRPERSON: Right. Now – so we’ll ask
20 you the question again. When you were told that there were
21 bodies at the kraal and when you were told other things
22 that you heard, were you not nuuskierig, even though you
23 might not have actually asked questions?
24 LT-COL BOTHA: I think I was but because
25 I - I saw the crime scene photos, I mean I – a lot of the

1 things I could, not answer for myself but I saw it.
2 CHAIRPERSON: But you also saw the crime
3 scene photos later, didn’t you? So why - if you were
4 inquisitive, in the sense I’ve explained, at the time why
5 didn’t you ask questions?
6 LT-COL BOTHA: I did not ask questions
7 about scene 2 when I learnt about it, sir.
8 CHAIRPERSON: I know that, but I’ve asked
9 you why? If you were curious, nuuskierig, inquisitive,
10 wouldn’t the natural response have to be have asked, to
11 say but what’s this, how can this be, what exactly happened
12 – other questions along those lines.
13 LT-COL BOTHA: No sir, I did not ask
14 questions along those lines.
15 CHAIRPERSON: No, but Colonel, I’m not
16 asking you whether you asked questions. We know you didn’t
17 ask questions. The question is a different question and
18 it’s why didn’t you?
19 LT-COL BOTHA: Mr Chair, I was – I sent
20 out people to the crime scenes and then at some stage I
21 also went to the crime scenes so I was, I did see scene 2.
22 I did not ask questions before that, so then I wasn’t
23 inquisitive before that. I hope that answers the question.
24 MR MADLANGA SC: Colonel, you were asked
25 a number of questions around discussions that would have

1 then the one of Colonel Vermaak.
2 MR MADLANGA SC: Yes, yes, so the four.
3 Four, you do recall four. But the distinct impression I
4 get is that that would be a tiny percentage of what you
5 recall.
6 LT-COL BOTHA: Yes, sir.
7 MR MADLANGA SC: You don’t recall most of
8 the communications.
9 LT-COL BOTHA: I said there was a lot of
10 communications so I don’t recall – these are things that
11 directly either influenced me or I mean the moment you hear
12 bodies, you think dead people and that is why maybe it
13 stuck in my mind but that is what I recall.
14 [15:22] MR MADLANGA SC: Can you, just for
15 clarity – because if you were able to hear these four
16 communications, I want to get an idea of why it is that you
17 did not hear the rest of the communications – is it that
18 you might’ve heard but now as you’re sitting there you no
19 longer remember, or is it that you did not hear at all or
20 you did not listen or pay attention at all?
21 LT-COL BOTHA: Sir, I do think it’s two
22 of those. I do think I might’ve heard but I can’t recall
23 at the moment. I don’t want to say I’m sitting in the
24 spotlight but I can’t recall at the moment, and I was
25 really trying to concentrate on the video camera because
1st to 31st October 2012
Marikan
Rustenburger

with a hand held video camera in a chopper, it's not easy.
You can see, when the chopper turns you go down, if the
chopper goes up you go up and – because at some stages
there are only blue light and I think due to those too, I
cannot recall a lot of these things.

MR MADLANGA SC: Lastly – and Chair,
commissioners, it doesn't arise from the cross-examination
but with your leave may I just ask the Colonel to confirm
under oath now the correctness of what he pointed out at
the inspection in loco, was it on the 2nd of October?

LT-COL BOTHA: Sir, that was on the 2nd of
October and I confirm that under oath as correct.

MR MADLANGA SC: There are no further
questions, Chair, thank you.

CHAIRPERSON: We will take the tea
adjournment at this stage and it is now 25 past my watch
- I don't know what it is by the Colonel's watch and we
will resume at 20 to four.

[INQUIRY ADJOURNS INQUIRY RESUMES]

Thank you, Colonel, for your evidence. You're excused.

LT-COL BOTHA: Thank you, Mr Chairman.

[NO FURTHER QUESTIONS – WITNESS EXCUSED]

MR SEMENYA SC: Chairperson might –

Page 637

Page 639

Page 638

Page 640

1 concerned, it hasn't been re-militarised.
2 LT-COL BOTHA: Sorry for that Mr Chair.
3 CHAIRPERSON: Mr Madlanga, have you got
4 another witness to lead?
5 MR MADLANGA SC: Yes Chairman,
commissioners, the next witness is Captain Moses Moshwana.
6 Can he please come forward and may I ask to hand up – or
no, not at this stage, not at this stage.
7 CHAIRPERSON: Captain, do you wish to
swear or do you wish to affirm?
8 CAPTAIN MOSHWANA: Swear.
9 CHAIRPERSON: Do you swear that the
evidence that you will give before this Commission will be
the whole truth and nothing but the truth. Please raise
your right hand and say so help me God.
10 MOSES MOSHWANA: So help me God.
11 CHAIRPERSON: Thank you, you may be
seated. Yes, Mr Madlanga?
12 EXAMINATION BY MR MADLANGA SC: Thank
you, Chair. There is an unsigned statement bearing your
name. Have you had sight of it, have you read it? This,
Chair and commissioners, was handed up on the first day of
Colonel Botha's testimony so the commissioners, I believe,
already have a copy of it.
13 MR MADLANGA SC: Yes, we do.

1 CHAIRPERSON: Mr Semenya?
2 MR SEMENYA SC: Chairperson, to the
extent that there might be a lingering misunderstanding, I
think the Colonel referred to the legal team being in
Potchefstroom –
3 CHAIRPERSON: I understood the earlier
reference to be a reference to an Adv Moolman who is, I
think he was described as a legal officer in the SAPS. I
didn't understand him to refer to you or your colleagues
who are appearing, but let's just get clarity from him on
that, just for the record's sake.
4 MR SEMENYA SC: On the light side –
5 CHAIRPERSON: Colonel, you heard Mr
Semenya's point. These lawyers who were present, were they
practising lawyers or were they lawyers who were permanent
members of the South African Police Force, Police Service?
6 LT-COL BOTHA: I'm talking about members
of the South African Police Force, sir.
7 CHAIRPERSON: Service.
8 LT-COL BOTHA: Police Service, sorry.
9 MR SEMENYA SC: I'm saying thankfully
you're not at risk of being disbarred.
10 CHAIRPERSON: Yes, no, I'm – you know, I
would've been astonished if there was any problem in that
regard. No, it's still the SAPS as far as the name is
1st to 31st October 2012
Marikana
Rustenburg

2. CAPTAIN MOSHWANA: That's correct.
3. MR MADLANGA SC: It does show also on the same slide, that is B9 but-
5. MR MADLANGA SC: Is that spot not visible in B10 as well, even though perhaps it's not marked that case number or is it? Oh ja, it is, it's marked at the top to the left of the letter W for "work", it is marked CAS115. This is at B10, the next slide. Do you see that, the following slide?
7. MR MADLANGA SC: My understanding is - or perhaps before you crossed that stream, after you had found the body next to what you referred to as an informal house, before one crosses the stream is there anything else you observed?
8. MR MADLANGA SC: Yes, Chairperson.
9. MR MADLANGA SC: There were cartridge cases before you cross the stream.
10. MR MADLANGA SC: How far from the stream was this, if you can tell?
11. MR MADLANGA SC: Chairperson, from the stream it can be plus-minus 50 metres.
12. MR MADLANGA SC: And would I be correct to say that this was on the western side of the stream?
13. CAPTAIN MOSHWANA: Yes. That is correct.

1. MR MADLANGA SC: Now on B10 I see what looks like a motor vehicle close to a circle. Is that the spot that you are referring to?
2. CAPTAIN MOSHWANA: Yes, Chairperson.
3. MR MADLANGA SC: And now when you go across where you found the body, is it where “body” is written?
4. CAPTAIN MOSHWANA: Chairperson, correct.
5. MR MADLANGA SC: And obviously that is on the western – or rather eastern side of the stream.
6. MR MADLANGA SC: Correct, Chairperson.
7. MR MADLANGA SC: At B11 you give a number of measurements, do you see that?
8. CAPTAIN MOSHWANA: Yes, I can see.
9. MR MADLANGA SC: Do you want to just quickly read those into the record?
10. CAPTAIN MOSHWANA: Chairperson, to explain my measurements from the main road until the body in front of the informal house number C05, it's 93.5 metres which is CAS116/8/2012 –
11. MR MADLANGA SC: And by main road would you be referring to the dirt road I earlier referred you to?
12. CAPTAIN MOSHWANA: That's correct,

1. MR MADLANGA SC: Now on screen.
2. MR MADLANGA SC: The laptop screen, yes.
3. Chair, I'm referring to the witness to B9 on the hard copies.
4. Do you want to take us through that slide and indicate what observations you made?
5. CAPTAIN MOSHWANA: Chairperson, the aerial photograph is to indicate the relationship between my crime scenes and also Lieutenant-Colonel Botha's crime scenes.
6. MR MADLANGA SC: Chairperson, there is a dirt road that separated the part of the scene that was processed by Colonel Botha and that part that was processed by you. Is that part which is linear and lighter in colour, that's dirt road, there's a motor vehicle further up close to where N for north is – is that the dirt road?
7. CAPTAIN MOSHWANA: That's correct, Chairperson.
8. MR MADLANGA SC: Now the CAS116/08/2012 does show on the slide, you agree?
9. CAPTAIN MOSHWANA: That's correct.
10. MR MADLANGA SC: What did you find there, if anything?
11. CAPTAIN MOSHWANA: Chairperson, there is an informal house number C05 and in front of this informal house I found a civilian body.
12. MR MADLANGA SC: Now before I forget, you were also at the in loco inspection on the 2nd of October 2012, were you not?
13. CAPTAIN MOSHWANA: That's correct.
14. MR MADLANGA SC: And you also participated in the sense that you pointed out certain spots.
15. CAPTAIN MOSHWANA: Yes, I pointed certain spots.
16. MR MADLANGA SC: Do you confirm the correctness of what you pointed out during your participation at that inspection?
17. CAPTAIN MOSHWANA: Yes, that's correct.
18. MR MADLANGA SC: Now, continue and tell us what else you observed and if you prefer showing us on a different slide, you may do so.
19. CAPTAIN MOSHWANA: Okay, on a spot on CAS115/8/2012 there was also a body of a civilian across the street.
1. MR MADLANGA SC: Please continue.
2. CAPTAIN MOSHWANA: And Chairperson, from the body in front of the informal house to the body across the stream is 500 metres.
3. MR MADLANGA SC: Yes?
4. CAPTAIN MOSHWANA: I just want to correct something, not 550, 500.
5. MR MADLANGA SC: Yes, continue.
6. CAPTAIN MOSHWANA: Chairperson, from the position of cartridge cases to a body across the stream, 74.4 metres which is - the body across the stream CAS115/8/2012.
7. MR MADLANGA SC: And the last measurement?
8. CAPTAIN MOSHWANA: Chairperson, the last measurement from the body in front of the informal house until to Lieutenant-Colonel Botha's scene, which is CAS117/8/2012, is 120 metres.
9. MR MADLANGA SC: Chair, commissioners, that is the evidence of the witness, thank you.
10. CHAIRPERSON: Do you have any questions for the witness?
11. MR SEMENYA SC: Chairperson, thank you, no.
12. CHAIRPERSON: Mr Burger, do you have any questions?
13. MR BURGER SC: No thank you, Mr Chairman.
14. CHAIRPERSON: To shorten things, has anyone got any questions? Do you have questions?
16. CHAIRPERSON: Please begin your cross-examination.
17. CROSS-EXAMINATION BY MR BRUINDERS SC: Thank you. Captain, there's one measurement I'd like you to confirm for us, is - have you any idea what the distance is between B and G?
18. CAPTAIN MOSHWANA: I did not attend to that. Just repeat the question?
19. MR BRUINDERS SC: The distance between B and G?
20. MR MADLANGA SC: Chair, may I just try to establish if my learned friend is referring to B1, the page?
21. CHAIRPERSON: That's Colonel Botha scene that he did. I'm not sure whether this witness can deal with it but if he can then obviously he will do so.
22. MR BRUINDERS SC: I beg your pardon, Captain.
23. CHAIRPERSON: Captain, do you see the Google photograph which is, I think, B1? I think that's what counsel is referring to.
24. CAPTAIN MOSHWANA: Yes, Chairperson -
25. CHAIRPERSON: Can you give him the information that he seeks?
26. CAPTAIN MOSHWANA: Yes, I don't have the measurement from B to G because letter B is Colonel Botha's crime scene.
27. MR BRUINDERS SC: When you say - so you did not go to the point at B?
28. CAPTAIN MOSHWANA: No, I didn't go to point B.
29. CHAIRPERSON: I take it what you're asking for is the distance between the railway line which is B –
30. MR BRUINDERS SC: Yes.
31. CHAIRPERSON: - and the place where the body on the other side of the stream was found?
32. MR BRUINDERS SC: Yes.
33. CHAIRPERSON: Can you perhaps give us an estimation, even if you didn't measure it?
34. CAPTAIN MOSHWANA: Chairperson, if I can give an estimation, it can be plus-minus 8 to 900 metres.
35. MR BRUINDERS SC: Is it possibly more than one kilometre?
36. CAPTAIN MOSHWANA: Yes Chairperson, it can be possible because I didn't measure.
37. MR BRUINDERS SC: On the 13th, what time did you arrive at the crime scene that you say you investigated?
39. MR BRUINDERS SC: How long did you spend there?
40. CAPTAIN MOSHWANA: Chairperson, I departed from the crime scene at 20:15.
41. MR BRUINDERS SC: Now you do say G is between half past four and half past eight that evening?
42. CAPTAIN MOSHWANA: Chairperson, I departed from the crime scene at 20:15.
43. MR BRUINDERS SC: Now do you say G is what you call your crime scene.
44. CAPTAIN MOSHWANA: That's correct.
45. MR BRUINDERS SC: What did you find there?
46. CAPTAIN MOSHWANA: It was a body of a civilian across the street.
47. MR BRUINDERS SC: And did you look at the...
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<th>Page 649</th>
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<tr>
<td>1 Just for purposes of the record, the witness has said there is one. We haven’t seen one and we’ll follow this up with Mr Chaskalson. Captain, on the second day of the inspection in loco you pointed out the crime scene of the 13th.</td>
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<td>2 CAPTAIN MOSHWANA: Yes, correct.</td>
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<td>3 MR BRUINDERS SC: The note that my attorney has of your pointing out is that you, in answer to a question, confirmed that this witness had a gunshot wound to the back of the neck or head. Would that be right?</td>
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<td>4 CAPTAIN MOSHWANA: No, I never said that.</td>
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<td>5 CHAIRPERSON: Mr Bruinders, again if - the proceedings at the inspection were recorded, I don’t know if they’ve been transcribed but they were recorded, so again if anything turns on this point you can check it from the transcript when it’s available but again, even if the witness was wrong on that point, once we get the post-mortem reports we’ll see whether there was a gunshot wound and unless something turns on his perception then I don’t know if we need spend any more time on it, but I’ve made the point to you.</td>
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<td>6 MR BRUINDERS SC: Well’ll move on.</td>
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<td>7 CHAIRPERSON: Yes, good idea.</td>
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<td>8 MR BRUINDERS SC: Were you at all involved in the crime scene at what I think is called scene 1 and 2 of the 16th?</td>
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<td>9 CHAIRPERSON: Mr Bruinders, I don’t want to unnecessarily interrupt you but I take it that the post-mortem report is before us. So is there any point in checking the accuracy of the memory of this witness on something which is objectively ascertainable?</td>
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<td>10 MR BRUINDERS SC: Chair –</td>
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<td>11 CHAIRPERSON: I’ve made my point, you can proceed.</td>
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<td>12 MR BRUINDERS SC: No Chair, with respect, it’s a point well taken. I want to, though, ask whether - we haven’t seen the post-mortem report and so I want to ask this witness whether he knows, but let me ask him. Do you know whether there is a post-mortem report for this, the person you saw at G?</td>
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<td>13 CAPTAIN MOSHWANA: Yes, I know.</td>
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<td>14 MR BRUINDERS SC: Where is that post-mortem report, do you know?</td>
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<td>15 CAPTAIN MOSHWANA: No, I don’t have any idea.</td>
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<td>16 CHAIRPERSON: Mr Chaskalson, as I understand it, is in charge of post-mortem reports. So – he’s not here at the moment, he’s obviously working on another aspect of the case but I imagine tomorrow morning you can ask him and obtain the post-mortem report.</td>
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<td>17 MR BRUINDERS SC: We will follow that.</td>
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<td>19</td>
<td>CAPTAIN MOSHWANA: Yes, Chairperson,</td>
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<td>1 1 and 2 of the 16th?</td>
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<td>2 CAPTAIN MOSHWANA: I was only at scene 1.</td>
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<td>3 MR BRUINDERS SC: When was that?</td>
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<td>4 CAPTAIN MOSHWANA: The 16th.</td>
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<td>5 MR BRUINDERS SC: What time?</td>
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<td>6 CAPTAIN MOSHWANA: 21:47.</td>
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<td>7 MR BRUINDERS SC: Why were you there?</td>
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<td>8 CAPTAIN MOSHWANA: I was called to come and assist because it was a big scene.</td>
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<td>9 MR BRUINDERS SC: What did you assist with?</td>
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<td>10 CAPTAIN MOSHWANA: I was assisting with collecting of exhibits and doing measurements.</td>
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<td>11 MR BRUINDERS SC: Whom did you assist?</td>
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<td>12 CAPTAIN MOSHWANA: Warrant Officer Thamae.</td>
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<td>13 MR BRUINDERS SC: So the crime scene investigator in charge of scene 1 was Warrant Officer Thamae?</td>
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<td>14 CAPTAIN MOSHWANA: Yes, it was Warrant Officer Thamae.</td>
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<td>15 MR BRUINDERS SC: And I take it that he will come and give evidence about what he found at that crime scene.</td>
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<td>16 CAPTAIN MOSHWANA: Yes, Chairperson,</td>
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| 23 | 25 |
| 24 | 25 |
1. That's correct.
2. Mr Bruinders SC: Before you arrived at the crime scene on the 16th, where were you?
3. Captain Moshwana: I was at – in Rustenburg.
4. Mr Bruinders SC: Where in Rustenburg were you?
5. Captain Moshwana: I was at my residential place.
6. Mr Bruinders SC: So you were off duty on that day?
7. Captain Moshwana: I was off duty after four but during the day I was on duty.
8. Mr Bruinders SC: So the first time you were called out to scene 1 and the Wonderkop area was after nine on the 16th.
9. Captain Moshwana: Chairperson, it was before eight because I arrived at the crime scene 21:47.
10. Mr Bruinders SC: And if you apply for the recall of the witnesses who’ve testified because you’ve obtained meaningful instructions from the people who were not available previously, then any application of that kind would be entertained.
11. Mr Mpfu: Yes.
12. Chairperson: And if successful, would be granted.
13. Mr Mpfu: Thank you.
14. Chairperson: Do you want to do it while the witness is here? Mr Mpfu: No.
15. Chairperson: Any questions arising from the new matter covered in re-examination? Thank you, Captain, you are excused.
16. [No further questions – witness excused]
**WARRANT OFFICER OPPERMAN:** On the 12th of August 2012 I attended and processed a crime scene involving Marikana CAS107/08/2012 which is in respect of the two Lonmin security officials. Captain Phule pointed to me two burnt motor vehicles, cartridges and two

**MR MADLANGA SC:** Yes, yes, Chair, thank you very much. Warrant Officer, details relating to your experience, training, et cetera are reflected in the statement, unsigned statement. I want you to read into the record paragraphs 4 and 5 of the statement.

**WARRANT OFFICER OPPERMAN:** "On the 12th of August 2012 I attended and processed a crime scene involving Marikana CAS107/08/2012 which is in respect of the two Lonmin security officials. Captain Phule pointed out to me two burnt motor vehicles, cartridges and two

**MR MADLANGA SC:** May I refer you to the Google map in the slides? I'm referring the witness to B12, commissioners. There you have points, a point marked A and another point marked NUM offices. Where is it that you found the bodies, the burnt motor vehicles and the cartridges? Is it where it's written NUM offices or is it where it's marked A or is it elsewhere?

**WARRANT OFFICER OPPERMAN:** It is where it's marked A, Mr Chairperson.
1 at the scene he met me and he told me that he's going to
2 investigate the case and he was on the scene and he showed
3 some points to me, Mr Chairperson.
4 MR BRUINDERS SC: So is he a detective
5 who was investigating what had happened on the 12th?
6 WARRANT OFFICER OPPERMAN: That is
7 correct, Mr Chairperson.
8 MR BRUINDERS SC: And he's a detective
9 stationed at Marikana?
10 WARRANT OFFICER OPPERMAN: That is
11 correct.
12 MR BRUINDERS SC: Nothing else.
13 CHAIRPERSON: Mr Bizos?
14 MR BIZOS SC: No questions.
15 CHAIRPERSON: Absent Mr Ntsebeza, is Mr
16 Mpfu - do you wish to ask any questions?
17 MR MPOFU SC: No thank you, Chairperson.
18 CHAIRPERSON: Sorry Mr Burger, I didn't
19 give you a chance. Do you want to ask any questions?
20 MR BURGER SC: No thank you, Chair.
21 CHAIRPERSON: Anyone want to ask
22 questions? I know the family of the deceased is
23 represented, does their representative want to ask any
24 questions?
25 CROSS-EXAMINATION BY MR RAMPHELE: Thank
26 you, Chair. Warrant Officer Opperman, what time did you
27 attend to the scene that you referred to?
28 WARRANT OFFICER OPPERMAN: I arrived at
29 the scene at 25 minutes past 12, Mr Chairperson.
30 MR RAMPHELE: And what was the date?
31 WARRANT OFFICER OPPERMAN: It was on the
32 12th of August.
33 MR RAMPHELE: So this is just about two
34 hours after the incident had happened?
35 WARRANT OFFICER OPPERMAN: That is
36 correct, Mr Chairperson.
37 MR RAMPHELE: Do you remember who all was
38 there?
39 WARRANT OFFICER OPPERMAN: I can remember
40 Captain Phule and Colonel Madoda, also of the detectives.
41 MR RAMPHELE: Were the bodies of the
42 deceased still at the scene?
43 WARRANT OFFICER OPPERMAN: That is
44 correct, Mr Chairperson.
45 MR RAMPHELE: And you say how far from
46 where the bodies were lying were the NUM offices, what is
47 the distance?
48 CHAIRPERSON: He did - say that
49 Lieutenant-Colonel Botha measured it because it was 250
50 metres.
1st to 31st October 2012

Marikana
Rustenburg

MR MADLANGA SC: Thank you, Chair. May I call Captain Mohlaki, please?

