

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 4 23 OCTOBER 2012 PAGES 203 TO 358

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 23 OCTOBER 2012]
 2 [09:12] CHAIRPERSON: Good morning. Commission
 3 resumes. I take it the air-conditioning isn't working yet.
 4 We had reached the point yesterday when we were on the
 5 point of hearing from Mr Mpofo to make his opening
 6 statement on behalf of the injured and arrested protesters.
 7 Mr Mpofo.
 8 MR MPOFU: Thank you very much,
 9 Chairperson. Speaking on behalf of my colleagues, they
 10 took the liberty, since the air-conditioning is not
 11 working, to assume that the dispensation continues,
 12 Chairperson.
 13 CHAIRPERSON: I said we continue until
 14 the air-conditioning was working.
 15 MR MPOFU: Thank you, Chair.
 16 Chairperson, I would like upfront to ask you for an
 17 indulgence. I know that we have time limits, but for the
 18 reason that this – and I'll explain later – in my case this
 19 might be an opening address, but it might also be a closing
 20 address. I will seek that indulgence. I say that because
 21 we find ourselves representing the injured persons in a
 22 very awkward situation in which, despite the fact that the
 23 Terms of Reference of the Commission make it very clear
 24 that the Commission is instituted in relation to three sets
 25 of victims, as we would like to see them, namely the

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1 deceased - the 250 people it says in the Terms of
 2 Reference, that number grew to 272, but that's not
 3 important for the purposes of what I'm about to say – and
 4 also it talks about the 70 people who were injured. But we
 5 have found a pattern, characterised by many things that
 6 have happened here, including the issues that necessitated
 7 the postponement, a pattern of treating the victims of this
 8 massacre with such disdain that it might not be possible
 9 for us to continue with participating in this forum, not of
 10 our own liking, Chairperson, but because of firstly the
 11 refusal of government and its agencies to assist the
 12 representative of the victims that we represent with even
 13 the basic logistical support for the, anticipated for the
 14 six months or whatever period this commission is likely to
 15 take.
 16 When we raised this issue, Chairperson, last
 17 time, you'll remember that a suggestion was made by our
 18 learned colleagues, the Evidence Leaders, that we approach
 19 Legal Aid South Africa. We did so and we have just
 20 received a very crass response from them, which says that
 21 they will not be funding these victims, they will only be
 22 funding the victims who are deceased. In other words what
 23 they are saying is that our people must wish that they had
 24 died, that the fact that they survived is something to be
 25 held against them.

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1 CHAIRPERSON: I'm sorry to interrupt you.
 2 I must confess, Sir, I can't understand that. I assume
 3 that in the case of those who died there will be –
 4 depending obviously on, presumably on the findings, but
 5 there will be or may well be dependence claims of some
 6 kind.
 7 MR MPOFU: Correct.
 8 CHAIRPERSON: And the appearance here on
 9 behalf of the dependents could be seen as a necessary
 10 anticipatory action –
 11 MR MPOFU: Correct.
 12 CHAIRPERSON