CHAIRPERSON: Captain, do you wish to swear or to affirm?

CAPTAIN MOHLAKI: To swear.

CHAIRPERSON: Do you swear that the evidence you’ll give before this Commission will be the truth, the whole truth and nothing but the truth. Please raise your right hand and say so help me God.

CAPTAIN APOLLO JEREMIAH MOHLAKI: So help me God.

CHAIRPERSON: Thank you, you may be seated. They tell me that – have you turned your microphone on? You’re no longer a source of interference.

EXAMINATION BY MR MADLANGA SC: Captain, just for – it should be FJ.

Thank you, thank you Chair. And Captain, your experience, training, et cetera are reflected in the statement. Do you confirm the correctness of the entire contents of the statement?

CAPTAIN MOHLAKI: That’s correct, Chair and the commissioners.

MR MADLANGA SC: Commissioners, I’ve been advised by Ms or Adv Malunga that the media are interested in the full names of the people. Captain, is it so that

your full names are Apollo Jeremiah Mohlaki, Mohlaki being M-O-H-L-A-K-I.

CAPTAIN MOHLAKI: That’s correct, Chair and commissioners, Apollo Jeremiah Mohlaki.

MR MADLANGA SC: Thank you. Captain, can you read paragraphs 4 and 5 of your statement into the record?

CAPTAIN MOHLAKI: Thank you, Chair and commissioners. “I am instructed in photography” –

MR MADLANGA SC: No, no, sorry – sorry.

CHAIRPERSON: There are two paragraph 4’s, I think he means paragraph 4 bis or you mean paragraph 4 which is the top of the second page.

MR MADLANGA SC: Yes Chair, thank you very much. Paragraph 4 on the next page, yes.

CAPTAIN MOHLAKI: Thank you, Chair and commissioners. “On the 16 August 2012 I attended and processed a crime scene involving Marikana CAS138/8/2012 and at what has come to be known as scene 2 at Wonderkop Marikana. Warrant Officer Monama indicated some points to me. Using these points and my own observation I took photos and measurements of the scene. Constable Molefe made a video recording of the scene. I compiled a photo plan using an aerial photo of the scene. I also collected exhibits from the scene.”
1st to 31st October 2012

Marikana
Rustenburgh

1. CAPTAIN MOHLAKI: That's correct, Chair and commissioners.
2. CHAIRPERSON: Had the incident happened yet?
3. CAPTAIN MOHLAKI: Come again, sir?
4. CHAIRPERSON: Had the shooting happened yet?
5. CAPTAIN MOHLAKI: Ja, when we arrived there I think the scene was still active because the police, with the movement of the police officials and the paramedics at the scene.
6. MR MADLANGA SC: Was there any shooting taking place when you arrived there?
7. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
8. MR MADLANGA SC: And who is it that had asked you to be on standby there?
9. CAPTAIN MOHLAKI: Chair, I think if you allow me to explain what happened according to the briefing that I got on the 16th. In the morning of the 16th 2012 August, I attended a morning briefing.

Page 670

1. CAPTAIN MOHLAKI: That's correct, Chair and commissioners. When I got there they were already started with the briefing.
2. MR MADLANGA SC: Where was this briefing?
3. CAPTAIN MOHLAKI: The briefing was held at Lonmin JOC.
4. MR MADLANGA SC: And who conducted the briefing?
5. CAPTAIN MOHLAKI: There were a couple of senior officers from SAPS. I still remember General Adeline, Brigadier Calitz, Brigadier –
6. MR MADLANGA SC: Captain, please be careful. Do not speak at the same time as the interpreter. There will be problems with the transcription. You should wait until he is done.
7. INTERPRETER: Thank you.
8. CAPTAIN MOHLAKI: Thanks, Chair and commissioners.
9. MR MADLANGA SC: Now, would the name perhaps not be General Annandale?
10. CAPTAIN MOHLAKI: I get difficulty pronouncing that surname but just like on that version, yes, Annandale.
11. MR MADLANGA SC: And I thought you mentioned the second, or rather another name as well. Who asked you to be on standby there?
12. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
13. MR MADLANGA SC: Was there any shooting taking place when you arrived there?
14. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
15. MR MADLANGA SC: And who is it that had asked you to be on standby there?
16. CAPTAIN MOHLAKI: Chair, I think if you allow me to explain what happened according to the briefing that I got on the 16th. In the morning of the 16th 2012 August, I attended a morning briefing.

Page 671

1. CAPTAIN MOHLAKI: It was Brigadier Calitz.
2. MR MADLANGA SC: And what exactly was the briefing?
3. CAPTAIN MOHLAKI: We were – we have to submit our strand. Our strand, I'm referring that when they ask the representative from LCRC how many members are there, then I have to account, then we were four. Then the briefing was, we must be on standby. There is an information or agreement that there will be a possibility of the people who are gathering at the mine, at the koppie, they will be surrendering some dangerous traditional weapons, possibly with some unlawful ammunition that will be in their possession and they will withdraw. Then we will be called to come and record, take photos with the detectives of those dangerous traditional weapons.
4. MR MADLANGA SC: What time or round about what time was this briefing?
5. CAPTAIN MOHLAKI: Thanks, Chair and commissioners, I'll have to refer to my diary. I arrived there at 16:05 – sorry, 06:05 in the morning.
6. CHAIRPERSON: You were asked what time was the briefing. You got there at five past six in the morning, what time was the briefing actually?
7. MR MADLANGA SC: Was there any shooting taking place when you arrived there?
8. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
9. MR MADLANGA SC: Was there any shooting taking place when you arrived there?
10. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
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16. CAPTAIN MOHLAKI: We were posted at, they call it holding area 1, somewhere around Lonmin. It was an open veld where we were requested to stay as to be on standby.
1st to 31st October 2012  
Marikana  
Rustenburg

Page 673

1 comment on that? Do you accept that there are inaccuracies 
2 in - or ja, with regard to where the cartridge cases or 
3 cartridges have been placed on the Google map? 
4 MR SEMENYA SC: Chairperson, perhaps we 
5 were misunderstood. The issue with the Google map was 
6 simply that there certainly were more cartridges than were 
7 captured by the LCRC, not that those captured are in 
8 incorrect places. 
9 CHAIRPERSON: Thank you, I take it that 
10 shortsens this part of the evidence. 
11 MR MADLANGA SC: Thank you, I’m indebted 
12 to my learned colleague but I will still ask the question 
13 in a different way. Now forgetting about what the SAPS 
14 presentation says, are there inaccuracies in the reflection 
15 of where the cartridge cases were on the Google map? 
16 CAPTAIN MOHLAKI: Correct, Chair and 
17 commissioners. 
18 MR MADLANGA SC: I think the correct verb 
19 that you use in your technical language is to plot, who 
20 plotted the cartridges on this Google map? 
21 CAPTAIN MOHLAKI: It was Lieutenant- 
22 Colonel Scott. 
23 MR MADLANGA SC: Can you explain how that 
24 came about and how exactly that unfolded? 
25 CAPTAIN MOHLAKI: Thanks, Chair and

Page 674

1 commissioners. We visited Potchefstroom for consultation 
2 with the SAPS advocates. I just want to check and confirm 
3 the date. That’s correct, 2012/09/11. After consultation 
4 with - it was three advocates representing SAPS - because 
5 we were not briefed when I left Rustenburg to Potch, that 
6 they will need a model of a crime scene so that they can 
7 understand what happened on that day of the 16th of August 
8 2012, so I did some rough sketches to indicate to them. So 
9 fortunately Lieutenant-Colonel Scott was there in the 
10 conference room, but not the room where we were with the 
11 advocate. So he asked me that he can help us with the 
12 model of the crime scene if I’m having the co-ordinates of 
13 the crime scene. Then I explained to Colonel Scott that I 
14 do have co-ordinates but I don’t have any documents with me 
15 so that I can present to him to plot those points, then I 
16 will e-mail the GPS readings. 
17 MR MADLANGA SC: And the GPS readings are 
18 what you have been referring to as co-ordinates? 
19 CAPTAIN MOHLAKI: Yes, Chair and 
20 commissioners. Then I’m not sure about the date but I did 
21 e-mail Colonel Scott the co-ordinates to plot for me and he 
22 e-mailed back the Google Earth with plots of these points. 
23 MR MADLANGA SC: And are you satisfied 
24 with how he plotted the cartridge cases, et cetera on the 
25 Google map?

Page 675

1 CAPTAIN MOHLAKI: Not at all because when 
2 I compared the Google map, some of the points, with my 
3 rough sketch, some points were not matching. 
4 MR MADLANGA SC: Can you address those? 
5 Can you explain to the Chairperson and commissioners what 
6 the inaccuracies are? 
7 CHAIRPERSON: May I ask, have you re- 
8 plotted them on another Google map? It would be easier if 
9 you re-plotted them rather than just told us by referring 
10 to Lieutenant-Colonel Scott’s map, which ones are wrong. 
11 Have you done that, re-plotted them? 
12 CAPTAIN MOHLAKI: No Chair, I’ve just 
13 drawn a sketch plan that is on the following slide. 
14 MR MADLANGA SC: May I refer the 
15 commissioners to B47? But I wanted us to deal with this 
16 more fully because when one then looks at the sketch, the 
17 sketch and the Google map, there will be a mismatch at 
18 certain places. 
19 CHAIRPERSON: Alright. 
20 MR MADLANGA SC: Thank you. 
21 CHAIRPERSON: Is this a suitable stage 
22 for us to adjourn or do you want to perform that exercise 
23 before we adjourn? 
24 MR MADLANGA SC: A suitable stage, Chair. 
25 CHAIRPERSON: Very well.
[PROCEEDINGS ON 31 OCTOBER 2012]

1 [09:05] CHAIRPERSON: Good morning. The Commission resumes. Before we proceed any further, I understand that the representatives of the parties have been told, but I don’t think that those in attendance necessarily know that we will only be having one session this afternoon. So we will adjourn at 4 o’clock and we will then resume on Monday morning at 9 o’clock next week.

2 I thought those in the public gallery might like to know that to plan their afternoons.

3 There is also a notification in front of me which says, “Please switch off all cell phones or put them on silent.” We had the problem yesterday that several cell phones went off during the course of the proceedings. It’s very disturbing and it interferes with the proceedings and it’s something that I hope will not happen today.

4 I see that Captain Mohlaki is here to continue with his evidence, but I did understand from Mr Mpofu I think that there might be some preliminary matters, which I hope will not keep us busy for too long. Mr Mpofu?

5 MR MPOFU: Thank you, Chairperson. It’s very disturbing and it interferes with the proceedings and it’s something that I hope will not happen today.

6 MR MPOFU: Thank you, Chairperson, very much for the opportunity. I want to raise three preliminary issues as briefly as possible.

7 The first one, Chair, just maybe to start with the good news is just, is a continuation of what was said yesterday. Up to now six people have been released. The bad news is that since last night I’ve been listening to the most gory details of their brutal assaults and torture and it’s a matter that we’ll take up with the IPID.

8 Obviously the Commission can’t take it much further, but I think its only relevance here is the extent and impact that it’s likely to have on the witnesses and other potential witnesses coming here. It’s quite a serious matter, Chair.

9 Without wanting to be too graphic, one of the persons I spoke to informed me of, and showed me of a situation where he was beaten up until he soiled himself and another one has almost lost hearing on his right ear, and the third one has visible scarring on his face, which he did not have when I last saw him on Tuesday. But these are matters that are well-founded and they’re indicative of an attempt to intimidate witnesses and prevent them from giving evidence before this inquiry. Allegations of this kind are obviously taken very seriously, but I’m sure regard being had to the people representing the South African Police Service, they’re well aware of what I said, but I’m sure it doesn’t do any harm for me to repeat it publicly.

10 MR MPOFU: Thank you.

11 CHAIRPERSON: Please proceed with your second point.

12 MR MPOFU: Thank you very much, Chair, appreciated.

13 Second issue, Chair, is also brief reference to the Masuhlo case. Chair, you remember that last week I think I reported to the Commission that our request for the extension of the Terms of Reference in respect of that case had been turned down, and Chair, on a closer scrutiny of the letter from the President, it turned out that there are two readings of it. One is that it’s ambiguous, or the other one is that it is being referred to the Commission, and I’ll just read one paragraph which drives me to that conclusion. In fact, let me read the whole thing. “1. Correspondence dated 5 October 2012 refers. 2. We advise that the President has considered your request to extend the Terms of Reference to incorporate the issues raised on behalf of your client. 3,” which is the important part, “The Terms of Reference, whilst focussed on the tragic...
25 preliminary view, I think it's sufficient for me to give
24 to whether she must continue coming here in, hoping that
23 here every day and I just need to give some indication as
22 looking now, particularly her sister – has been coming
21 I have is that the family, the Masuhlo family – and I was
20 repeats what I said at the first meeting that we had, the
19 or the other of whatever the Commission's view is on this
18 letter, once it has properly studied the letter. We'll –
17 or the other of whatever the Commission's view is on this
16 when we come back, we can just get some indication one way
15 incident is considered or not. We'll pass a copy of this
14 letter to the evidence leaders and, Chair, just to save
13 material before us and we will then be able to see whether
12 evidence later on, we'll have quite a lot of evidential
11 evidence is received, presumably you will wish to see that
10 upon on Monday in abstracto, as it were, but when the
9 matter which I don't know that I can necessarily pronounce
8 that way – what happened in the relevant period, will be
7 before the 9th. I think the key word in the passage you
6 read me is "evidence where relevant." Whether evidence
5 relating to the death of the councillor has relevance is a
4 account of all circumstances and incidents which may assist
3 to make. We are confident that to the extent that it is
2 relevant in terms of the principles which the Commission
1 must apply, the incidents to which you refer will be
considered." Then the next sentence says, "The President
is consequently not persuaded to extend the Terms of
Reference in the manner that you propose," and extends
sympathies and so on.

Now as I say this, at best for us it says that it
will be the Commission that must decide whether that
incident is considered or not. We'll pass a copy of this
letter to the evidence leaders and, Chair, just to save
time, we don't expect you to make a ruling. If on Monday
when we come back, we can just get some indication one way
or the other of whatever the Commission's view is on this
letter, once it has properly studied the letter. We'll –

CHAIRPERSON: It sounds as if the letter
repeats what I said at the first meeting that we had, the
representative parties. I don't think you were present.

MR MPOFU: No, I wasn't.

CHAIRPERSON: I said that evidence of
events before the 9th and evidence of events after the 16th
would be received insofar as that evidence threw light on
the issues that we primarily have to determine over that
period from the 9th to the 16th. The evidence that points
backwards, as it were, to illuminate – if one can put it
that way – what happened in the relevant period, will be
received and equally evidence that points forwards from
before the 9th. I think the key word in the passage you
read me is "evidence where relevant." Whether evidence
relating to the death of the councillor has relevance is a
matter which I don't know that I can necessarily pronounce
upon on Monday in abstracto, as it were, but when the
evidence is received, presumably you will wish to see that
evidence later on, we'll have quite a lot of evidential
material before us and we will then be able to see whether
it is relevant and does indeed cast light backwards, as it
were, on the issues we have to investigate. But that's a
preliminary response, but I hope that's of assistance to
you.

MR MPOFU: Yes, it is of much assistance,
Chairperson. We'll still pass the letter on. The trouble
I have is that the family, the Masuhlo family – and I was
just looking now, particularly her sister – has been coming
here every day and I just need to give some indication as
to whether she must continue coming here in, hoping that
her sister's death will be considered. But given just that
preliminary view, I think it's sufficient for me to give

this might be adopted by other potential funders, I think
it's important to put it in perspective that there are two
things. One is that Lonmin itself, I think around the 20
something of August, issued a statement for a different
reason, stating clearly that half, or more than half of the
people who were arrested and injured, were not its
employees, and I'll think that that would have been enough
to make it clear that those people potentially cannot be
represented by either NUM or AMCU.

But the most important thing, Chair, is that our
understanding is that the unions have been cited here in
their "personal capacity" as potential causes of the so-
called inter-union rivalry of the disaster, and that was
illustrated two days ago, Chair, when we spoke about the
release of the arrested witnesses, when my learned friend
Mr Tip made it clear that his instructions were that those
people should not be released from custody. So quite
clearly, and Mr Tip obviously was acting on instructions,
so quite clearly it's inconceivable that Mr Tip could
represent here the interests of the people that he was
saying should not be released, and also the interests of
the people who instructed him. So it's quite clear, and
it's something that we did anticipate, which is why – so
this reason of, this new reason of denying us funding is
actually worse than the first one, and –
1st to 31st October 2012
Marikana
Rustenburg

CHAIRPERSON: Sorry to interrupt you, but it sounds from what you say, it's clearly as if the decision to refuse you legal aid may at least in part be based upon what you say is a misapprehension as to the correct facts.

MR MPOFU: J a.

CHAIRPERSON: So clearly you're going to go back to the Legal Aid Board to seek to remove that misapprehension.

MR MPOFU: J a.

CHAIRPERSON: But as you correctly point out, it's not a matter over which we have any jurisdiction.

I haven't got the power, either sitting alone or with my two colleagues, to overrule the Legal Aid Board or order them to grant you legal aid. What you do know is that the evidence leaders acting on behalf of the Commission made representations to the Legal Aid Board, which we in fact dealt with in the document that was read yesterday.

MR MPOFU: J a.

CHAIRPERSON: So further than that I can't take it. But anyway, I take it we should leave it there for the moment and leave it to you to raise the concerns that you've expressed, obviously with further elaboration, before the chairman of the Legal Aid Board.

MR MPOFU: Yes, thank you, Chair. No, no, that I appreciate hundred percent, Chair. All I'm saying is the only relevance perhaps to yourselves is the potential impact of this kind of reasoning, which it might have in depriving the Commission of the evidence which it will be deprived of if we are unable to represent these people. That's the only direct impact on this Commission that it might have, because as I said the other day, at some stage we're just going to run out of our own resources to do this.

The second relevance perhaps, Chair, is that we have written a letter to the Department of Justice separately, raising this matter of funding and whatever influence or, the Commission may have in - we haven't received a response - in respect to government funding, we are obviously approaching other non-governmental funding sources and we don't need any assistance there, but insofar as there's a potential of government funding, we thought that to avoid the potential of us having to stop the representation, which we think is essential for the Commission, that whatever might be done by anybody, could be done. Thank you, Chair.

CHAIRPERSON: Thank you, Mr Mpofu. Is the conclusion of the preliminary matters that you wanted to raise?

MR MPOFU: Yes, thank you, Chairperson.

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Page 686
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CHAIRPERSON: Has anyone got any comments to make in regard to those matters? Mr Semenya.

MR SEMENYA SC: Chair and Commissioners, it is most unfortunate I think that apropos what Mr Mpofu raises as the first issue, that these matters are not raised with me and my team first to test their veracity and, where appropriate, to be able to give counter-evidence, if that is what he's tendered. It is certainly prejudicial just to raise them as they are raised for the first time, casting, as the Chair correctly points out, if well-founded they have profound implications in the running of this Commission.

The questions of arrest also, if they were properly handled and we intervened, as we did, would not have enjoyed this publicity. So we're almost having shadows every time. There are allegations, very serious in their, very grave in their degree, if correct, which are just thrown like that. We would really appreciate it if we could be given advance notice of this so that we can investigate it and where there are appropriate answers, to give them.

CHAIRPERSON: Thank you, Mr Semenya. You noticed that I prefaced my comments by saying “if these allegations were well-founded.” Obviously I don't accept that they necessarily are, and in any event, we've heard
1st to 31st October 2012
Marikana
Rustenburg

1 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When I arrived at scene 1 with my team of three members, we were looking for General Naidoo. Just to go back a little bit, when we were called from where we were standing to be on standby, General Naidoo called Captain Ngcobo from Detectives to inform us that they are looking for us to process the crime scene. Then when we arrived at the crime scene 1, that is where we wanted to locate where is General Naidoo. Then I was told that General Naidoo is at scene 2.

2 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

3 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. Immediately when we received that message that General Naidoo is at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

4 CHAIRPERSON: Did you proceed to scene 2? If so, at what time and at what time did you arrive there?

5 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 2 – at scene 1, that is where we wanted to arrive at the crime scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

6 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

7 CAPTAIN MOHLAKI: Three members, we were looking for General Naidoo. From Detectives to inform us that they are looking for us to process the crime scene. Then when we arrived at the crime scene 1, that is where we wanted to locate where is General Naidoo. Then I was told that General Naidoo is at scene 2.

8 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

9 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

10 CHAIRPERSON: Did you proceed to scene 2? If so, at what time and at what time did you arrive there?

11 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

12 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

13 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

14 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

15 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

16 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

17 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

18 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

19 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

20 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

21 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

22 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

23 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.

24 CHAIRPERSON: Sergeant Molefe went with you, and how many detectives?

25 MR MADLANGA SC: And what time was it when you were told that General Naidoo was at scene 2?

26 CAPTAIN MOHLAKI: Thank you, Chair and Commissioners. When we arrived at scene 1, that is where we wanted to look for us to process the crime scene. Then when we got to scene 1 and were told that General Naidoo was at scene 2, we immediately, myself and Constable Molefe and four detectives, we drove to scene 2.
1st to 31st October 2012  
Marikan Rustenburg

<table>
<thead>
<tr>
<th>Page</th>
<th>CAPTAIN MOHLAKI:</th>
<th>CHAIRPERSON:</th>
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<tbody>
<tr>
<td>1.</td>
<td>Not at all.</td>
<td>So would it be a fair inquiry? that whatever had happened at scene 2 was over, or did something happen thereafter, but which Mr Madlanga will ask you about, at scene 2 which is relevant to our inquiry?</td>
</tr>
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<td>2.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>I will say, Chair, when it comes to shooting, I don't think there was any shooting when I was at scene 1.</td>
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<td>3.</td>
<td>MR MADLANGA SC:</td>
<td>And when you were called and told you were required to go to scene 2, did any shooting take place whilst you were there?</td>
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<td>4.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>Not at all. While I was at scene 2, there was no shooting.</td>
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<td>5.</td>
<td>MR MADLANGA SC:</td>
<td>And when you were called and were advised that you were required at scene 1 to go ahead and process the scene at scene 1, were you at forward holding area - did you say 1?</td>
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<td>6.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>I will say when I arrived at scene 1, what was happening at scene 2 it was already happened.</td>
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<td>7.</td>
<td>MR MADLANGA SC:</td>
<td>And when you got to scene 2, did any shooting take place whilst you were there?</td>
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<td>8.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>Not at all. While I was at scene 2, there was no shooting.</td>
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<td>9.</td>
<td>MR MADLANGA SC:</td>
<td>And when you were called and were advised that you were required at scene 1 to go ahead and process the scene at scene 1, were you at forward holding area - did you say 1?</td>
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<tr>
<td>10.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>Ja, there was a holding area where they are, I understand it was holding area 1.</td>
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<td>11.</td>
<td>MR MADLANGA SC:</td>
<td>And that is where you were when you were called and told you were required to go and process a scene?</td>
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<td>12.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>That's correct, Chair and Commissioners.</td>
</tr>
<tr>
<td>13.</td>
<td>MR MADLANGA SC:</td>
<td>You said you processed the scene - that is scene 2 - from the time that you arrived there until the afternoon of the following day. Obviously it got dark at some point. What lighting, if any, did you use whilst processing the scene?</td>
</tr>
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<td>14.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>It was arranged with the Lonmin that they can supply us with lights and around 7 there were two generators with lights that were installed in our scene 2.</td>
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<td>15.</td>
<td>MR MADLANGA SC:</td>
<td>And would you say this provided you with enough light to process the scene?</td>
</tr>
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<td>16.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>I won't guarantee that because I need extra light.</td>
</tr>
<tr>
<td>17.</td>
<td>MR MADLANGA SC:</td>
<td>I'm not sure I follow that response. Are you saying you sourced extra lights, or are you saying you couldn't do your job because you needed extra lights? I don't quite follow you.</td>
</tr>
<tr>
<td>18.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>The generator was supplying with the lights, but I have to use my alternative light so that I can see some close-up.</td>
</tr>
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<td>19.</td>
<td>MR MADLANGA SC:</td>
<td>Would you say additional light because it’s the name of the light that I’m using. It’s the name of the lights that I’m using, is it a kind of a torch?</td>
</tr>
<tr>
<td>20.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>That’s correct, Chair and Commissioners.</td>
</tr>
<tr>
<td>21.</td>
<td>MR MADLANGA SC:</td>
<td>Thank you for the edification, Captain. And did that alternative light and the generators provide you with sufficient light for you to do your job?</td>
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<td>22.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>That’s correct, Chair and Commissioners.</td>
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<td>23.</td>
<td>MR MADLANGA SC:</td>
<td>Now let us go back to the subject that we were dealing with yesterday, the inaccuracies in the Google map B46. Could you -</td>
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<tr>
<td>24.</td>
<td>CHAIRPERSON:</td>
<td>It’s not so much inaccuracies. I understand the captain to, Mr Semenya to say it was suggested that the Google map was inadequate in the sense that there were extra things that weren’t recorded on it, not that everything that was recorded was wrong. Did I understand you correctly, Mr Semenya?</td>
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<td>25.</td>
<td>MR SEMENYA SC:</td>
<td>In relation to B1, Chair.</td>
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<td>26.</td>
<td>CHAIRPERSON:</td>
<td>Sorry, I misunderstand. You’re talking about the inaccuracies in the map prepared by Lieutenant-Colonel Scott?</td>
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<td>27.</td>
<td>MR MADLANGA SC:</td>
<td>Yes, which is what I referred to and I said -</td>
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<td>28.</td>
<td>CHAIRPERSON:</td>
<td>I’m sorry, I misunderstood.</td>
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<td>29.</td>
<td>MR MADLANGA SC:</td>
<td>I said Google map, Chair, and these are inaccuracies that are not what my learned friend Mr Semenya was referring to. Thank you, Chair. Now Captain, can you please indicate to the Commissioners where is the inaccuracies are?</td>
</tr>
<tr>
<td>30.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>Okay, thank you, Chair. Commissioners. I will go to number U. I would like if you can put it on, in record that number U must read U1 to U6. It was not only one point. It was six points there.</td>
</tr>
<tr>
<td>31.</td>
<td>MR MADLANGA SC:</td>
<td>Do you have a pointer there with you -</td>
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<td>32.</td>
<td>CAPTAIN MOHLAKI:</td>
<td>Correct.</td>
</tr>
<tr>
<td>33.</td>
<td>MR MADLANGA SC:</td>
<td>- so that you can assist us and point at the screen there, then we can try to relate the spot at which you are pointing to our hard copies in front of us?</td>
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</table>
| 34.  | CAPTAIN MOHLAKI: | There’s a U somewhere...
<table>
<thead>
<tr>
<th>Page 697</th>
<th>Page 698</th>
<th>Page 699</th>
<th>Page 700</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MR MADLANGA SC: And the open patch</td>
<td>1</td>
<td>MR MADLANGA SC: And the open patch</td>
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<td>2</td>
<td>there, to the right there's the busy area. Then what I've</td>
<td>2</td>
<td>there, to the right there's the busy area. Then what I've</td>
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<td>3</td>
<td>referred to as a patch, and then another bushy area to the</td>
<td>3</td>
<td>referred to as a patch, and then another bushy area to the</td>
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<td>4</td>
<td>left. Is that so?</td>
<td>4</td>
<td>left. Is that so?</td>
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<td>5</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
<td>5</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
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<td>6</td>
<td>and Commissioners.</td>
<td>6</td>
<td>and Commissioners.</td>
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<td>7</td>
<td>MR MADLANGA SC: And you are saying all</td>
<td>7</td>
<td>MR MADLANGA SC: And you are saying all</td>
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<td>8</td>
<td>of these should have been clustered together as AA30 to</td>
<td>8</td>
<td>of these should have been clustered together as AA30 to</td>
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<td>9</td>
<td>AA42?</td>
<td>9</td>
<td>AA42?</td>
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<td>10</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
<td>10</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
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<td>11</td>
<td>and Commissioners.</td>
<td>11</td>
<td>and Commissioners.</td>
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<td>12</td>
<td>MR MADLANGA SC: Is there anything else</td>
<td>12</td>
<td>MR MADLANGA SC: Is there anything else</td>
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<tr>
<td>13</td>
<td>that you would like to correct on this Google map?</td>
<td>13</td>
<td>that you would like to correct on this Google map?</td>
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<td>14</td>
<td>CAPTAIN MOHLAKI: Nothing up to so far,</td>
<td>14</td>
<td>CAPTAIN MOHLAKI: Nothing up to so far,</td>
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<td>15</td>
<td>Chair and Commissioners.</td>
<td>15</td>
<td>Chair and Commissioners.</td>
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<td>16</td>
<td>MR MADLANGA SC: B47 is a sketch plan.</td>
<td>16</td>
<td>MR MADLANGA SC: B47 is a sketch plan.</td>
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<tr>
<td>17</td>
<td>Is that the sketch plan that you said you drew yourself?</td>
<td>17</td>
<td>Is that the sketch plan that you said you drew yourself?</td>
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<td>18</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
<td>18</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
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<td>19</td>
<td>and Commissioners.</td>
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<td>and Commissioners.</td>
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<tr>
<td>20</td>
<td>MR MADLANGA SC: And would you say that</td>
<td>20</td>
<td>MR MADLANGA SC: And would you say that</td>
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<td>21</td>
<td>on that sketch plan you placed everything that you</td>
<td>21</td>
<td>on that sketch plan you placed everything that you</td>
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<td>22</td>
<td>observed, you placed it as accurately and as reasonably</td>
<td>22</td>
<td>observed, you placed it as accurately and as reasonably</td>
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<td>23</td>
<td>possible?</td>
<td>23</td>
<td>possible?</td>
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<td>24</td>
<td>CAPTAIN MOHLAKI: Correct, Chair and</td>
<td>24</td>
<td>CAPTAIN MOHLAKI: Correct, Chair and</td>
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<td>25</td>
<td>Commissioners.</td>
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<td>Commissioners.</td>
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<table>
<thead>
<tr>
<th>Page 698</th>
<th>Page 699</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MR MADLANGA SC: Proceed. Are there any</td>
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<td>2</td>
<td>other?</td>
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<tr>
<td>3</td>
<td>CAPTAIN MOHLAKI: AA30 to AA42, it was a</td>
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<tr>
<td>4</td>
<td>group of rifle cartridge case. They are also misplaced</td>
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<td>5</td>
<td>there. I would just indicate the correct position.</td>
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<td>6</td>
<td>MR MADLANGA SC: Just a minute. You</td>
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<td>7</td>
<td>refer to AA30 to AA42, and you say those are misplaced.</td>
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<tr>
<td>8</td>
<td>I see AA30 to AA34. I do not see AA30 to AA42.</td>
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<td>9</td>
<td>CAPTAIN MOHLAKI: Thank you. Let me just</td>
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<tr>
<td>10</td>
<td>explain myself. AA30 to AA34, you see it?</td>
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<td>12</td>
<td>you proceed, just point again for people to get an idea.</td>
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<td>13</td>
<td>CAPTAIN MOHLAKI: There's AA30 to AA34.</td>
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<td>14</td>
<td>Just on top there it's AA35 to AA37. If you go towards</td>
</tr>
<tr>
<td>15</td>
<td>your western side, there's AA38 to AA42. They were</td>
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<tr>
<td>16</td>
<td>supposed to be plotted somewhere here.</td>
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<tr>
<td>17</td>
<td>MR MADLANGA SC: You seem to be pointing</td>
</tr>
<tr>
<td>18</td>
<td>to a bushy area.</td>
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<tr>
<td>19</td>
<td>CAPTAIN MOHLAKI: Here, this passage.</td>
</tr>
<tr>
<td>20</td>
<td>CHAIRPERSON: Pointing to an area below</td>
</tr>
<tr>
<td>21</td>
<td>AA30 to 34, beginning slightly south-west as it were, of</td>
</tr>
<tr>
<td>22</td>
<td>AA30 and extending along to a point more or less opposite</td>
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<tr>
<td>23</td>
<td>AA34, if I see correctly.</td>
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MR MADLANGA SC: Following the sketch plan, four aerial photographs, BB48, 49, 50 to 51, are those aerial photographs of Scene 2?

[10:08] CAPTAINAIN MOHLAKI: That is correct, Chair and Commissioners.

MR MADLANGA SC: Just a second, Chair, Commissioners. Sorry, sorry, Chair, I had promised my learned friend, Mr Bruinders a document, and I just established that he still doesn’t have it. I will take care of that. And I noticed on the aerial photographs that you have the letters SNE and W, do those signify south, north, east and west?

CAPTAIN MOHLAKI: That is correct, Chair and Commissioners.

MR MADLANGA SC: And there is “N” also on the sketch plan, B47, that indicates north obviously.

CAPTAIN MOHLAKI: That is correct, Chair and Commissioners.

MR MADLANGA SC: You don’t have the E, W and S, but would it be correct, that is on B47, to say that east would be on the right margin of the sketch plan? That is E for East.

CAPTAIN MOHLAKI: That is correct.

Chair.

CHAIRPERSON: [Inaudible].

MR MADLANGA SC: Obviously, I was going to say, Chair, yes, and I was going to say Chair the rest falls in place, I was not going to take him through S and W. Thank you, Chair. Now, I will take you to B52, your key. We have already dealt with the aerial photographs.

Let us go to bodies A and B. When one looks at B46, it looks like those bodies are on top of the rock, whereas on your sketch plan on the next page, it looks like they are right on the ground. What is the correct situation?

CAPTAIN MOHLAKI: I don’t understand, where do you refer, you are saying body A and B?

MR MADLANGA SC: Body A and B, purely because of the colouring on the Google map, it looks as though, that is on the Google map B46, it looks as though they are on top of what looks like a rock, and I am saying, on your sketch, the next page, your dots representing bodies A and B, would appear to be right on the ground, do you understand me?

CAPTAIN MOHLAKI: Correct, I understand.

MR MADLANGA SC: Yes. Now my question is, what is the correct position, or did you find those two bodies on a rock, or right on the ground?

CAPTAIN MOHLAKI: Were found right on the ground.

MR MADLANGA SC: There is a reference by
<table>
<thead>
<tr>
<th>Page 705</th>
<th>1</th>
<th>Xhosa weapon, &quot;incula.&quot; In English, it's any piece of iron that has been sharpened that would be used for stabbing a person.</th>
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<tr>
<td>2</td>
<td>CHAIRPERSON: The witness has followed that. I take it what you want to know from him, is did he find implements of that kind on the scene?</td>
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<td>3</td>
<td>MR MADLANGA SC: At this stage it's more wood, that would be part of what he is referring to as traditional weapons.</td>
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<td>4</td>
<td>CAPTAIN MOHLAKI: Correct, Chair and Commissioners.</td>
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<td>5</td>
<td>MR MADLANGA SC: As the itemisation that you and I have just gone through left out any other types of traditional weapons?</td>
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<td>6</td>
<td>CAPTAIN MOHLAKI: Chair, I think you've covered almost all the traditional weapons that were there.</td>
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<td>7</td>
<td>MR MADLANGA SC: That's probably an indication that I also know traditional weapons.</td>
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<td>8</td>
<td>MR MAHLANGU: If I may also add, Chair, it is also used in Zulu, but in Zulu it's not a wood that they – it's not a piece of iron that they sharpen but it's a stick that is sharpened and hidden behind the shield, so that a person could at very close range then be stabbed, and it's called in Zulu, &quot;ubogo.&quot;</td>
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<td>9</td>
<td>MR MADLANGA SC: Thank you, Mr Mahlangu.</td>
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<tr>
<th>Page 706</th>
<th>1</th>
<th>Captain, did you find any traditional weapons close to bodies A and B, and perhaps because close to, may be a relative term, say within four metres of the spot where you found them, were there any traditional weapons?</th>
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<tbody>
<tr>
<td>2</td>
<td>CAPTAIN MOHLAKI: No, body A and body B, there was no close traditional weapons that were found by myself.</td>
<td></td>
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<td>3</td>
<td>MR MADLANGA SC: Now the, on your sketch, it seems as though there are two big rocks there, that is next to where you found bodies A and B. Are there roughly two rocks there? Big rocks.</td>
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<td>4</td>
<td>CAPTAIN MOHLAKI: No, it's just a crack.</td>
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<td>5</td>
<td>MR MADLANGA SC: Crack?</td>
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<tr>
<td>6</td>
<td>CAPTAIN MOHLAKI: Ja, if you check towards body B, body B, yes, there's a crack, it's not two separate big rocks there.</td>
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<td>7</td>
<td>MR MADLANGA SC: Oh, thank you. Is that rock flat and roughly level with the ground, or is it raised?</td>
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<td>8</td>
<td>CAPTAIN MOHLAKI: It is raised, not flat on the ground.</td>
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<td>9</td>
<td>MR MADLANGA SC: Does it slope towards where bodies A and B were?</td>
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<td>10</td>
<td>CAPTAIN MOHLAKI: That is correct, Chair and Commissioners.</td>
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<tr>
<th>Page 707</th>
<th>1</th>
<th>MR MADLANGA SC: And on your observations, would you say it slopes gently or it slopes steeply?</th>
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<tr>
<td>2</td>
<td>CAPTAIN MOHLAKI: I would say it is a steep slope.</td>
<td></td>
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<td>3</td>
<td>MR MADLANGA SC: Were there any cartridge cases on the ground, say within a distance of plus-minus two metres, or even three from where bodies A and B lay?</td>
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<td>4</td>
<td>CAPTAIN MOHLAKI: No, Chair, there was no cartridge cases found there.</td>
<td></td>
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<tr>
<td>5</td>
<td>MR MADLANGA SC: Is there any other observation of note that you would like to make, or tell this Commission with regard to bodies A and B?</td>
<td></td>
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<td>6</td>
<td>CAPTAIN MOHLAKI: What I observed with body A and B, it was just bodies with a gun wound.</td>
<td></td>
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<td>7</td>
<td>MR MADLANGA SC: Did you find or now show us whether on the Google map or on your sketch where body C was?</td>
<td></td>
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<td>8</td>
<td>CAPTAIN MOHLAKI: On top there, on that letter N, you go on your left, towards it, you will get the body C.</td>
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<td>9</td>
<td>MR MADLANGA SC: So roughly, it's on the north-western side.</td>
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<td>10</td>
<td>CAPTAIN MOHLAKI: Correct, Chair.</td>
<td></td>
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<tr>
<td>11</td>
<td>MR MADLANGA SC: Did you find any cartridge cases in the vicinity of or close to body C, again say within three metres of body C?</td>
<td></td>
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<thead>
<tr>
<th>Page 708</th>
<th>1</th>
<th>CAPTAIN MOHLAKI: Not at all. No cartridges were recovered around body C, or not close.</th>
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<tbody>
<tr>
<td>2</td>
<td>CHAIRPERSON: No, no, you weren't asked about cartridges, you were asked about cartridge cases.</td>
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<tr>
<td>3</td>
<td>CAPTAIN MOHLAKI: Cartridge cases.</td>
<td></td>
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<td>4</td>
<td>MR MADLANGA SC: Perhaps, let me before I continue further, with regard to body C, let me just try to establish the entire area that you searched whilst you were processing this scene. Let's take, for instance, the eastern side from the koppie itself, how far would you say you searched to the east?</td>
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<td>5</td>
<td>CAPTAIN MOHLAKI: I walked for about 150 metres.</td>
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<td>6</td>
<td>MR MADLANGA SC: You walked, walking?</td>
<td></td>
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<tr>
<td>7</td>
<td>CAPTAIN MOHLAKI: Ja.</td>
<td></td>
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<tr>
<td>8</td>
<td>MR MADLANGA SC: 150?</td>
<td></td>
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<td>9</td>
<td>CAPTAIN MOHLAKI: Yes, 1-5-0.</td>
<td></td>
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<td>10</td>
<td>MR MADLANGA SC: And to the northern side, how far did you search?</td>
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<td>11</td>
<td>CAPTAIN MOHLAKI: For about 1570 metres.</td>
<td></td>
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<td>12</td>
<td>MR MADLANGA SC: To the north up to that, rather up to the point which you measured to be the 157 you say, yes?</td>
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</table>
| 13 | CAPTAIN MOHLAKI: That is correct.
1st to 31st October 2012
Marikana
Rustenburg

Page 709
1. MR MADLANGA SC: Yes. Is there any
2. particular landmark that you can indicate, up to what point
3. landmark or next to what point or landmark did you stop
4. searching?
5. CAPTAIN MOHLAKI: Yes, I can indicate
6. that if you walk towards the north, there's a road that it
7. was used, it's used by people from Marikana going to the
8. informal settlement somewhere, that is where I stopped.
9. MR MADLANGA SC: Look at B48, is the road
10. that you are referring to showing there at all?
11. CAPTAIN MOHLAKI: B48 is which one?
12. MR MADLANGA SC: That is the very first
13. aerial photograph.
14. CAPTAIN MOHLAKI: Okay, I can see it,
15. that is correct.
16. MR MADLANGA SC: Can you try to describe,
17. so that the Commission and everybody else present can get
18. an idea of what you are referring to?
19. CAPTAIN MOHLAKI: If you check on top
20. there, on our right-hand side, on my right-hand side,
21. there's a gravel road, but you don't follow where that
22. vehicle is standing, you go this direction.
23. MR MADLANGA SC: Are you able to give an
24. indication on that very same aerial photograph, roughly
25. where body C would have been?

Page 710
1. CAPTAIN MOHLAKI: Body C will be
2. somewhere, somewhere here.
3. MR MADLANGA SC: And to the west, how far
4. did you search?
5. CAPTAIN MOHLAKI: 100 metres.
6. MR MADLANGA SC: And would now in
7. relation to how far you searched to the north and how far
8. you searched to the west, would body C be within the area -
9. or rather, say you referred to or rather you said did
10. not find any cartridge cases -
11. CAPTAIN MOHLAKI: Yes.
12. MR MADLANGA SC: - close to body C.
13. CAPTAIN MOHLAKI: Correct.
14. MR MADLANGA SC: Did you search only one
15. side of where body C lay, or did you search all around
16. where body C lay?
17. CAPTAIN MOHLAKI: Maybe if I can explain
18. the searching that I used -
19. MR MADLANGA SC: No, no, just answer that
20. question. Did you search only on one side of where body C
21. lay, or did you search all around body C?
22. CAPTAIN MOHLAKI: I don't understand when
23. you are saying “all around body C.”
24. CHAIRPERSON: Sorry, if you put a compass
25. in the ground where body C is, and you extend the edge of

Page 711
1. the compass so that it's about 100 metres away and you draw
2. a circle around like that, that area, that circular area,
3. with body C in the centre, and a radius of about 100
4. metres, that's the area that I think that Mr Madlanga is
5. referring to.
6. MR MADLANGA SC: Or perhaps just if I
7. were to just -
8. CHAIRPERSON: I am sorry.
9. MR MADLANGA SC: Thank you, Chair, thank
10. you, that's very useful. Let's take this bottle and let's
11. say it's body C, what I am trying to get at is, did you
12. search only this side of body C, or only this side of body
13. C, or only that side, or did you search all around body C?
15. I searched all over around body C. That is why I was
16. saying if you allow me to explain the searching, it was
17. going to be easy for us to understand because when I
18. searched towards north and I searched towards east and
19. west, somewhere north-west will be covered because if I go
20. this direction I cover this area and when I start to go
21. this direction I will cover this area. So that area of
22. north-west where the body was then, was positioned, it was
23. going to be covered. It was within the 157 to the north
24. and the 100 to the west, that's correct.
25. MR MADLANGA SC: You are still going to

Page 712
1. deal with the measurements but I just want to quickly get
2. the measurement in relation to body C. How far was body C
3. from the koppie itself?
4. CAPTAIN MOHLAKI: Body C to edge of the
5. mountain is 107.7 metres.
6. CHAIRPERSON: By mountain I take it you
7. mean the koppie?
8. CAPTAIN MOHLAKI: Sorry Chair?
9. CHAIRPERSON: By mountain I take it you
10. mean the koppie?
11. CAPTAIN MOHLAKI: That's correct, Chair,
12. the koppie.
13. CHAIRPERSON: Mr Madlanga, I trust that
14. at some stage before this evidence-in-chief is over we will
15. be told the names of bodies A, B and C and any other bodies
16. that you refer to, so that if there are any questions about
17. the injuries it will be a simple matter, one hopes, to
18. refer to the post-mortem reports that have been handed in,
19. if the post-mortem reports handed in relate to these bodies
20. because I understand there are still some missing, is that
21. correct? But it will be helpful I think for us to know the
22. names of A, B and C and any other lettered bodies we're
23. going to refer to, so that we can immediately see what
24. injuries in fact were sustained by those bodies.
25. MR MADLANGA SC: Thank you, Chair. And
1. to the south, how far did you search?

2. CAPTAIN MOHLAKI: 251.9 metres.

3. MR MADLANGA SC: And on that side was there a landmark?

4. CAPTAIN MOHLAKI: That's correct, Chair and commissioners.

5. MR MADLANGA SC: And did you search up to that landmark and what was it?

6. CAPTAIN MOHLAKI: I searched up to the road. When you cross over the road there is an electrical station.

7. MR MADLANGA SC: An electrical station or just one electrical pylon?

8. CAPTAIN MOHLAKI: If you pass that immediately on that pylon there's a road, a gravel road.

9. MR MADLANGA SC: The distances that you give, are they all measured from the koppie?

10. CAPTAIN MOHLAKI: That's correct, Chair and commissioners.

11. MR MADLANGA SC: Chair, may I at this stage, in the hope that - oh, my learned junior is going to assist me and give me what he's referring to as the proper document. I have a handwritten ones with the names and

12. CAPTAIN MOHLAKI: 251.9 metres.

13. MR MADLANGA SC: And the white icon close to the south, how far did you search?

14. CAPTAIN MOHLAKI: Yes I did, Chair.

15. CHAIRPERSON: Before you whisper instructions to your junior it might help to turn your microphone off.

16. MR MADLANGA SC: Sorry about that, Chairperson and commissioners. Let us go back to your key, BS2 commissioners, and we were dealing with body C and if I may just give the name right away, it's Mr Thobile Mpumza, T-H-O-B-I-L-E M-P-U-M-Z-A. And whilst at it, may I go back to bodies A and B and those are Mr Anele, A-N-E-L-E, Mdizeni, M-D-I-Z-E-N-I. And body B is Mr Thabiso Johannes Thelejane, T-H-A-B-I-S-O, then Johannes and then T-H-E-L-E-M-D-I-Z-E-N-I. And body B is Mr Thabiso Johannes Thelejane, T-H-A-B-I-S-O, then Johannes and then T-H-E-L-E-M-D-I-Z-E-N-I. Did you look for cartridges next to body C?

17. CAPTAIN MOHLAKI: Yes I did, Chair.

18. MR MADLANGA SC: Where would you - or rather which cartridge case or cases are closest to body C, according to your findings?

19. CAPTAIN MOHLAKI: The closest cartridge, I have a handwritten ones with the names and
1. MR MADLANGA SC: Let us move to bodies D and E and commissioners, the names are Mr Julius Mangcotsywa, M-A-N-G-C-O-T-S-Y-W-A and E is Raphael Janeveke Liau, J-a-n-e-v-e-k-e J-A-N-E-V-E-K-E, Liau L-I-A-U. And I would want to join those together with other bodies and perhaps before we deal with those, let’s go to F. What does F indicate?

2. CAPTAIN MOHLAKI: F indicates a firearm, a pistol.

3. MR MADLANGA SC: Where was this pistol?

4. CAPTAIN MOHLAKI: It was lying on the ground between, distance between body D and E and body G and H and it was in the holster magazine in the firearm.

5. MR MADLANGA SC: And was it loaded?

6. CAPTAIN MOHLAKI: That’s correct, Chair, it was loaded.

7. MR MADLANGA SC: And how many cartridges were in it?

8. CAPTAIN MOHLAKI: 15 cartridges.

9. MR MADLANGA SC: I take it that as a policeman you would know the answer to this. How many cartridges does a firearm of that type take?

10. CAPTAIN MOHLAKI: As far as I know it must be 15 cartridges.

11. MR MADLANGA SC: Chair, commissioners, may I just give the names of other bodies to the Commission? I went up to D and E.

12. CHAIRPERSON: Yes.

13. MR MADLANGA SC: Then G and H – no, no, I think already gave G to the commissioners. No – no, G yes, G is Thabiso Mosebetse, T-H-A-B-I-S-O, Mosebetse M-O-S-E-B-E-T-S-E and H is Mafolisi Mabiyi and I apologise for the terrible pronunciation and this is M-A-F-O-L-I-S-I and H and it was in the holster magazine in the firearm.

14. MR MADLANGA SC: And was it loaded?

15. CAPTAIN MOHLAKI: Yes.

16. MR MADLANGA SC: Then G and H were loaded.

17. CAPTAIN MOHLAKI: Yes.

18. MR MADLANGA SC: Where was this pistol?

19. CAPTAIN MOHLAKI: I take it that as a pistol.

20. MR MADLANGA SC: policewoman you would know the answer to this. How many cartridges does a firearm of that type take?

21. CAPTAIN MOHLAKI: 15 cartridges.

22. MR MADLANGA SC: I take it that as a pistol.

23. CAPTAIN MOHLAKI: As far as I know it must be 15 cartridges.

24. MR MADLANGA SC: Chair, commissioners. Body D and E, there was a rock on the northern side of the bodies. Body D, the head was facing the rock. Body E, the head was opposite the rock. Then that was the firearm which was marked point F. And body G and body H, they were lying between the two rocks on their sides.

25. [10:48] MR MADLANGA SC: And would you – I know it may be a difficult question because there’s a bit of relativity to this – would you say those were small or large rocks?

26. CAPTAIN MOHLAKI: I will say it’s a large rock because it can cover the body altogether.

27. MR MADLANGA SC: You are using the singular – I thought you said between rocks. So is there, what you’ve just described does that relate to both rocks or are you talking only about one rock?

28. CAPTAIN MOHLAKI: I’m referring to both rocks, Chair.

29. MR MADLANGA SC: Please continue.

30. CAPTAIN MOHLAKI: If you move, as you are going to F there’s a rock –

31. MR MADLANGA SC: Please, please repeat, speak into the microphone.

32. CAPTAIN MOHLAKI: Alright. Sorry Chair, can I put this, this side because if I concentrate here I cannot see what I’m indicating this side. Thank you very
1 much. If you go back as if you're going to the direction
2 of F there's a rock, actually between two rocks also.
3 MR MADLANGA SC: Small or large?
4 CAPTAIN MOHLAKI: I will say large. So
5 there's a passage between body G and H and F where you can
6 move. You are going towards body I and J. Then when you
7 go over this side, because as I have indicated there is a
8 rock here – if you go this side you are going to get body
9 K. Then when you move from K you come in this, on the open
10 veld here, you are going to that body L. Then body M is
11 between the rocks and also there are some trees, so it
12 won't be easy to see because you will see, you will think M
13 is just on top of the trees but it is in between the two
14 big rocks. And when you go to the western side there is a
15 yellow man with –
16 MR MADLANGA SC: No, no, just – I said up
17 to M.
18 CAPTAIN MOHLAKI: Oh, sorry for that.
19 CAPTAIN MOHLAKI: Oh, sorry for that.
20 CHAIRPERSON: There were nine bodies, how
21 many weapons? I said there were nine bodies, how many
22 weapons did you find?
23 MR MADLANGA SC: Next to each one of
24 those bodies?
25 CAPTAIN MOHLAKI: That's correct, Chair.
26 CHAIRPERSON: There were nine bodies, how
27 many weapons? I said there were nine bodies, how many
28 weapons did you find?
29 MR MADLANGA SC: Next to each one of
30 those bodies?
31 CAPTAIN MOHLAKI: That's correct, Chair.
32 CAPTAIN MOHLAKI: That's correct, Chair.
33 and commissioners.
34 CHAIRPERSON: There were nine bodies, how
35 many weapons? I said there were nine bodies, how many
36 weapons did you find?
37 CAPTAIN MOHLAKI: I never counted the
38 weapons individually because they were just lying around.
39 MR MADLANGA SC: Did you find any
40 cartridge cases close to or in the vicinity of bodies D to
41 M?
42 CAPTAIN MOHLAKI: No cartridge cases were
43 recovered around those bodies.
44 MR MADLANGA SC: Not within three metres
45 of those bodies?
46 CAPTAIN MOHLAKI: Not at all, Chair and
47 commissioner.
48 MR MADLANGA SC: If I were to stretch it
49 and say within four metres of the bodies?
50 CAPTAIN MOHLAKI: Not at all, Chair and
that each one of these people, or rather of the deceased people. Had. So we will just tweak it a little bit, and have it in an acceptable format, thank you.

CHAIRPERSON: I don’t know if this will be possible, but I think an attempt should be made to achieve agreement on what I am now going to talk about, and that is, may be possible to get agreement on the distance from which the shots were fired, in the case of those who have bullet wounds, because if that can be the subject of agreement, it may eliminate a fair amount of cross-examination and save quite a lot of time. I haven’t studied the post-mortem reports from that point of view myself but you know, sometimes there are powder marks, and that kind of thing, according to the books on forensic medicine, and it is possible to ascertain with a fair degree of accuracy from what distance a weapon was fired which inflicted a particular shotgun - a particular wound on, a firearm wound on a corpse. So if that could be the subject of agreement before, a matter actually canvassed before the Commission, that might save a lot of time and also.

MR MADLANGA SC: Chair, will I guess the legal teams will have to engage each other and see if agreement can be reached on that. Thank you very much, Chair. Captain, can we now go to body O, and Chair,

1st to 31st October 2012

Marikana

Rustenbury

[INQUIRY ADJOURS INQUIRY RESUMES]


MR MADLANGA SC: Thank you, Chair and Commissioners. Chair, may I ask to take the Commissioners back to body N. Chair, we were corrected and assisted by Mr Mpofu’s team, and they said the name there should be Mr Makhosandile Mkhonjwa. Makhosandile, M-A-K-H-O-S-A-N-D-I-L-E, and Mkhonjwa, M-K-H-O-N-J-W-A. Thank you, Chair.

CHAIRPERSON: Yes, thank you, it’s important that people’s names be correct, not only for the family but generally, I think, to help us. MR MADLANGA SC: That is so, Chair, and I apologise for the - and may I also just add, Chair, that we will look more closely at it, and we propose just preparing a little schedule, which will reflect the letters, the post-mortem numbers and then the names, and we hope that at that stage, everything will be exactly as it should be.

CHAIRPERSON: That will be very helpful, and it will actually save a lot of time as well because then we don’t have to have cross-examination about what wounds did body N have, because we will know objectively as it were, what the correct facts are.

MR MADLANGA SC: Also I might add that my learned junior, Mr Mojapelo, has already prepared a schedule that actually sets out all the types of injuries that each one of these people, or rather of the deceased people, had. So we will just tweak it a little bit, and have it in an acceptable format, thank you.

CHAIRPERSON: I don’t know if this will be possible, but I think an attempt should be made to achieve agreement on what I am now going to talk about, and that is, may be possible to get agreement on the distance from which the shots were fired, in the case of those who have bullet wounds, because if that can be the subject of agreement, it may eliminate a fair amount of cross-examination and save quite a lot of time. I haven’t studied the post-mortem reports from that point of view myself but you know, sometimes there are powder marks, and that kind of thing, according to the books on forensic medicine, and it is possible to ascertain with a fair degree of accuracy from what distance a weapon was fired which inflicted a particular shotgun - a particular wound on, a firearm wound on a corpse. So if that could be the subject of agreement before, a matter actually canvassed before the Commission, that might save a lot of time and also.

MR MADLANGA SC: Chair, will I guess the legal teams will have to engage each other and see if agreement can be reached on that. Thank you very much, Chair. Captain, can we now go to body O, and Chair,
1st to 31st October 2012

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MR MAHLANGU:    And BB1 where you say
cartridge, would that have been the full, full, what in
loose terms or colloquial would refer to as a bullet?

CAPTAIN MOHLAKI:   The whole -
7
MR MAHLANGU:    The case and the
8
projectile?
9
CAPTAIN MOHLAKI:    That is correct.
10
Perhaps, let me just refer to B59, that is they show you
where you have the photographs or sketches. Mr Chairman,
Commissioners, there's an indication on what these things
are, so there is a reference to cartridge and one can see
that's the whole unit as it were at number 8, and cases at
9, that's the empty thing and so on and so on.

CHAIRPERSON:    I think you used the
expression “projectile,” to indicate the cartridge,
preumably consists of the case and what you call the
projectile. Probably we can stick to that terminology and
then we know what's being talked about.

MR MADLANGA SC:    Thank you very much,
Chair. Now you've referred to, were you at - are you done
with BB2 to BB5 on page 2 of your key?

CAPTAIN MOHLAKI:    Correct, Chair and
Commissioners.

Page 734
1
MR MADLANGA SC:    And proceed, please.
2
CAPTAIN MOHLAKI:   BB6, on this cluster of
3
BB4 to BB8 shows the position of 9 millimetre cartridge
case, with that blue icon.
4
MR MADLANGA SC:    And what was that blue
icon? Or rather what does it represent?
5
CAPTAIN MOHLAKI:   Nine millimetre
cartridge case.
6
MR MADLANGA SC:    Was it all by itself or
was it in a cluster with other items perhaps, or not?
7
CAPTAIN MOHLAKI:   Yes, Chair, they were
on this cluster of cartridges, of rifle cartridges.
8
MR MADLANGA SC:    And those are marked,
what?
9
CAPTAIN MOHLAKI:   BBs.
10
MR MADLANGA SC:    Sorry?
11
CAPTAIN MOHLAKI:   The BB1 to BB8.
12
MR MADLANGA SC:    Okay. Those being what
cartridge cases?
13
CAPTAIN MOHLAKI:   Ja, BB1 is a rifle
14
cartridge, the whole bullet, BB1. Then BB2 to BB5 is rifle
cartridge cases, BB6 is a nine millimetre cartridge case.
15
MR MADLANGA SC:    The next entry BB7 to
16
BB35.
17
CAPTAIN MOHLAKI:   Is this clusters of
18
rifle position of rifle cartridge cases.
19
MR MADLANGA SC:    36, BB36?
20
CAPTAIN MOHLAKI:   BB36 was around this
cluster of BB1 to 3, to BB48, it was a position of a
fragment.
21
MR MADLANGA SC:    Can you please indicate
22
or describe what a fragment is?
23
CAPTAIN MOHLAKI:   Fragments, I would say
24
is a bullet that maybe is damaged by hitting something.
25
You cannot maybe identify it correctly that is a bullet or
it is a bullet cover, so it falls under the group of
fragment.
26
[11:46]    MR MADLANGA SC:    And the next entry?
27
CAPTAIN MOHLAKI:   It’s T, on top of the
rock.
28
MR MADLANGA SC:    No, please go down, or
are you done with 37 to 41?
29
CAPTAIN MOHLAKI:   41, oh. 37 to 41 is
the position of rifle cartridge cases. On this cluster
with the big icon.
30
MR MADLANGA SC:    And P?
31
CAPTAIN MOHLAKI:   P shows the position of
9 millimetre cartridge case on top of the rock.
32
MR MADLANGA SC:    Was it all by itself, or
was it in a cluster?
1st to 31st October 2012

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1 towards O, so it started, the T1 to T3, they were just
going towards the body O.

2 MR MADLANGA SC: Is it so that you have
certain measurements at B58 – you have certain measurements
that you made and which you reflect in this slide, is that
not so?

3 CAPTAIN MOHLAKI: Concerning which
measurement between which one and one?

4 MR MADLANGA SC: No, no, you made certain
measurements.

5 CAPTAIN MOHLAKI: Oh, that’s correct,
that’s correct, Chair and Commissioners.

6 MR MADLANGA SC: Thank you. Now, entry
U1 to U6, what does that depict?

7 CAPTAIN MOHLAKI: It also shows the
position of rifle cartridge cases that were clustered.

8 MR MADLANGA SC: The next entry?

9 CAPTAIN MOHLAKI: Is V1 to V3. There
were a cluster rifle cartridges that were closer to body O.

10 MR MADLANGA SC: You said cartridges, is
that what they were?

11 CAPTAIN MOHLAKI: Ja, V1 to V3, were
rifle cartridge cases.

12 MR MADLANGA SC: And Y1 to Y9?

13 CAPTAIN MOHLAKI: Y1 to Y9 is the shotgun
cartridge case that was in this cluster of AA1 to AA11,
which were shotgun cartridge cases.

14 MR MADLANGA SC: And AA13 to AA24?

15 CAPTAIN MOHLAKI: AA13 to AA24, it was a
cluster of 9-millimetre cartridge cases.

16 MR MADLANGA SC: Where there any
cartridges of different type close to them or not?

17 CAPTAIN MOHLAKI: Not at all, Chair and
Commissioners.

18 MR MADLANGA SC: AA25 to AA27?

19 CAPTAIN MOHLAKI: It was just a cluster
of shotgun cartridge cases.

20 MR MADLANGA SC: Now, your sketch refers
to AA25 to 29, which is not the same as what the Google map
indicates, can you just explain that?

21 CAPTAIN MOHLAKI: AA25 to AA28, these two
icons, they are representing two different shotgun –
ammunition types, so this white one, it was for shotgun,
and this blue one, it was for 9-Millimetre, but they were
in the same cluster.

22 MR MADLANGA SC: Continue.

23 CAPTAIN MOHLAKI: AA30 to AA42 were the
rifle cartridge cases that were running, starting somewhere
here on this passage.

24 MR MADLANGA SC: Yes, continue.

25 CAPTAIN MOHLAKI: So we have to go to the
slide of sketch plan. CC1 is the exhibit that was
recovered with IPID members on the 31st of August 2012. So
it was a bullet.

26 MR MADLANGA SC: Yes, continue.

27 CAPTAIN MOHLAKI: And just next to the
bullet, there was on top of the rock, there a blood shot, a
possible blood that I shot on that day.

28 MR MADLANGA SC: Yes?

29 CAPTAIN MOHLAKI: And the CC2, it was at
the edge of that big rock, of that P, Q1, R5, just on the
edge, it was a rifle cartridge case.

30 MR MADLANGA SC: And these two you found
when you revisited the scene with members of IPID?

31 CAPTAIN MOHLAKI: Ja, actually the
members of IPID called me, that they’ve got information
that there are some cartridges at the crime scene, then I
met them at the scene.

32 MR MADLANGA SC: And you found CC1, AC,
BCC, and CC2 on that day?

33 CAPTAIN MOHLAKI: That’s correct, Chair
and Commissioners.

34 MR MADLANGA SC: And M5?

35 CAPTAIN MOHLAKI: M5, I visited the scene
of Pretoria SSN, ballistic section. So it was trapped on
MR MADLANGA SC: It was brought to your attention by the ballistics experts?
CAPTAIN MOHLAKI: That's correct, Chair and Commissioner.
MR MADLANGA SC: You may already have given evidence on this, isn't there something that you found on the 1st of October 2012, when the Commission was conducting an inspection in loco at scene 2?
CAPTAIN MOHLAKI: Yes, we did recover something.
MR MADLANGA SC: And what was it and where is it depicted?
CAPTAIN MOHLAKI: Where I've marked CC3.
MR MADLANGA SC: On the sketch not on the Google map?
CAPTAIN MOHLAKI: No, not on the Google map on the sketch.
MR MADLANGA SC: Now, let's go to – did you say what it was?
CAPTAIN MOHLAKI: It was a 9-Millimetre cartridge case.
MR MADLANGA SC: Next page after your key, you have certain totals there. I will not ask you to go through them. Do you confirm the totals that you give there? The correctness thereof, that is?
CAPTAIN MOHLAKI: Maybe I have to explain, Chair and Commissioner, if you take it from top, I'm saying exhibit collected on 2012.08.16 to 2012.08.17, then immediately after, then there is an additional collection of exhibits, then I specify the date. So, for example, if on number 1, I say total is 67, it doesn't include the one that I've collected on the 31st of August, but roughly we can add it, if the Commission and the Chair allow me to do that?
MR MADLANGA SC: Okay, I think we can all do that exercise, unless perhaps the Commission and other colleagues here, might want to take you though that document. Then you skip the next page, and go to the page thereafter, B58, there you have measurements, do you confirm the correctness of what you have there?
CAPTAIN MOHLAKI: That's correct, Chair and Commissioners.
MR MADLANGA SC: And, according to that, what was the distance between body N and the closest cartridge case or cases?
CAPTAIN MOHLAKI: Body N, the closest cartridge was AA -
MR MADLANGA SC: Cartridge case, not cartridge.
CAPTAIN MOHLAKI: Cartridge case, oh correct, thanks, thanks for the correction. The closest body – the closest cartridge case to body N was 20.2 metres, AA13.
MR MADLANGA SC: Mr Chairman, Commissioners, the pages that follow after the measurements and B59, which we've already had a look at, are photographs of the bodies. Chair, we just skip –
CHAIRPERSON: Is it necessary for us to see –
MR MADLANGA SC: I was going to say we can just –
CHAIRPERSON: If they're exhibited on the screen, they may be the bodies of loved ones of some of the people in the auditorium, and it may cause them a lot of stress and a lot of unhappiness.
MR MADLANGA SC: Yes. I actually wanted to suggest, Chair, that we can just skip all of those, yes. Then can we go to the slide where you have traditional weapons on top of a blanket. That's B81, Commissioners.
Where did you find these, and when you found them were they in this collection?
CAPTAIN MOHLAKI: I did find at the crime scene. They were in this position.
MR MADLANGA SC: And can you indicate where they were on the Google map?
CAPTAIN MOHLAKI: That's correct. I'm going to a Google map.
MR MADLANGA SC: Yes, now that you are there, where was it?
CAPTAIN MOHLAKI: They were lying on this area.
MR MADLANGA SC: And you've marked them what?
CAPTAIN MOHLAKI: No, they were not marked anything, because I was told that the police, they were the one who picked them were they were lying and they were brought on that area.
MR MADLANGA SC: Can you now please put your hand over the – yes, yes, and flip back to just after that blanket. Yes, B82, That is the next stage, yes, yes, and can you describe what this about?
CAPTAIN MOHLAKI: It is a firearm pistol that I indicted earlier that I marked point F, surrounded
by some weapons.

MR MADLANGA SC: And B83, the next page that depicts the same scene, not so?

[12:06] CHAIRPERSON: Can I just ask a question about B82, while we're about it. Is that the pistol that you said that takes 15 cartridges and had 15, so it hadn't been fired?

CAPTAIN MOHLAKI: That's correct, Chair and Commissioners.

CHAIRPERSON: Then there's two other pistols which you photographed, they were found, according to what you were told they were found in possession of people who were arrested. Is that correct?

CAPTAIN MOHLAKI: That's correct, Chair and Commissioners.

CHAIRPERSON: And there was also ammunition in the pistols?

CAPTAIN MOHLAKI: That's correct, Chair.

CHAIRPERSON: Were you able to ascertain whether those pistols had been fired or were, they had clearly not been fired because they were full, you know, or are you not able to say?

CAPTAIN MOHLAKI: Let me explain the position of the firearm. I recover one pistol, there was and Commissioners.

only two rounds, cartridges, and the other one there were six. So I took them to Pretoria FSL for testing. Unfortunately I don't have any feedback if it was, but this is what I did.

CHAIRPERSON: Has that information come back to you yet so that you can give it to us in due course, or is it still awaited?

CAPTAIN MOHLAKI: I understand where the, our norm or procedure, when I took the exhibit to Forensic I state on my report that when they’re finished with their investigation they must just direct that, the reports to the relevant – officer. In this case I indicated that they must refer the – back to IPID.

MR MADLANGA SC: - in due course.

CHAIRPERSON: - tell us about those pistols found in possession of arrested people. Is that correct?

CAPTAIN MOHLAKI: That’s correct -

CHAIRPERSON: - tell us that this pistol was obviously not fired at B as far as you can see?

CAPTAIN MOHLAKI: No –

CHAIRPERSON: - cartridges, it had 15 cartridges in it and unless it was reloaded at some stage during the proceedings then it wasn't fired. Is that right?
<table>
<thead>
<tr>
<th>Page 749</th>
<th>Page 751</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>movement, then when I locate Colonel Pitsi he indicated to me that is the Nyala, then I went and inspect it. Then we managed to videograph it on the, Constable Molefe, he managed to videograph it.</td>
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<td>MR MADLANGA SC:</td>
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<td>That’s correct, Chair</td>
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<td>MR MADLANGA SC:</td>
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<td>the Nyala, or were you shown anything on it?</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>driver of the Nyala.</td>
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<td>What did he or she show you and then can you indicate that to us in the photographs?</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>and Commissioners. He indicated to me that when he inspect the vehicle in the morning, this mark was not there, this mark was not there.</td>
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<td>MS HEMRAJ SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<th>Page 752</th>
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<td>driver was?</td>
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<td>CAPTAIN MOHLAKI:</td>
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indicated to me that this mark here and this mark here and this mark, when he inspect the Nyala, was not there.

MR MADLANGA SC: And who is the person that you are talking about? Who is it that said all these things?

CAPTAIN MOHLAKI: It was Constable Dlamini.

MR MADLANGA SC: And who is the person that you are talking about? Who is it that said all these things?

CAPTAIN MOHLAKI: Constable Dlamini.

MR MADLANGA SC: And he said the marks that you are indicating were not there when? When he was inspecting it when exactly?

CAPTAIN MOHLAKI: The way I interview him, he was explaining to me that on the day of the 16th this mark, when he was inspecting the vehicle in the morning, were not there. So that is why I’m saying I cannot confirm, but I’ve got that feeling that it’s the same driver who was driving the Nyala on the 16th because the incident happened, I saw the Nyala around 19:00 and he was referring to me that on the 16th in the morning when he inspect the Nyala there was not these marks, and after the incident I never communicated with him directly. I communicated this with Colonel Pitsi. Then I met the Constable Dlamini at Lonmin on the 22nd to photograph it. That is when he explained to me that on the 16th those marks were not there when he inspect the Nyala. So I just presumed the possibility of him driving that Nyala on the 16th is there, but I cannot confirm.

MR MADLANGA SC: So you yourself only saw those marks for the first time at Lonmin a few days after the 16th, the marks that you’re indicating on this picture?

CAPTAIN MOHLAKI: Not at all. I saw them on the 16th during the night, but Colonel Pitsi is the one who indicated that to me and we only videographed them. Then on the 22nd I met the driver, then I interviewed the driver to indicate to me the – because now I want to take photos, not video. That is when he indicated to me that in the morning the Nyala, of the 16th, the Nyala was not having these marks.

CHAIRPERSON: What exactly do we see on this picture, or what is it that has these marks on it?

CAPTAIN MOHLAKI: Allow me, Chair, to come and show you maybe on this, maybe it will be easy, or indicate the –

CHAIRPERSON: Just tell me in one, what is it that we see on the picture? We see something with green –

CAPTAIN MOHLAKI: Ja, he showed me those small marks there.

MR MADLANGA SC: Please use your pointer and indicate the –

CHAIRPERSON: No, I can see the marks but...
1st to 31st October 2012
Marikana
Rustenburg

Page 757

1 CAPTAIN MOHLAKI: Sorry?
2 CHAIRPERSON: Have you seen the video
3 film that he took at the initial stages at scene 2?
4 CAPTAIN MOHLAKI: That's correct, Chair.
5 CHAIRPERSON: So it is available?
6 CAPTAIN MOHLAKI: That's correct.
7 CHAIRPERSON: And there was no problem
8 with his video camera, it was working properly, was it?
9 CAPTAIN MOHLAKI: Unfortunately, he told
10 me that the time, he's got a problem with the time. Then I
11 advised Constable Molefe that we have to book that camera
12 to SAP13 so that when there's a need, or there's a
13 confusion about time, we can draw it then anybody can see
14 if there's a problem with time or not.
15 CHAIRPERSON: Yes, apart from the timing
16 problem, which presumably can be sorted out by checking the
17 camera against a watch that's correct, apart from that it
18 was working properly, was it?
19 CAPTAIN MOHLAKI: It was working, Chair.
20 CHAIRPERSON: Ja, thank you.
21 [12:26] COMMISSIONER HEMRAJ: Captain, when you
22 were in the holding area right at the beginning of the
23 incident and you were called to attend scene 1, what time
24 were you summoned to come to scene 1?
25 CAPTAIN MOHLAKI: I never recorded the

Page 758

1 time because the communication was not directed direct to
2 me. It was my members and the members of detective under
3 the supervision of Captain Ngcobo. The communication
4 received, the call was received by Captain Ngcobo and
5 Captain Ngcobo is the one who informed me that we are
6 called at the scene to process, but I never recorded that
7 exact time.
8 COMMISSIONER HEMRAJ: Alright, you told
9 us you arrived at scene 1 at five minutes past four in the
10 afternoon.
11 CAPTAIN MOHLAKI: Sorry?
12 COMMISSIONER HEMRAJ: You arrived at
13 scene 1 at five minutes past four in the afternoon.
14 CAPTAIN MOHLAKI: Around four o'clock,
15 scene 1.
16 COMMISSIONER HEMRAJ: How long would it
17 have taken you to get from the holding area to scene 1?
18 CAPTAIN MOHLAKI: It's not a distance but
19 because we struggled to get there - because when I checked
20 my measurement from scene 2 to where we were held, it was
21 1.8 kilos, kilometres. Then we just struggled to get to
22 the scene because it was the first time most of us, if not
23 all of us, to visit that area so we have to struggle to get
24 to that scene. So - but I will estimate maybe 20 minutes,
25 15 minutes, 20 minutes.

Page 759

1 COMMISSIONER HEMRAJ: Sorry, just let me
2 understand this. 20 minutes to get from the holding area
3 to scene 1?
4 CAPTAIN MOHLAKI: Correct, Chair and
5 commissioners.
6 COMMISSIONER HEMRAJ: And you've told us
7 that when you arrived at scene 1 you didn't hear any
8 shooting thereafter.
9 CAPTAIN MOHLAKI: That's correct, Chair
10 and commissioners.
11 COMMISSIONER HEMRAJ: Thank you, Captain.
12 CHAIRPERSON: Mr Semenya, would you like
13 to ask any questions in cross-examination?
14 MR SEMENYA SC: Chair, subject to your
15 direction, is it possible that we come almost last in our
16 questioning?
17 CHAIRPERSON: No, certainly. If you wish
18 to reserve your cross-examination - if you would prefer to
19 reserve your cross-examination at this stage and cross-
20 examine later after some or all of your colleagues have
21 cross-examined, then you may do so.
22 MR SEMENYA SC: That's our preference,
23 Chair.
24 CHAIRPERSON: Right. Mr Burger, do you
25 have a similar preference or would you like to cross-

Page 760

1 examine now?
2 MR BURGER SC: Sir, my learned friend Mr
3 Madlanga has spoken to me and we should really come at the
4 end. This is not our debate. I wonder whether my
5 colleagues to the left may want preference on –
6 CHAIRPERSON: Yes, after you is Mr Tip
7 and after him is Mr Bruinders, after him Mr Bizos and then
8 Mr Mpofu and I don't know whether Mr Ntsebeza, who is not
9 available today, has got someone standing in for him – but
10 anyway we'll get there when we get there. You want to
11 reserve cross-examination as well, then I'll ask Mr Tip if
12 he'd like to cross-examine now.
13 MR TIP SC: We're in the same position,
14 Mr Chair, we think that the others should go first and I
15 understand that they would prefer to.
16 CHAIRPERSON: Mr Bruinders, would you
17 like to cross-examine now?
18 MR BRUINDERS SC: It's a bit like an
19 auction, isn't it Mr Chair?
20 CHAIRPERSON: No, it's the opposite,
21 people are declining, they're not bidding.
22 MR BRUINDERS SC: We do, we do though
23 need to take a couple of instructions arising out of some
24 of the matters.
25 CHAIRPERSON: Okay, let me ask Mr Bizos
1st to 31st October 2012

Marikana

Rustenburg

1 if he’d like to cross-examine now. Let the advocate who is ready commence with his cross-examination and you can come later.
2 CROSS-EXAMINATION BY MR BIZOS SC: Thank you. Captain, let’s start at the beginning. You were called to a briefing session early in the morning of the 16th.
3 CAPTAIN MOHLAKI: Correct, Chairperson.
4 MR BIZOS SC: You went to it.
5 CAPTAIN MOHLAKI: Correct.
6 MR BIZOS SC: What time did you get there?
7 CAPTAIN MOHLAKI: 06:05.
8 MR BIZOS SC: I’m glad that you keep a diary, it may become helpful later in our questioning you.
9 CAPTAIN MOHLAKI: Myself, I was informed by Colonel Botha that I have to attend the briefing but at the briefing itself there were General – the surname, I’m struggling to pronounce the surname of the General – Addandal or what.
10 CAPTAIN MOHLAKI: If you don’t get it quite right, we’ll guess. Just give us the name as you remember it.
11 CAPTAIN MOHLAKI: 06:05.
12 MR BIZOS SC: I think it.
13 CAPTAIN MOHLAKI: There was General Addandal –
14 CHAIRPERSON: It sounds like General Annandale. I think he’s a Major-General Annandale.
15 CAPTAIN MOHLAKI: That’s correct, Chair.
16 MR BIZOS SC: Yes, General Annandale, yes?
17 CAPTAIN MOHLAKI: Brigadier Van Zyl.
18 MR BIZOS SC: Yes?
19 CAPTAIN MOHLAKI: Brigadier Calitz.
20 MR BIZOS SC: Yes?
21 CAPTAIN MOHLAKI: Lieutenant-Colonel Scott.
22 MR BIZOS SC: Yes?
23 CAPTAIN MOHLAKI: And about all the section leaders of different units represented.
24 MR BIZOS SC: So it was a full house of senior police officers.
25 CAPTAIN MOHLAKI: I will agree with you on that, Chairperson.
26 MR BIZOS SC: Yes. Did each one of them speak during this briefing because I understand it lasted a couple of hours?
27 CAPTAIN MOHLAKI: Ja, it was a normal process of, we give the strength, Colonel Scott will write on the board – for example LCRC how many are you, we are four, mounted unit, all the reps that were there and they, General Annandale just briefed us on the duties of the day.
28 Then I was –
29 MR BIZOS SC: That’s what we would like to hear about. Would you please try and remember what General Annandale told - how many policemen were there first of all, how large was the audience?
30 CAPTAIN MOHLAKI: I don’t have a total number Chair, but –
31 MR BIZOS SC: More or less.
32 CAPTAIN MOHLAKI: Ja, I’m coming. I still remember there were some members from other provinces that they were reported, they are still driving, because it was initial stage so most of the members were travelling home and coming to Lonmin. So on that day we were just given the numbers and you indicate if your members are already arrived, yes or no. So some indicated that they are still coming, some indicated that they are there.
33 MR BIZOS SC: Make an allowance for latecomers, how many policemen were there that the generals and the brigadiers and the colonels addressed?
34 CAPTAIN MOHLAKI: Oh, in our briefing I will estimate about 20 to 30.
35 MR BIZOS SC: People who spoke?
36 CAPTAIN MOHLAKI: In the briefing?
37 MR BIZOS SC: In the briefing?
38 CAPTAIN MOHLAKI: That’s correct.
39 CHAIRPERSON: Is that people who spoke or people who were there to hear the briefing?
40 CAPTAIN MOHLAKI: They were group leaders of different sections.
41 CHAIRPERSON: I understand, but how many people attended the briefing? How many people were in what one can describe as the audience, who were being briefed?
42 CAPTAIN MOHLAKI: It’s two-way. They were briefed and they were submitting their strength. We were submitting the strength. After submitting the strength they will brief, they brief us what is the plan for today on that briefing.
43 MR BIZOS SC: In all, how many people were in the area where the meeting or the briefing took place? How many people were there?
44 CAPTAIN MOHLAKI: That is why I’m estimating 20 to 25 or 30. I never counted because there was movement of in, out, in, going to verify something, coming in, out.
45 MR BIZOS SC: 20, 25 leaders and a lot of non-leaders, or was it just a meeting of leaders?
1st to 31st October 2012
Marikana
Rustenburg

Page 765
1 CAPTAIN MOHLAKI: They were – the meeting
2 between the top, maybe let me say top officers or senior
3 officers with the group leaders because some of the group
4 leaders were captains, some were lieutenant-colonels, some
5 were full colonels.
6 MR BIZOS SC: There were no constables or
7 sergeants or warrant officers?
8 CAPTAIN MOHLAKI: If I remember well,
9 because there was a radio that was supposed to be operated
10 there, I did identify a constable coming in and out but he
11 was just in that room, not as a part of briefing.
12 MR BIZOS SC: I still don't have a clear
13 answer from you. In all, irrespective of rank, how many
14 people were there at this meeting?
15 CAPTAIN MOHLAKI: I estimate between 25 -
16 20, 25, 30.
17 MR BIZOS SC: Thank you for that. Now, try
18 and remember what did they say about a crime scene?
19 What crime did they expect to be committed that made it
20 necessary for the leaders to gather? What crime was
21 expected to be committed?
22 CAPTAIN MOHLAKI: On that day the
23 briefing was, you LCRC members, you'll be on standby
24 because there is an information or agreement that was
25 reached during the negotiations that the people will be

Page 766
1 gathering at the koppie, they will be coming in and handing
2 in their traditional weapons and possible unlawful
3 ammunition or arms that will be in possess and they will
4 withdraw. From there they are going to call us with those
5 group of detectives to come and document those weapons that
6 were left at the koppie.
7 MR BIZOS SC: Did any of the leaders
8 suggest that there may be violence committed, either by the
9 people on the koppie or by the police?
10 CAPTAIN MOHLAKI: No, I never heard that
11 information, sir.
12 MR BIZOS SC: So that, according to you,
13 the police were not expecting any trouble, if what you're
14 telling us is correct.
15 CAPTAIN MOHLAKI: I’m not saying they
16 were not expecting it may be any trouble, but I’m
17 responding to the question of I got information that there
18 may be. That is my answer. No, I never heard that
19 information.
20 MR BIZOS SC: You were not expecting any
21 trouble?
22 CAPTAIN MOHLAKI: If I receive
23 information that they are saying they are going to hand
24 over their traditional weapons and withdraw and it's the
25 information that is in my disposal, I won't expect anything

Page 767
1 wrong with that.
2 MR BIZOS SC: Was an officer who has the
3 name of Captain Kidd – I don’t know if it’s his real name
4 or whether it’s a literary name but it’s the name that I
5 have – was he there?
6 CAPTAIN MOHLAKI: I won’t know if he was
7 there or not because I was not recording the names of the
8 people who were attending that morning briefing.
9 MR BIZOS SC: Did you not, or did anyone,
10 or you don't know Captain, did anyone say that there were
11 armed people that may not disperse and that they may have
12 to force them to disperse? Did anyone say that?
13 CAPTAIN MOHLAKI: Not at all, Chair and
14 commissioners.
15 MR BIZOS SC: Nobody referred to the
16 people on the koppie as criminals?
17 CAPTAIN MOHLAKI: Not at all, Chair and
18 commissioners.
19 MR BIZOS SC: Nobody referred to that two
20 policemen had been killed by these criminals?
21 CAPTAIN MOHLAKI: No-one indicated to me
22 on that briefing, sir.
23 MR BIZOS SC: Did anybody say that this
24 business of gathering on the koppie was going to be put to
25 an end on that day?

Page 768
1 CAPTAIN MOHLAKI: Not at all, Chair.
2 MR BIZOS SC: Was there anyone there not
3 wearing ordinary police uniform but a sort of a – what do
4 they call it - camouflage uniform and a beret? Was there
5 any such person there?
6 CAPTAIN MOHLAKI: Ja, I did manage to see
7 members who were wearing camouflage.
8 MR BIZOS SC: And berets?
9 CAPTAIN MOHLAKI: That's correct.
10 MR BIZOS SC: Are they a very special
11 unit?
12 CAPTAIN MOHLAKI: To my understanding,
13 yes, they have got the division that they are falling on.
14 MR BIZOS SC: Why are they called a
15 special unit?
16 CAPTAIN MOHLAKI: I don’t know if they
17 are called a special unit but I know they are calling TRT
18 and special task force.
19 MR BIZOS SC: Did anyone in that uniform
20 and a beret address the gathering?
21 CAPTAIN MOHLAKI: In my presence, no.
22 MR BIZOS SC: Why would the meeting have
23 lasted over two hours if it was only to inform you that you
24 must be there in order to record the arms that had been
25 surrendered?
MR BIZOS SC: The holding area. And when did you leave that holding area? [12:46]

CAPTAIN MOHLAKI: Unfortunately I never recorded the time because the time because Captain Ngcobo just informed me that that they are calling us to come and process the crime scene but what I can recall is that around four o'clock we were at that scene that we are saying we must refer it as Scene 1, next to the kraal.

MR BIZOS SC: What time did you start off driving to the – to Scene 1? Where were you at about quarter to four, for instance?

CAPTAIN MOHLAKI: I must be maybe at the area of hold – that we were still at that holding area.

MR BIZOS SC: How long does it take to come from the holding area to the Scene 1?

CAPTAIN MOHLAKI: I never recorded the time, but it's not so far, it's close but we just struggled to, because when I make my measurement, it gives me 1.8 kilometres from where we were to Scene 2, not Scene 1, to Scene 2.
1 first to 31st October 2012 Marikana Rustenburg

2 CAPTAIN MOHLAKI: I did observe that, because when we arrived the paramedics and the police were moving around the scene and the bodies.

3 MR BIZOS SC: And you didn't hear any shots?

4 CAPTAIN MOHLAKI: Not at all.

5 MR BIZOS SC: Oh, very well. Did you ask what happened? Why are there dead people? I thought we were coming to count traditional weapons, what are 14 or 15 bodies doing on the ground?

6 CAPTAIN MOHLAKI: That's true, I just asked myself, now what happened, then because I have to locate where is Brigadier Naidoo, who must explain to me now what happened.

7 MR BIZOS SC: Well, did you need to go so high, maybe he was still busy somewhere else, helping in killing the other people nearby. Did you ask anybody –

8 CHAIRPERSON: Sorry, that's inappropriate comment, Mr Bizos.

9 MR BIZOS SC: Well, because we have evidence that he was actually at the klein koppie, this is why I was –

10 CAPTAIN MOHLAKI: I never got that chance to ask him, because he just indicated to me, this is a crime scene. We know what to do. And he also informed me that there is a possibility of the IPID will come and investigate the scene – the case.

11 MR BIZOS SC: Who will come?

12 CAPTAIN MOHLAKI: They will come and investigate the case.

13 MR BIZOS SC: Who will come?

14 CAPTAIN MOHLAKI: IPID, Independent Police Investigation Directorate.

15 MR BIZOS SC: What were you asked to do?

16 CAPTAIN MOHLAKI: To videograph the scene as the scene as it is, but mind you, if you see something that it may help us, you must just videograph it, even if you have not yet make a proper walk through.

17 MR BIZOS SC: Did you make a video?

18 CAPTAIN MOHLAKI: Constable Moleswe, if you can see you won't be able to make a proper walk through, so the best thing to do you have to record the video as the scene as it is, but mind you, if you see something that it may help us, you must just videograph it, even if you have not yet make a proper walk through.

19 MR BIZOS SC: Did you make a video?

20 CAPTAIN MOHLAKI: Constable Moleswe did make a video.

21 MR BIZOS SC: Of what did he make a –

22 CAPTAIN MOHLAKI: He videographed the movement of the police, the movement of the paramedics around the medical, temporary medical centre, and some of the bodies that he managed to saw them, when he was walking with a video camera.
1st to 31st October 2012
Marikana
Rustenburg

Page 777

1 MR BIZOS SC: You stayed there overnight,
2 if I understood you correctly.
3 CAPTAIN MOHLAKI: That is correct, Chair.
4 MR BIZOS SC: And if I may say so, with
5 respect you appear to have gathered very useful information
6 which must be available on the video.
7 CAPTAIN MOHLAKI: Not all of them will
8 appear to explain that, the cartridges were recovered to
9 early hours of the 17th, and the day of the 17th, so most of
10 the videos that were recorded by Constable Moleswe, will
11 cover the movement of paramedics, police, and some of the
12 bodies, dead bodies.
13 MR BIZOS SC: Although you do not give an
14 indication in your statement that you are a detective, I
don’t suppose that you could become a captain without being
16 quite a good detective in order to know what material to
17 gather.
18 CAPTAIN MOHLAKI: To respond on that, I
19 am falling under the National Commissioner from the
20 National – it is a long, actually SAPS is a big
21 organisation, with aim of achieving one goal, common
22 purpose, under the SAPS there are divisions, so myself I am
23 falling under the division of forensic.
24 MR BIZOS SC: Yes, I know that. What I
25 am asking you is that you can’t be good in your branch of

Page 778

1 the service without having detective instincts and
2 detective experience and be guided what I have to look for,
surely that must be part of your experience and your
3 training.
4 MR MADLANGA SC: Mr Chairman,
5 Commissioners, I have no idea what the detective instinct
7 is, perhaps my learned friend –
8 CHAIRPERSON: Not being asked a question.
9 Mr Madlanga, that –
10 MR MADLANGA SC: Chair, this speaks to
11 the fairness of the question and if it is not clear –
12 CHAIRPERSON: Okay, I take it. Mr Bizos,
13 the point taken is your question isn’t as clear as you are
14 capable of making it, the suggestion is that you formulate
15 it with more precision.
16 MR BIZOS SC: Yes. You knew what
17 evidence would be relevant in relation to the commission of
18 a crime, in order to choose what evidence you will gather,
19 what evidence you will note where it was found, and you
20 would know that the space between a dead body and where the
21 cartridges were, are important factors.
22 CAPTAIN MOHLAKI: That’s correct, you are
23 correct on that statement.
24 MR BIZOS SC: That’s what I meant, I will
25 develop the reason. I didn’t realise it.

Page 779

1 CHAIRPERSON: Mr Bizos, I am just
2 indicating to you, it’s just before one o’clock. If you
3 want me to take the adjournment now, I will. I you would
4 like to carry on a little bit longer to round off the point
5 you are busy with –
6 MR BIZOS SC: No.
7 CHAIRPERSON: - please go ahead.
8 MR BIZOS SC: It’s as good as any other
9 time.
10 CHAIRPERSON: The Commission will adjourn
11 until 2 p.m.
12 [INQUIRY ADJOURNS INQUIRY RESUMES]
13 [14:00] CHAIRPERSON: The Commission resumes.
14 Captain, you’re still under oath. Mr Bizos, you are cross-
15 examining.
16 CROSS-EXAMINATION BY MR BIZOS SC (CONT'D):
17 Yes, Mr Chair. We are apologising to Brigadier -
18 General Naidoo. It was an unfortunate slip of the tongue.
19 What I wanted to put or to say, he may have been at another
20 place where people had been killed but -
21 CHAIRPERSON: I must say I didn’t think
22 that you meant it because I think I know you well enough,
you’re not likely to say things of that kind. Initially I
23 said it wasn’t worthy of you but what I really meant was
24 that you hadn’t done it intentionally and what you said

Page 780

1 wasn’t worthy of you, but anyway –
2 MR BIZOS SC: I knew that he was at the
3 klein koppie, I knew that people died there and instead of
4 saying he may have been at a place where other people had
5 been killed, it slipped out. I unequivocally apologise.
6 Thank you. Captain, did you go to Potchefstroom?
7 CAPTAIN MOHLAKI: Correct.
8 MR BIZOS SC: Were you there for the nine
9 days?
10 CAPTAIN MOHLAKI: Not true.
11 MR BIZOS SC: You were there some of the
12 time?
13 CAPTAIN MOHLAKI: Not true.
14 MR BIZOS SC: Well, please explain -
15 CHAIRPERSON: What’s not true? You say
16 you went to Potchefstroom - nine days, the answer to that
17 one is no. How many days were you there?
18 CAPTAIN MOHLAKI: Okay, let me explain my
19 visit to Potchefstroom.
20 CHAIRPERSON: Yes.
21 CAPTAIN MOHLAKI: I was called by Colonel
22 Botha, that General Naidoo wants to see me at Potchefstroom
23 on that meeting.
24 MR BIZOS SC: Yes.
25 CAPTAIN MOHLAKI: When I arrived there I
1st to 31st October 2012  
Marikana  
Rustenburg

1 met with General Naidoo. Then he indicated to me that he
2 wants to know all the exhibits that were collected at the
3 scene, so I give that number, then I withdraw. I came back
4 to Rustenburg. That was my visit at Potchefstroom.
5 MR BIZOS SC: Oh, I see. I see, you
6 didn't attend a meeting?
7 CAPTAIN MOHLAKI: No, it was not a formal
8 meeting because I just met with General Naidoo and he asked
9 me the exhibits, the information note that I prepared to
10 him, and I withdraw.
11 MR BIZOS SC: Right, I accept that.
12 Thank you for that. Now I'm not going to ask you to
13 express an opinion on it because it's for the Commission to
14 decide but with your experience, the evidence that you have
15 collected, appears on the whole to be that there was a
16 considerable distance between the dead bodies and where the
17 cartridges were. You've got a whole list of distances.
18 You're absolutely sure that that evidence is correct?
19 CAPTAIN MOHLAKI: I'm sure that is
20 correct.
21 MR BIZOS SC: Yes. Now did anybody since
22 these unhappy events occurred, investigating the killings,
23 come to you and ask you for your statement?
24 CAPTAIN MOHLAKI: Not yet. The only
25 people I met, it was members from IPID. They were asking
1st to 31st October 2012

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1 It's 366, Mr Chairman, it's 366. A complaint of murder was
2 - the writing scrawl, Mr Chairman -
3 MR BURGER SC: Chair, if I may assist my
4 learned friend, Obed Mekwe is a Lonmin employee. That's
5 the person my learned friend refers to.
6 MR BIZOS SC: Is he one of the employees?
7 Well, I don't - I have no explanation for that. I have a
8 document here which says that a charge of murder is being
9 investigated by Mr Obed Mekwe. You know nothing about
10 that?
11 CAPTAIN MOHLAKI: Not at all, I don't
12 know nothing.
13 CHAIRPERSON: Sorry to interrupt you.
14 You say you do read the newspapers?
15 CAPTAIN MOHLAKI: That's correct, Chair.
16 CHAIRPERSON: And you do watch television
17 news broadcasts?
18 CAPTAIN MOHLAKI: That's correct, Chair.
19 CHAIRPERSON: One of the things that I
20 think is fairly notorious is that charges of murder were
21 laid, people went publicly - I'm not sure if they were
22 accompanied by the media but they went publicly to the
23 police station and laid charges of murder against the
24 police. I think one can take judicial notice of that.
25 Were you aware of that at all? Did you not read that in

1 the newspapers or see it on television?
2 CAPTAIN MOHLAKI: Okay, I still remember
3 there was, in the media where they were saying Julius
4 Malema was at the police station to open a murder case.
5 That one yes, I do remember, but not Obed.
6 CHAIRPERSON: I don't think Mr Bizos
7 minds who laid the charge, I think Mr Bizos's point is that
8 there was a charge of murder laid. Am I correct, Mr Bizos?
9 MR BIZOS SC: We have on the computer
10 that the charge of murder was laid. Did somebody come to
11 you and say where is the evidence that this was done in
12 self-defence on the evidence that you've gathered? Has
13 nobody come to you?
14 CAPTAIN MOHLAKI: Not at all.
15 MR BIZOS SC: I'm sorry for the delays
16 but the handwriting's poor and -
17 CHAIRPERSON: While you're trying to
18 decipher the handwriting, the witness conceded that despite
19 his earlier statement that he didn't know there was a
20 charge of murder, he had seen in the media that Julius
21 Malema had laid a charge of murder. So he was aware of the
22 fact that there was a charge of murder. That's the point
23 you missed while you were trying to read the handwriting.
24 You might like to proceed.
25 MR BIZOS SC: You say that you - Marikana

1 case 138/08/12, where did you get that docket number from?
2 CAPTAIN MOHLAKI: From the computer in
3 our system.
4 MR BIZOS SC: That is the case which, in
5 terms of what we see on the computer, is the docket of
6 murder against the police.
7 CAPTAIN MOHLAKI: But what I'm seeing
8 here, Chair, it seems it is 148, not 138. I don't know if
9 we are watching the two different screens.
10 MR BIZOS SC: Anyway let me confine, on
11 the advice given to us by the Chairman. Can you explain
12 how an important witness like you, on the issue of whether
13 there is a self-defence or not, has not been interviewed -
14 CHAIRPERSON: Mr Bizos, I don't think
15 that's a fair question. I don't see how the witness can be
16 expected to answer why he wasn't approached and asked for
17 information. The fact, obviously, you can use in argument.
18 It's a question that you could address to those who you
19 would've expected would've approached him but I'm not sure
20 it's fair to ask him why other people didn't approach him.
21 MR BIZOS SC: Yes.
22 CHAIRPERSON: So I'm not allowing that
23 question.
24 MR BIZOS SC: Did you not report to your
25 superior officers that you, as a detective, think it
CAPTAIN MOHLAKI: I won't agree and I won't disagree because I don't know if that same cartridge that you are referring to is 70 metres away, it was directed to the same body that you are referring to 70 metres away, I won't know.

MR BIZOS SC: What was the purpose of you taking the measurements?

CAPTAIN MOHLAKI: The purpose of me taking the measurement is to take the evidence that I'm having to the forensic at Pretoria so that they can handle that department. It's not field of my work.

MR BIZOS SC: At the second scene you found cartridges on top of a rock.

CAPTAIN MOHLAKI: Correct, sir.

MR BIZOS SC: And a body at the bottom of a rock.

CAPTAIN MOHLAKI: Correct, sir.

[14:20] MR BIZOS SC: Did you not think that you should draw to your senior's attention that the self-defence defence would be very difficult, in view of your evidence, how did the cartridges get on top of the rock with the body down below?

CAPTAIN MOHLAKI: If I was aware that the cartridges that were on top of the rocks, the bullets were directed to the body that you are referring to, I will say yes, I will advise them, but I don't know that the cartridges that were on top of the rock they were directed to the body on the edge.

MR BIZOS SC: What are the possibilities or the probabilities?

CAPTAIN MOHLAKI: I was not there, I don't know.

MR BIZOS SC: You are a senior officer in the police force, you have agreed that you would have what we call nouse, a detective's nouse, if you see cartridges on top of a rock –

CHAIRPERSON: I am sorry, Mr Bizos, I know you are Greek speaking, so you know what the word “nouse” means, I am not sure he does.

MR BIZOS SC: I beg your pardon? Oh, I am sorry. In a feeling really, detectives in the feeling, you find cartridges on top of a rock, and the body below, what conclusion do you come to?

CAPTAIN MOHLAKI: That is why I don't have a conclusion, that is why I took all the evidence to forensics to help me on that aspect.

MR BIZOS SC: Captain, why are you so reluctant to admit the obvious?
1st to 31st October 2012  

Marikana  

Rustenburub

1  MR MADLANGA SC:  Mr Chairman,
2  Commissioners, it's not an objection really, the witness
3  has repeatedly referred to IPID being the investigators and
4  the Commissioners and my learned friends across are aware
5  of what has been referred to as volume A of the documents
6  that we have exchanged, that copious documentation in
7  volume A relates to the IPID investigations, those are
8  statement collected by IPID in their investigation of the -
9  MR BIZOS SC:  I thank my learned friend
10  for it, I have seen those statements, and we will draw
11  attention in due course of some of the statements.
12  CHAIRPERSON:  Mr Bizos, further, the
13  point I think that's been made is the case has been
14  investigated by IPID.  They were the investigating officers
15  of the murder charge against the police. They approached
16  the witness, according to his evidence, they asked for a
17  report, he said he is busy, as I understood his evidence,
18  he is busy with a report, he is also busy with the
19  Commission and when he gets an opportunity, he will give
20  them the report. So it's not correct to put to him that
21  whoever was investigating the case hadn't approached him
22  for the information that he had to give, and insofar as
23  that is the basis of the present line of cross-examination,
24  I am not sure that it's fair.  But I put the point to you,
25  so you can possibly reformulate the question.

1  CHAIRPERSON:  Mr Bruinders have you been
2  able to take instructions on the matter that you wanted to
3  take instruction on? Are you prepared to cross-examine?
4  MR BRUINDERS SC:  The answer is yes and
5  no.  Yes, I have, but one of the things that we haven't
6  seen or looked at is the video of the actual crime scene
7  investigation, it seems to - my attorney says he hasn't, he
8  didn't know it was there. It's apparently the huge hard
9  drive. We would like to look at that before we ask some
10  questions about the crime scene. There won't be many, but
11  we'd obviously like to clarify. I suppose what that means
12  is we should reserve our right to recall this witness if
13  necessary.
14  CHAIRPERSON:  One way of doing it. The
15  other one is, are there other questions that you wish to
16  ask, relating to other matters? Sometimes one can cross-
17  examine on certain points, and either reserve cross-
18  examination on other points, or apply to recall the witness
19  to deal with the other points. Are you able to cross-
20  examine on anything at this stage?
21  MR BRUINDERS SC:  Yes.
22  CHAIRPERSON:  I suggest you start.
23  MR BRUINDERS SC:  Captain, can I ask you
24  a few questions about the morning of the 16th.

1  MR BIZOS SC:  I will confine myself to
2  this, Mr Chairman, that not having taken a detailed
3  statement from this witness, because what we have is one-
4  and-a-quarter page - oh, sorry, it's two pages and this is,
5  it's long by the standard of others for a quarter page. We
6  only have a two page statement from him. One would have
7  expected a very detailed statement –
8  CHAIRPERSON:  I understand the point you
9  are making, but isn't that a question you should ask of
10  somebody else, not the captain. The captain doesn't know
11  they only took a short statement they did. He doesn't know
12  what, whether they are going to come back to him at some
13  later stage, and ask for a fuller report. I am not sure
14  it's fair to ask him about what may be as a significant
15  omission on the part of others, but I am not sure you can
16  lay it at his door. And that's why I am not sure that
17  questioning him about it is going to help us to get to the
18  truth in this matter.
19  MR BIZOS SC:  Thank you, Mr Chairman, I
20  have made the point. I hope that those who are really
21  investigating the matter, will take the suggestion
22  seriously, in consulting with this witness in relation to
23  the defence that they are putting up before this Commission
24  and before the – or in relation to the criminal charges
25  made. Thank you for the opportunity, Mr Chairman, I have
MR BRUINDERS SC: And when you left, the remainder of your team, I take it there was more than you present left the briefing.

CAPTAIN MOHLAKI: I was alone in the briefing, then I withdraw myself to go and brief my three members who were outside the JOC because I was there as their representative from NCRC.

MR BRUINDERS SC: Was it during the course of that briefing that you were told that you were to collect evidence later on?

CAPTAIN MOHLAKI: That is correct, Chair.

MR BRUINDERS SC: And were you told where you were supposed to gather evidence?

CAPTAIN MOHLAKI: That is correct, Chair.

MR BRUINDERS SC: Where were you told you had to gather evidence?

CAPTAIN MOHLAKI: We were told that the people will be gathering at the koppie, the big koppie, and they will be surrendering their dangerous weapons, and unlicensed firearms or ammunition, if they are in possession of any, and they will disperse, they will withdraw from the mountain. Then we will be called to come and document those dangerous weapons and traditional weapons that will be left at the koppie.

MR BRUINDERS SC: This morning was the first time that you became involved in this Marikana strike.

CAPTAIN MOHLAKI: Sorry, repeat your question.

MR BRUINDERS SC: This morning was the first time that you became involved in this Marikana strike action.

CAPTAIN MOHLAKI: That is correct.

MR BRUINDERS SC: So when you were given the briefing and told that you were supposed to collect evidence from people at the koppie, were you told what time you were supposed to collect evidence?

CAPTAIN MOHLAKI: We were told that we are going to get an indication from General Naidoo when they need our service but they never specified that it will be this time.

MR BRUINDERS SC: So when you sat in that briefing, you didn't know where the people were or were not at the koppie that morning.

CAPTAIN MOHLAKI: It is true, I was not aware that they are already at the koppie or not.

MR BRUINDERS SC: You did not know where the people who were meant to surrender their arms or weapons, where they were at that stage, at all?

CAPTAIN MOHLAKI: Correct, I was not aware.
1st to 31st October 2012

Marikana

Rustenbug

MR BRUINDERS SC: In your evidence-

CAPTAIN MOHLAKI: Oh, we were four.

MR BRUINDERS SC: And you were going to

be accompanied by eight detectives, you understood.

CAPTAIN MOHLAKI: That is correct, Chair.

[14:40] MR BRUINDERS SC: If all that you were

required to do was to record and photograph the number of

weapons and possibly to take some guidance from the

detectives about those exhibits, if that was all you were

required to do, why were 12 of you needed for that purpose?

CAPTAIN MOHLAKI: The duties that the
detectives are doing, is not the one that I’m doing. The

work that I’m doing is not the one the detectives are doing

because I’m from division of forensics, they are from

detective investigators.

MR BRUINDERS SC: Well, let’s stick with

your work and your team. You had no idea of the number of

people involved, correct?

CAPTAIN MOHLAKI: You are referring to

the big gathering there?

MR BRUINDERS SC: Yes.

CAPTAIN MOHLAKI: No, we were not aware.

MR BRUINDERS SC: You had no idea of the

number of weapons that you might have to record?

CAPTAIN MOHLAKI: Correct.

MR BRUINDERS SC: And all you understood

was that your team was going to do the three things that I

think we’ve already established you were going to do, not

so?

CAPTAIN MOHLAKI: Correct.

MR BRUINDERS SC: How did you know that

four of you were required for that task?

CAPTAIN MOHLAKI: If we have to arrive at

the scene I have to evaluate the scene. If we need extra

assistance from other people, we have to make a call.

MR BRUINDERS SC: Did I understand you

correctly that your team, the rest of your team was there

when you got out of your briefing session?

CAPTAIN MOHLAKI: That is correct, Chair.

MR BRUINDERS SC: In other words, they

were at Lonmin?

CAPTAIN MOHLAKI: Correct, Chair.

MR BRUINDERS SC: Or, to be more

accurate, just outside Lonmin.

CAPTAIN MOHLAKI: At the JOC, outside the

JOC.

MR BRUINDERS SC: And as I understood

your evidence, you and your team spent from between quarter

to seven and seven o’clock, you spent the rest of the day

there until round about four o’clock when you went off to

scene 1.

CAPTAIN MOHLAKI: No, around nine, 10, we

had to move from the JOC to that holding area. I have

never recorded the time of departure from the JOC to the

holding area. It was some distance from the JOC.

MR BRUINDERS SC: Now the holding area -

I beg your pardon, Mr Interpreter. The holding area was at

a point between the JOC and the koppie?

CAPTAIN MOHLAKI: Correct, sir.

MR BRUINDERS SC: And you and your team

spent the rest of the day there until you went off to scene

1?

CAPTAIN MOHLAKI: Correct, sir.

MR BRUINDERS SC: I want to come back to

an earlier question of mine, how did you know that four of

you were required for this task when you didn’t know what

the extent of the task was?

CAPTAIN MOHLAKI: That is how our

division, we are working. We’ll send a member to the scene

- even if he’s one member, he can go and attend that crime

scene and we will make or she will make a call while she is

at, or he is at the scene. If he needs any assistance or

extra pair of hands he will make a call or she will make a

call.

CAPTAIN MOHLAKI: That's correct.

MR BRUINDERS SC: You don’t know what a

crime scene might involve, one of you goes there, assesses

and then makes the call about whether reinforcements are

needed?

CAPTAIN MOHLAKI: That's correct.

MR BRUINDERS SC: That is not the way it

worked on this day.

CAPTAIN MOHLAKI: I don’t understand, in

which fashion?

MR BRUINDERS SC: Because you have

already said that you didn’t go to the scene to make an

assessment about how many people were needed to do the

task. The four of you were there from the outset, long

before the task had to be done, not so?

CAPTAIN MOHLAKI: No, I think you are

coming with two statements here. You are asking me about

the issue of Lonmin and the holding area and you make a

general statement saying, where I respond by saying even if

it’s a crime scene, one member can go if he’s on duty to

perform the duties on that crime scene and if he or she can

see that I need assistance, he will call. But if you are
<table>
<thead>
<tr>
<th>Page 805</th>
<th>Page 806</th>
<th>Page 807</th>
<th>Page 808</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 referr</td>
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<td>1 things - soccer, just under “G”, we were just talking.</td>
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<td>ing or coming back to the scene of the incident of</td>
<td>the same issue that we were there for, then when we arrived</td>
<td>haven’t answered the</td>
<td>soccer, just under “G”, we were just talking.</td>
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<td>Lonmin, we were going to be on that holding area until we</td>
<td>there we waited for a call. If -</td>
<td>question, Captain. The question you were asked was, did</td>
<td>MR BRUINDERS SC:</td>
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<td>received a call that we must come and process, if it was</td>
<td>CHAIRPERSON:</td>
<td>you and the detectives - while you were waiting there -</td>
<td>things, I take it you spoke about more than soccer?</td>
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<td>true that they surrendered those weapons. If we are four</td>
<td>You haven’t answered the</td>
<td>discuss the task that you were asked, that you had been</td>
<td>CAPTAIN MOHLAKI:</td>
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<td>and we arrive there and we see that we need extra people to</td>
<td>question, Captain. The question you were asked was, did</td>
<td>asked to perform later in the day? That’s the question you</td>
<td>MR BRUINDERS SC:</td>
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<td>come and help us from our section, we are going to make</td>
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<td>haven’t answered.</td>
<td>MR BRUINDERS SC:</td>
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<td>that call.</td>
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<td>MR BRUINDERS SC:</td>
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<td>How did you know at</td>
<td>CHAIRPERSON:</td>
<td>MR BRUINDERS SC:</td>
<td>MR BRUINDERS SC:</td>
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<td>seven o’clock that morning that you needed four people for</td>
<td>You haven’t answered the</td>
<td>What was the “that”,</td>
<td>Pirates are soccer?</td>
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<td>a task later in the day that you didn’t know what it might</td>
<td>question, Captain. The question you were asked was, did</td>
<td>that you spoke about?</td>
<td>CAPTAIN MOHLAKI:</td>
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<td>involve?</td>
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<td>you and the detectives - while you were waiting there -</td>
<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>discuss the task that you were asked, that you had been</td>
<td>MR BRUINDERS SC:</td>
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<td>The information that I</td>
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<td>asked to perform later in the day? That’s the question you</td>
<td>MR BRUINDERS SC:</td>
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<td>received from Colonel Botha is that we must meet at Lonmin,</td>
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<td>haven’t answered.</td>
<td>MR BRUINDERS SC:</td>
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<td>four of us. I don’t know the detail of the brief. If he</td>
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<td>MR BRUINDERS SC:</td>
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<td>was briefed like that, I don’t know.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Colonel Botha gave you</td>
<td>9</td>
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<td>MR BRUINDERS SC:</td>
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<td>an instruction that you and your entire team should report</td>
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<td>MR BRUINDERS SC:</td>
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<td>at the JOC.</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Colonel Botha informed</td>
<td>13</td>
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<td>MR BRUINDERS SC:</td>
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<td>me that I must report at the JOC and I will be joined by</td>
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<td>MR BRUINDERS SC:</td>
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<td>other members because Constable Molefe was not from our</td>
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<td>MR BRUINDERS SC:</td>
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<td>office, he was from Brits LCRC. I don’t know the</td>
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<td>MR BRUINDERS SC:</td>
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<td>communication between Molefe and Colonel Botha and Warrant</td>
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<td>MR BRUINDERS SC:</td>
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<td>Office Thamae was from Klerksdorp provincial crime scene</td>
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<td>MR BRUINDERS SC:</td>
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<td>investigation team. I don’t know the communication between</td>
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<td>MR BRUINDERS SC:</td>
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<td>him and Colonel Botha and Warrant Officer Henderson, he was</td>
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<td>MR BRUINDERS SC:</td>
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<td>from Rustenburg LCRC, I don’t know the communication</td>
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<td>MR BRUINDERS SC:</td>
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<td>between him or Colonel Botha.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Colonel Botha asked you</td>
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<td>MR BRUINDERS SC:</td>
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<td>to report at the JOC on the 16th.</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Correct, sir.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>He did not tell you</td>
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<td>MR BRUINDERS SC:</td>
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<td>what other crime scene investigators would be joining you?</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>He said to me that</td>
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<td>MR BRUINDERS SC:</td>
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<td>there will be people joining me but he never specified who</td>
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<td>MR BRUINDERS SC:</td>
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<td>are those people.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>So he knew who would be</td>
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<td>joining you?</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>I hope so.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>The four of you go to</td>
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<td>MR BRUINDERS SC:</td>
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<td>the holding area.</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Correct.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>When you get there, are</td>
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<td>MR BRUINDERS SC:</td>
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<td>there other officers at the holding area?</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>It was us and a</td>
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<td>49</td>
<td>MR BRUINDERS SC:</td>
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<td>detective.</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>MR BRUINDERS SC:</td>
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<td>Did you, your team and</td>
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<td>MR BRUINDERS SC:</td>
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<td>the detectives, did you talk about the task that you were</td>
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<td>MR BRUINDERS SC:</td>
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<td>to perform later that day?</td>
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<td>MR BRUINDERS SC:</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>MR BRUINDERS SC:</td>
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<td>They were briefed about</td>
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<td>MR BRUINDERS SC:</td>
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<td>the same issue that we were there for, then when we arrived</td>
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<td>57</td>
<td>MR BRUINDERS SC:</td>
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1 we got lunch, so we have to concentrate on our food.
2 MR BRUINDERS SC: And apart from
3 concentrating on your food you also spoke about the squads
4 of the two sides, the players.
5 CAPTAIN MOHLAKI: Yes, in passing.
6 MR BRUINDERS SC: And none of you ask
7 each other, what exactly are we waiting here so long for to
8 record and photograph the delivery of weapons?
9 CAPTAIN MOHLAKI: Okay, I’ll respond on
10 my behalf because that was my thinking. I said maybe the
11 people are still moving, surrender – because they were
12 saying they were going to surrender and they never
13 specified what time they will be surrendering.
14 MR BRUINDERS SC: Did you try and get
15 hold of Colonel Botha to find out when is this surrender
16 happening so that I can be saved from this interminable
17 talk about soccer?
18 CAPTAIN MOHLAKI: No, it was not
19 necessary for me to call Colonel Botha to ask because I was
20 on duty, I was just waiting to assist where I have to
21 assist.
22 MR BRUINDERS SC: Did you call anybody
23 else? Did you call anybody else to find out when things
24 are going to happen?
25 CAPTAIN MOHLAKI: Not at all.

Page 810

1 MR BRUINDERS SC: And did you talk to
2 your team of investigators, not the detectives, about how
3 you would go about carrying out your task?
4 CAPTAIN MOHLAKI: Fortunate in our
5 division, most of the time we decide when we are at the
6 crime scene. We don’t plan for something that we don’t
7 know that it will happen, what. We’ll make a call when we
8 arrive, assess that to make our walk through. It would
9 depend on the situation but we were for - waiting for a
10 call that we must come and process the exhibits.
11 MR BRUINDERS SC: And did General Naidoo
12 make the call?
13 CAPTAIN MOHLAKI: Yes, he did.
14 MR BRUINDERS SC: Who took his call?
15 CAPTAIN MOHLAKI: It was Captain Ngcobo
16 from detectives.
17 MR BRUINDERS SC: After taking his call, 18 did Captain Ngcobo then speak to you?
19 CAPTAIN MOHLAKI: That’s correct.
20 MR BRUINDERS SC: What did he say?
21 CAPTAIN MOHLAKI: He said we are needed
22 to process the scene.
23 MR BRUINDERS SC: Did he say anything
24 else?
25 CAPTAIN MOHLAKI: He said we must go.

Page 811

1 MR BRUINDERS SC: And that’s when you
2 went to scene 1?
3 CAPTAIN MOHLAKI: That’s correct.
4 MR BRUINDERS SC: Did you go in your own
5 car?
6 CAPTAIN MOHLAKI: Correct.
7 MR BRUINDERS SC: Were you in radio
8 contact at all with the JOC?
9 CAPTAIN MOHLAKI: Not at all.
10 MR BRUINDERS SC: Were you in radio
11 contact with any other police officer?
12 CAPTAIN MOHLAKI: Not at all.
13 MR BRUINDERS SC: On the way to scene 1
14 while you were in your car, did nobody phone you with any
15 news?
16 CAPTAIN MOHLAKI: Not at all.
17 MR BRUINDERS SC: You did not hear
18 anything unusual?
19 CAPTAIN MOHLAKI: Not at all.
20 MR BRUINDERS SC: Not the sound of
21 gunfire?
22 CAPTAIN MOHLAKI: Not at all.
23 MR BRUINDERS SC: And forgive me for
24 asking this but I can’t recall whether you described the
25 route you took from the holding area to scene 1. If you

Page 812

1 have said that, would you mind just describing for us
2 again, what was the route you took?
3 CAPTAIN MOHLAKI: We used the gravel road
4 to the direction of Marikana and I still remember somewhere
5 on the electrical, electric station, so we go in there.
6 MR BRUINDERS SC: And when you went in
7 there what did you first see?
8 CAPTAIN MOHLAKI: I still remember there
9 was some smoke. If there was no burning of grasses, but
10 there was smoke.
11 [15:00] MR BRUINDERS SC: Teargas smoke?
12 CAPTAIN MOHLAKI: I won’t say it’s
13 teargas smoke, because it seems as if the grass was
14 burning.
15 MR BRUINDERS SC: Apart from the smoke,
16 anything else that you saw?
17 CAPTAIN MOHLAKI: The movement of
18 paramedics and the police.
19 MR BRUINDERS SC: Where were the
20 paramedics going to? I’m sorry, forgive me, let me
21 rephrase that. In what direction were they moving?
22 CAPTAIN MOHLAKI: They were just going
23 towards the direction of the kraal.
24 MR BRUINDERS SC: And in what direction
25 were the police going?
Page 813

1 CAPTAIN MOHLAKI: The police were moving around. I don't have specific directions that they were going to kraal or moving away from the kraal, because they were just moving around.
2 MR BRUINDERS SC: When you say they were moving around, did it look to you like they were chasing people?
3 CAPTAIN MOHLAKI: If they were chasing people, I was going to say they were chasing people, because I'll be able to see that he's taken that direction, going to chase somebody, but I never saw anyone chasing anybody, they were just moving around on the crime scene.
4 MR BRUINDERS SC: Movement of paramedics down a line formed by Y1 towards Z. And he says that they ran towards AA6, to the right of it, as we look at the screen, and he describes the movement of the paramedics down a line formed outside the line of the shrubs. Could you tell from the video, together with some of the witnesses, who obviously could tell us more about that.

Page 814

1 CAPTAIN MOHLAKI: If, Chair, you allow me to use the Google map, it will be easy for me to indicate, because when I arrived, I found that on this centre where I said it was temporary holding area and centre, police were moving in and out, and the paramedics, they were moving in this direction, because I saw some ambulances who were parked this side of the koppie. So there were movement on this passage, to and fro.
2 MR BRUINDERS SC: Chair, Commissioners, I suppose you need to describe what he's just shown us.
3 CHAIRPERSON: I would be grateful if you would, because it's not quite clear to me from the screen what it is. It may be that our screen hasn't got the arrow, but anyway, perhaps if you could describe it to us.
4 MR BRUINDERS SC: Could you show us again what direction the paramedics were moving?
5 CAPTAIN MOHLAKI: This area were a group of people, injured, treated by paramedics, and there was a movement this side, coming this area, where I saw some of the ambulances were parked here.
6 MR BRUINDERS SC: Chair, Commissioners, as I have it, he describes the holding area adjacent to AA6, to the right of it, as we look at the screen, and he describes the movement of the paramedics down a line formed by Y1 towards Z. And he says that they ran towards...
1st to 31st October 2012
Marikana
Rustenburg

<table>
<thead>
<tr>
<th>Page 817</th>
<th>Page 818</th>
</tr>
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<td>myself on record? Nicole Lewis, I appear on behalf of the</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair</td>
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<td>families, together with Mr Ntsebeza who couldn't be with us</td>
<td>and Commissioners.</td>
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<td>today. Chair, could we also reserve our right to recall</td>
<td>MR SEMENYA SC: Please don't read what</td>
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<td>this witness, once we've had a chance to have a look at</td>
<td>I'm putting to you as an attack on your evidence. It was a</td>
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<td>Constable Molefe's video, and aside from that, Chair, we</td>
<td>very huge scene, was it not?</td>
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<td>have no further cross-examination.</td>
<td>CAPTAIN MOHLAKI: Sorry, Chair, maybe I</td>
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<td>CHAIRPERSON: Thank you. Any other</td>
<td>have to understand the previous question. You were</td>
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<td>representative who wishes to cross-examine the witness at</td>
<td>referring to the crime scene 2, or you're referring the</td>
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<td>this stage. Mr Mpofu, you've raised your hand.</td>
<td>holding area waiting for surrounding of exhibit, let me</td>
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<td>MR MPofu: Yes, thank you, Chair. I</td>
<td>clear on that question?</td>
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<td>think I also need to qualify two things, the video and some</td>
<td>MR SEMENYA SC: I'm referring the entire</td>
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<td>consultations, so we certainly won't be able to finish the</td>
<td>scene 1 and 2, for which, as a team of four, you were to</td>
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<td>cross-examination, but we can cover some ground, with your</td>
<td>compile all the evidentiary material there.</td>
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<td>permission, Chair?</td>
<td>CAPTAIN MOHLAKI: Oh, thanks, Chair, I</td>
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<td>CHAIRPERSON: You want to ask questions now?</td>
<td>understand. Yes, we started being a team of four members,</td>
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<td>MR MPofu: Yes, Chair. What I was saying</td>
<td>but while we were processing the crime scene, the</td>
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<td>was I'd like to ask some questions, but -</td>
<td>arrangement was made that there are people who would be</td>
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<td>CHAIRPERSON: Yes, I understand, you want</td>
<td>coming and assisting us at that same crime scene.</td>
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<td>to ask some questions, then you want to see the video, and</td>
<td>MR SEMENYA SC: And principally because</td>
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<td>then decide, and take instructions, and then see if there's</td>
<td>the scene was huge, correct?</td>
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<td>anything else -</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair.</td>
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<td>MR MPofu: No, we also are going to</td>
<td>MR SEMENYA SC: And the amount of</td>
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<td>consult with people who are not here, ja, thank you.</td>
<td>evidentiary material that was to be captured was huge as</td>
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<td>CHAIRPERSON: Mr Semenya, did you</td>
<td>well?</td>
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<td>indicate you want to say something?</td>
<td>CAPTAIN MOHLAKI: Correct, Chair and</td>
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<td>MR SEMENYA SC: No, Chair, I would have</td>
<td>Commissioners.</td>
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<td>put certain questions if there was nobody. Not that there</td>
<td>MR SEMENYA SC: And the terrain was not a</td>
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<td>would - to use -</td>
<td>friendly terrain to do your work, am I correct?</td>
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<td>CHAIRPERSON: I don't waste time, it's</td>
<td>CAPTAIN MOHLAKI: Correct, Chair and</td>
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<td>now ten past three, now we're proposing to sit until four,</td>
<td>Commissioners.</td>
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<td>so if there are questions that you could usefully,</td>
<td>MR SEMENYA SC: The terrain also had</td>
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<td>meaningfully ask at this stage, it might be appropriate for</td>
<td>activities happening whilst you were trying to do your work</td>
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<td>you to ask them, unless you prefer to ask them later, but I</td>
<td>as well, correct?</td>
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<tr>
<td>mean if you can use them and the force of the questions</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair.</td>
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<td>won't be in any way diluted by being asked now, rather than</td>
<td>MR SEMENYA SC: Motor vehicles were</td>
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<td>later, I suggest you start asking.</td>
<td>moving all over the terrain where you had to look for</td>
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<td>MR SEMENYA SC: Thank you, Chair.</td>
<td>cartridg, etcetera, isn't that right?</td>
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<td>CHAIRPERSON: Right, Mr Mpofu, you want</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair.</td>
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<td>to ask questions now, and then we give Mr Semenya a chance</td>
<td>MR SEMENYA SC: Medical personnel and</td>
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<td>if there's time left over before 4 o'clock?</td>
<td>other police officers were walking all over the place which</td>
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<td>MR MPofu: Either way, Chair, I really</td>
<td>you had to examine, isn't that right?</td>
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<td>don't mind. If Mr Semenya is not going to be long, he can</td>
<td>MR MPofu: That is correct, Chair.</td>
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<td>go first.</td>
<td>MR SEMENYA SC: It was such an unusual</td>
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<td>CHAIRPERSON: Well, Mr Semenya, would you</td>
<td>event that you worked cross night, isn't that right?</td>
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<td>like to ask your questions now? Yes, please proceed.</td>
<td>CAPTAIN MOHLAKI: That's correct, Chair.</td>
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<td>CROSS-EXAMINATION BY MR SEMENYA SC: Let me ask them, Chair.</td>
<td>MR SEMENYA SC: Can I even hazard to</td>
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<td>Captain, as you told us, you were a</td>
<td>suggest that this was the very first of its nature in your</td>
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<td>team of four who were going to do the crime scene</td>
<td>professional career?</td>
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<td>management, correct?</td>
<td>CAPTAIN MOHLAKI: I agree with you 100%,</td>
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<td>Chair.</td>
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1 st to 31st October 2012  
Marikana  
Rustenburg

1 friendly witness, may affect the value of the answers,
2 that’s the legal position. That’s why I allowed Mr Semenya
3 to ask the questions. I am not sure that these points that
4 are being put are controversial in any event, but I think
5 the answer to your possible objection, if it is an
6 objection, it’s not a good one. So let Mr Semenya proceed.
7 MR MPOFU:     Chairperson, just, no, I
8 accept that, Chair. All I am saying is and you’ve
9 qualified your statement by saying these are not
10 controversial issues anyway, which I also accept.
11 CHAIRPERSON:  Even if they were
12 controversial issues, the authorities are as I have
13 explained them to you as I understand them, affects the
14 value of the answers given, by cross-examination of a
15 friendly witness. I can’t stop the questioning, and Mr
16 Semenya, who knows it all as well as I do, knows that the
17 problem he has is the one I’ve stated, that he is entitled
18 to carry on, and I won't stop him.
19 MR MPOFU:     Okay, no one is asking for
20 that.
21 MR SEMENYA SC:  Captain, I hope you don’t
22 get friendly with me, just give the Commission as truthful
23 an answer as you are able to. For instance, the evidence
24 will be that there were no less than 500 rounds of rubber
25 bullets fired on the day. Your recording doesn’t capture

1 anything close to that, am I right?
2 CAPTAIN MOHLAKI:     On that day, I recorded
3 24 shotgun cartridge cases, correct.
4 MR SEMENYA SC:     The evidence will also
5 record that there were more than 400 odd sharp ammunition
6 fired, that’s hardly what your information reveals, as we
7 have seen, Captain.
8 CAPTAIN MOHLAKI:     Sorry, let me
9 understand something.
10 COMMISSIONER HEMRAJ:  Mr Semenya, the
11 numbers that you postulate are for Scene 1 and 2?
12 MR SEMENYA SC:     Indeed.
13 COMMISSIONER HEMRAJ:  And his numbers
14 refer only Scene 2.
15 MR SEMENYA SC:     I am quite alive to that.
16 COMMISSIONER HEMRAJ:  Alright, thank you.
17 CAPTAIN MOHLAKI:     Oh, thank you, Chair,
18 that is what the question that I wanted to ask that I want
19 clarity, if you are referring to Scene 1 or Scene 2, but if
20 you are saying both scenes, yes, I can account for those
21 at Scene 1, how, the numbers that I collected there.
22 MR SEMENYA SC:     And in fact your account
23 of the evidence correct as it is, it is really a reflection
24 of the collective team that was mapping out the scene,
25 isn’t that right?
1ST TO 31ST OCTOBER 2012

MARIKANA

RUSTENBURG

1 CAPTAIN MOHLAKI: That is correct.
2 MR SEMENYA SC: You correctly make the point, Captain, don't you, that on the face of your own evidence, it is not possible to link any cartridge to any particular body, is that right?
3 CAPTAIN MOHLAKI: That is correct, Chair.
4 MR SEMENYA SC: Probably, it will properly be the function of ballistic experts to do that connections to the extent they can, correct?
5 CAPTAIN MOHLAKI: That is correct, Sir, and Commissioners.
6 MR SEMENYA SC: It doesn't lie within the area of your expertise to tell us whether a particular particular body, is that right?
7 CAPTAIN MOHLAKI: That is correct, Chair.
8 MR SEMENYA SC: You'd need to know the velocity of the bullet fired to make such determinations, won't you?
9 CAPTAIN MOHLAKI: That is correct, Chair.
10 MR SEMENYA SC: It could never been even competent within your field of expertise to say at what distance any particular cartridge would have been fired, relative to any particular body, am I right?
11 CAPTAIN MOHLAKI: That is correct, Chair.
12 MR SEMENYA SC: You'd need to know the velocity of the bullet fired to make such determinations, won't you?
13 CAPTAIN MOHLAKI: That is correct, Chair.
14 MR SEMENYA SC: In fact, let me get one area out of the room. It was put to you that the police version has been that they have done no wrong, do you remember that evidence, those questioning?
15 CAPTAIN MOHLAKI: Yes, I still remember, Chair.
16 MR SEMENYA SC: For the record, you may not have been present when the opening statement was done for the SAPS, were you here?
17 CAPTAIN MOHLAKI: That is correct, I was not around.
18 MR SEMENYA SC: The opening statement conceives a possibility to where the evidence might reveal that the exchange of fire may prove disproportionate to the threat. Can you take that as a given?
19 CAPTAIN MOHLAKI: That is correct, Chair.
20 MR SEMENYA SC: I want to show you a document and given your answers, we will make the various copies for the Commission and Commissioners. Chair, I must apologise, this was triggered by issues that were said earlier. That document was given to - was faxed to Colonel Scott by yourself, correct?
21 CAPTAIN MOHLAKI: That is correct, Sir.
22 MR SEMENYA SC: It is a document to help somebody do the mapping, giving the longitude and the latitude that were found at the scene, correct?
23 CAPTAIN MOHLAKI: That is correct, Sir.
24 MR SEMENYA SC: Chair, at an appropriate stage, we will make the copies available to all the parties.
25 CHAIRPERSON: Thank you. In view of the fact that it's been referred, I suppose we should give it an exhibit number. Ms Pillay is in charge of that, keeping track of that, what is the next exhibit number, Ms Pillay?
26 MR MADLANGA SC: It should be G, Chairman and Commissioners.
27 CHAIRPERSON: Thank you, Mr Madlanga. So the document you handed to the witness will be exhibit number G.
28 MR SEMENYA SC: You have already testified that that Google map mapping and your sketch plan have various points of difference, am I right?
29 CAPTAIN MOHLAKI: That is correct, Sir.
30 MR SEMENYA SC: I want to dispel a proposition that would suggest that the other mapping was done to mislead, it was merely a translation of the co
MR MPOFU: And although Colonel Botha, you were acting head of the LCRC, you were not present, in fact, at the meeting that you attended, was it not?

CAPTAIN MOHLAKI: Yes, it is correct, Sir.

MR MPOFU: No problem. I understand. Now I understand, all I am saying at this stage is that Colonel Botha would have been asking you to videograph crime scenes, isn't it?

CAPTAIN MOHLAKI: That is correct, Chair.

MR MPOFU: And one of the standard duties of LCRC is to videograph crime scenes, isn't it?

CAPTAIN MOHLAKI: That is correct, Sir. And that is, or rather one of the key things you are going to be doing at this stage is that Colonel Botha would have been asking you to videograph crime scenes, isn't it?

MR MPOFU: And one of the key things you are going to be doing, so they were just going to get guidelines from me to do that video.

CAPTAIN MOHLAKI: Yes, now I understand. All I am saying at this stage is that Colonel Botha would have been asking you to videograph crime scenes, isn't it?

MR MPOFU: As you have said, so they were just going to get guidelines from me to do that video.

CAPTAIN MOHLAKI: Yes, if he was present on the day?

MR MPOFU: Oh, I think acting and some deputy, when you went to the meeting.

CAPTAIN MOHLAKI: That is correct, Chair.

MR MPOFU: And one of the standard duties of LCRC is to videograph crime scenes, isn't it?

CAPTAIN MOHLAKI: That is correct, Sir. And that is, or rather one of the key things you are going to be doing at this stage is that Colonel Botha would have been asking you to videograph crime scenes, isn't it?

MR MPOFU: Thank you. And in any event, Colonel Botha is not there.

CAPTAIN MOHLAKI: No, already, processing scene 1.

MR MPOFU: That's correct, Chair.

CAPTAIN MOHLAKI: No, already, processing scene 1.

MR MPOFU: That's correct, Chair.

CAPTAIN MOHLAKI: No, already, processing scene 1.

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CAPTAIN MOHLAKI: No, already, processing scene 1.

MR MPOFU: That's correct, Chair.

CAPTAIN MOHLAKI: No, already, processing scene 1.

MR MPOFU: That's correct, Chair.
1. CAPTAIN MOHLAKI: That's correct, sir.
2. MR MPOFU: And as the acting head, at least, on the day, did you have the chance to debrief your troops? In other words to find out what their activities had been?
3. CAPTAIN MOHLAKI: Yes, I did, sir.
4. MR MPOFU: Thank you. And everything went well except for the non-functioning timer or timers, everything went well.
5. CAPTAIN MOHLAKI: That's correct, sir.
6. MR MPOFU: And what did you do in your capacity as their head, with the different videos which they must have presented?
7. CAPTAIN MOHLAKI: I still remember Colonel Botha informed us that they need copies of CDs and videos.
8. MR MPOFU: Which you supplied him?
9. CAPTAIN MOHLAKI: Yes I did, sir.
10. MR MPOFU: Thank you. And everything went well then you got either a CD or a video from a member from your office. Now what was - was that a CD or a video and what did that relate to?
11. CAPTAIN MOHLAKI: It was a CD of post-mortems.
12. CHAIRPERSON: CD of post-mortems.
13. CAPTAIN MOHLAKI: Yes.
14. CHAIRPERSON: Thank you. And then the question arises, what about Warrant Officer Thamae and Warrant Officer Henderson, did you get anything from them or are you still waiting for it or was that sent by them directly to Colonel Botha or do you know anything about that?
15. CAPTAIN MOHLAKI: Ja. Thanks Chair, the material that was in my possession I handed them to Colonel Botha but the one from Warrant Officer Henderson and one from Warrant Officer Thamae, I don't know what was the arrangement maybe to reach Colonel Botha.
16. CHAIRPERSON: Thank you.
17. MR MPOFU: Okay, I'm sorry I lost concentration and I lost count, but let's just ask it, simply like this - you mentioned that there were four cameras, correct?
18. CAPTAIN MOHLAKI: Video cameras.
19. CHAIRPERSON: Yes, yes, oh, I understand.
20. Then you got either a CD or a video from a member from your office. Now what was - was that a CD or a video and what did that relate to?
21. CAPTAIN MOHLAKI: It was a CD of post-mortems.
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26. MR MPOFU: Okay, I'm sorry I lost concentration and I lost count, but let's just ask it, simply like this - you mentioned that there were four cameras, correct?
27. CAPTAIN MOHLAKI: Video cameras.
28. CHAIRPERSON: Yes, video cameras.
29. CAPTAIN MOHLAKI: That is correct.
30. MR MPOFU: And you had CDs from each of those four video cameras at some stage.
31. CAPTAIN MOHLAKI: Only two.
32. MR MPOFU: That's Molefe's and the second one?
33. CHAIRPERSON: The video recording at the crime scene, there were two people. It was Constable Molefe and Warrant Officer Henderson, they were the videographers at the crime scene but I managed to get one video from Colonel Dreyer from, of Molefe. The one of Warrant Officer Henderson, a video recording, I don't know what was the arrangement because when I was looking for CDs, for DVD, I understand if he was not on leave he was somewhere, he was not available to give me a copy.
34. MR MPOFU: Thank you. Okay, I just also wanted to understand the issue of the times. How do you know that you were there at four o'clock?
35. CHAIRPERSON: Yes, yes, oh, I understand.
36. Then you got either a CD or a video from a member from your office. Now what was - was that a CD or a video and what did that relate to?
37. CAPTAIN MOHLAKI: It was a CD of post-mortems.
38. CHAIRPERSON: CD of post-mortems.
39. CAPTAIN MOHLAKI: Yes.
40. CHAIRPERSON: Thank you. And then the question arises, what about Warrant Officer Thamae and Warrant Officer Henderson, did you get anything from them or are you still waiting for it or was that sent by them directly to Colonel Botha or do you know anything about that?
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48. MR MPOFU: That's Molefe's and the second one?
49. CAPTAIN MOHLAKI: The video recording at the crime scene, there were two people. It was Constable Molefe and Warrant Officer Henderson, they were the videographers at the crime scene but I managed to get one video from Colonel Dreyer from, of Molefe. The one of Warrant Officer Henderson, a video recording, I don't know what was the arrangement because when I was looking for CDs, for DVD, I understand if he was not on leave he was somewhere, he was not available to give me a copy.
50. MR MPOFU: Thank you. Okay, I just also wanted to understand the issue of the times. How do you know that you were there at four o'clock?
the holding – what you call the holding area?

CAPTAIN MOHLAKI: Yes, we were moving

from holding area to the koppie.

MR MPOFU: Yes. You were asked a

question by one of the commissioners, Adv Hemraj, the trip

from the holding area to the first scene you took you about –

did you say 10, 20 minutes or did you say five, 10 minutes?

CAPTAIN MOHLAKI: I don’t remember but we

were talking about five, 10 minutes because we were just

struggling. It was 1 point, when we made a deduction we

said it may be 1.3 metres, 1.3 ja, to go there.

INTERPRETER: Metres?

CAPTAIN MOHLAKI: Sorry, not metres –

CHAIRPERSON: If you’d gone 1.3 metres

you wouldn’t have taken very long at all.

CAPTAIN MOHLAKI: I’m sorry, Chair.

CHAIRPERSON: Okay.

CAPTAIN MOHLAKI: Ja, so we never

struggled to reach the - because specifically we never

know, where was the crime scene where maybe the bodies are.

Then we take it that all that area is the crime scene.

MR MPOFU: Okay, can you just clarify

that because I’m quite certain that when you were asked

that question by the commissioner you said 15 to 20

minutes.

CAPTAIN MOHLAKI: Ja, there were a lot of

questions concerning time and we were estimating, so I
don’t know specifically if that was the one you are

referring now – I’m not sure.

MR MPOFU: No, no – Captain please, I
don’t want you to remember what your answer was to the
commissioner, I want you to remember how long it took you
from the holding area to the scene.

CAPTAIN MOHLAKI: I said I never recorded

the time but what I know, around four o’clock we were

around the scene 1.

MR MPOFU: So on your, at least on one of

your estimations you must have left at about 20 to four.

CAPTAIN MOHLAKI: I don’t know if it was

my estimation or it was when we were doing some deductions

from the times, I’m not sure.

MR MPOFU: Well, I’m sure.

CAPTAIN MOHLAKI: If you are sure, no

problem.

MR MPOFU: Ja. When you were asked, you

estimated 15 to 20 minutes. I’m saying if we use that

estimation, that would mean that you left at about 20 to

four, anything between 20 to four and quarter to four and

so on.

CAPTAIN MOHLAKI: Let’s say 10 to four.

MR MPOFU: Okay, that’s fine. And in

that, between 10 to four and four o’clock you didn’t hear a

single shot being fired?

CAPTAIN MOHLAKI: That’s correct.

MR MPOFU: And in any event, even before

that time you were only 1.3 kilometres from the – from

scene 1, correct?

CAPTAIN MOHLAKI: That’s correct.

MR MPOFU: For how long?

CAPTAIN MOHLAKI: I would think that we

arrived there around 9:10 in the morning until we were
called to come and process the crime scene.

MR MPOFU: I see. So you were there for

something like what – eight hours, seven hours.

CAPTAIN MOHLAKI: Plus-minus correct.

MR MPOFU: Yes and in that seven hours

until you arrived, you didn’t hear a single shot being

fired?

CAPTAIN MOHLAKI: That’s correct.

MR MPOFU: Anyway, so you then arrived at

scene 1 and you saw more than 10 bodies next to the kraal,
correct?

CAPTAIN MOHLAKI: No, I never counted

them but I saw some bodies were lying there because at that
time they were a mixture of dead bodies and injured people.
1. although they accounted for the numbers of their units,
2. indicated that they were still driving from various parts
3. of the country?
4. **CAPTAIN MOHLAKI:** That's correct, sir.
5. **MR MPOFU:** Did you, from that, get the

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<th>Page 842</th>
<th>Page 843</th>
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| 1. | 1. someone were to force you to guess, how many policemen
| 2. | 2. you say were there on the day, total? |
| 3. | 3. CHAIRPERSON: Is that an answer that's |
| 4. | 4. going to help us? We will be able to ascertain objectively |
| 5. | 5. how many people were there. Unless something turns on this |
| 6. | 6. witness's impression of how many people were there, if it's |
| 7. | 7. a wrong impression then I don't see how it can help us to |
| 8. | 8. come to the truth of the matters that we've been asked to |
| 9. | 9. investigate. I don't want to stop you but I just want to |
| 10. | 10. say it seems to me, with respect, to be a question that's |
| 11. | 11. not going to help anyone to get anywhere. |
| 12. | 12. MR MPOFU: Well, Chairperson – |
| 13. | 13. CHAIRPERSON: We will be able to find out |
| 14. | 14. with absolute accuracy, I take it, how many people were |
| 15. | 15. there. It appears from many of the documents that we've |
| 16. | 16. already seen, there were various units, how many people |
| 17. | 17. there were belonging to each unit. I think the IPID |
| 18. | 18. investigation covers that quite fully. So I don't know – |
| 19. | 19. obviously it's an important fact that you want to get on |
| 20. | 20. record – |
| 22. | 22. CHAIRPERSON: This isn't, with respect, |
| 23. | 23. the best way to get it on record, is it? |
| 24. | 24. MR MPOFU: Yes. No, no. Chair. Chair, I |
| 25. | 25. accept that. Maybe I should loosen up the question. Would |

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<thead>
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<th>Page 844</th>
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<td>Page 845</td>
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<tr>
<td>MR MPOFU:</td>
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<td>That’s fine. Okay but –</td>
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<td>CHAIRPERSON:</td>
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<td>Mr Mpofu, it’s four</td>
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<tr>
<td>o’clock. I don’t know that this line is going to take you</td>
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<td>any further today. You may wish to resume it next time but</td>
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<td>before we adjourn –</td>
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<td>MR MPOFU:</td>
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<td>That’s fine.</td>
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<td>CHAIRPERSON:</td>
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<td>have you got your diary here?</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>The diary that you used on</td>
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<td>the 16th.</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>May I look at it for a</td>
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<td>moment? I’m interested in the time – thank you.</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>No, don’t worry. Yes,</td>
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<td>thank you. Are you still using the diary?</td>
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<td>CAPTAIN MOHLAKI:</td>
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<td>Well, may we keep it then</td>
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<td>and copy the relevant page -</td>
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<td>CAPTAIN MOHLAKI:</td>
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<tr>
<td>Oh, you are using it?</td>
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<tr>
<td>Okay, alright, if you’re still using it then you’ve got to</td>
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<td>hang onto -</td>
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<td>CAPTAIN MOHLAKI:</td>
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<tr>
<td>I see there are still some</td>
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<td>pages here that are empty, alright. Perhaps it would be</td>
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<td>helpful if you could make copies for us.</td>
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<tr>
<td>Okay.</td>
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<td>Of - I presume the relevant</td>
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<td>dates are the 16th and the 17th -</td>
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<td>Correct.</td>
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<td>Of August, maybe the 15th as</td>
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<tr>
<td>well, if you don’t mind. Let’s just – yes, yes, thank you.</td>
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<td>We will adjourn now until next Monday at nine o’clock. I’m</td>
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<td>sorry we can’t sit tomorrow or Friday. We’ll start, as I</td>
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<td>say, on Monday and the Captain will be back in the witness</td>
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<tr>
<td>box, armed with photocopies of the relevant pages of his</td>
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<tr>
<td>diary, not only for the commissioners but for the evidence</td>
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<td>leaders and for the parties. On that note -</td>
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<td>Chair, can you make a request</td>
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<tr>
<td>– maybe not so much to the witness but to either the</td>
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<tr>
<td>evidence leaders or Mr Semenya’s team, just for the sake of</td>
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<td>completion – that when the witness comes back on Monday,</td>
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<td>that he also comes with all the videos that he has</td>
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<td>mentioned. Thank you.</td>
</tr>
<tr>
<td>Well, Mr Madlanga is in</td>
</tr>
<tr>
<td>charge of leading evidence, he’s heard what you have to say</td>
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</tbody>
</table>
1st to 31st October 2012

Marikana Rustenburg


1st to 31st October 2012
Marikana Rustenburg

transcribe 5:23 15:11
265:16
transcribed 454:4
491:16 651:14
transcers 100:12
112:17
transcribing 85:25
transcript 36:6 133:21
265:21 266:6 286:14
286:22 292:20 418:4
443:18 445:18 453:2
454:2 621:3 623:2
500:1 651:16
transcription 337:13
670:14
transfers 6:6 491:17
transferred 76:20
translated 92:13 265:18
translated 265:6,14
translation 633:16
827:25
transmitted 5:7
transmuted 150:1
247:12 201:4
transport 366:24 367:2
416:14
transportation 70:10
70:20 101:10 359:6
359:15 365:23 373:5
373:8 374:11 375:6
408:8
transported 42:17
416:22
trapped 728:7,10
740:25
trauma 2:22 128:13
traumatic 41:15 72:10
259:7
traumatised 3:7
traumatised 207:16
travel 44:20 199:11,11
199:20
travelled 193:15
308:21 769:18
travelling 199:18
663:12 763:16 769:18
841:12,14
treacherous 128:25
treat 57:7 360:24 361:1
362:1 821:23
trained 188:6,38 378:19
395:10 738:4 814:18
training 204:7
treatment 390:1 840:16
tree 728:10,12 741:1,1
trees 98:4 721:11,13
728:8 815:2
trend 142:10
trial 57:12 396:5
419:15
tribal 220:11
tribe 231:20
tribute 3:16
tried 123:14,17 124:4
127:17 174:3,11,23
176:3,5 180:10 252:2
252:3,5 369:3 441:7
441:13,16,22,25
442:2
triger 196:11
triggered 33:11 252:22
826:25
trip 581:14 837:5
tripe 403:8
tripped 139:17
true 232:3
trivialise 209:1
troops 833:7
trouble 109:25 320:22
323:20 682:19 766:13
766:16,21
trousers 663:10
TRT 33:6 137:2,4
176:0 600:13 768:17
trucks 663:19
true 3:8 272:4 421:11
448:22 494:20 520:25
556:17 623:1 773:13
780:10,13,758:18
798:20 805:4
trust 13:3 47:18 225:6
242:19 261:22 493:3
689:12 712:13
truth 2:174:4 4:3 8:7
21:16 36:7,8 37:2,6
120:11 186:20 196:13
197:2,10,13 216:16
225:1 241:17,24
269:7 271:1,11 337:3
371:6 372:15 376:21
519:1 614:10 623:8
623:18 639:14,14
657:6,6 665:8,8
689:2 794:18 843:8
truthful 823:22
truthfulness 292:10
294:23 640:15 667:17
try 27:12 33:8 52:7,25
96:22 131:18 184:2
197:7 207:21 254:2
271:20 274:3 324:16
337:10 345:24 390:4
405:21 202:4 420:57,67
591:5 646:16 696:22
708:8 709:16 744:5
763:7 765:18 809:14
trying 18:18 40:6
51:25 58:9,10 75:5
77:22 93:5 94:14
105:12 129:20 147:11
189:7 207:20 369:2
387:7 400:19 431:19
433:13 439:2,12
459:11 503:9 515:18
538:17 546:23 575:20
582:1 599:7 636:25
711:11 786:17,23
820:7
Tselene 108:2
Tsepiso 202:3
Tshepiso 239:23 542:4

ds 5:2
Tswana 5:9 238:20
239:2 256:25 260:4
263:20
Tuesday 129:18 150:10
359:11 380:18 381:6
390:4 402:24 418:17
418:17 441:10 443:7
443:22 446:16 455:9
456:2,3 457:10 482:6
516:7 517:23 518:24
606:1 679:14
Tuwalane 17:1
turn 8:15,17 43:16
117:20 126:25 165:22
178:21 179:14 220:12
251:17 363:11 421:22
449:25 714:10
turned 95:21 208:6
377:22 379:5 421:17
449:8 483:2 665:13
680:15,16
turnout 369:2
turns 88:3 343:28 454:5
380:15 637:2 651:15
651:19 843:5
TV 98:25 99:14,15,16
271:3
Twala 24:15 165:17
twink 72:72
twice 420:6 562:12
twists 380:15
twofold 36:13
two-day 129:14 764:12
two-year 157:17
type 54:9 145:13
442:21 452:1 549:1
626:15 631:15,15
655:25 663:12,13,16
663:19 715:2 717:24
724:1 730:12 739:7
800:5
types 705:13 726:25
730:3,2 739:18
typical 186:1
typically 593:4
T-H-A-B-I-I-S-O 718:8
T-H-E-E-L-E 714:19
T-H-O-B-I-I-L-E 714:16
T1 736:23,24 737:1
T3 736:23,24 737:1

U
u 422:3 491:18,18,19
594:9 695:16,16,25
ubogo 705:24
UCs 60:23
ulterior 387:24
ultimate 51:10 237:9
ultimately 5:22 7:4
141:24 167:14 193:16
45 2:1 90:9 133:6
134:21 136:14 600:8
796:6,9
45th 88:21
45.4 600:11
45.5 601:11
46 88:21
46th 90:7
48 382:7,7,11,13
49 701:2

5 90:3 153:1 165:18
190:12 279:15 281:24
291:6 292:24 293:13
293:22,25 294:1
297:1 343:10 430:15
508:8 621:25 640:21
657:20 666:6 680:21
691:14
5:26 490:8
5:30 153:19
50 96:21 196:8 330:1
489:9 643:22 701:2
500 149:6 168:5 169:25
170:8,21 431:1 645:4
645:7 771:1,12
823:24
51 701:2
5131 552:14
5132 552:14
5134 552:14 555:4
550 645:7
553 104:22,23
554 104:23
555 104:23,23
578 105:6
583 105:7
59 449:20

6 17:7 18:25 90:6
163:10 165:11 290:14
293:12,22 344:19
346:21 357:23,24
430:15 508:10 517:17
519:9 520:19
6PM 153:19
6th 606:17
600 285:21 430:15
62 448:21 449:11,17,20
450:9
649 573:19
66 159:12
67 742:7
687 507:9
688 507:9

7 19:1 21:12 90:10
290:15 293:25 294:17
294:23 316:24 439:15
453:6 508:11 694:14
70 151:2 204:4 220:2
788:25 789:5,6
70’s 235:5

74.4 645:11

8 8 17:10 21:13 90:13
101:8 172:18 227:6
227:5 516:25 519:5
647:22 733:14 791:22
8th 76:17 97:11 101:24
102:3
80 438:9
80s 72:25
80% 586:8
800 330:18,23
813001120 486:14
84(2)(f) 1:22
86 752:21
87 752:23

9 9:1:8 90:19 110:10
111:6 118:12 120:1
130:19 147:25 155:4
155:15,17,21 166:7
167:9 172:13 176:13
181:10 202:4,24
227:6 288:19 358:4
656:14 678:8 715:4
715:16 724:3 730:23
731:14 733:15 734:3
735:23
9AM 677:21
9th 6:22 29:13,17
149:11 595:3 606:17
606:22 631:9 681:24
682:2,6
9-millimetre 738:25
739:5,19 741:21
9:10 839:11
9:30 130:22
90% 438:9
900 647:22
93.5 644:19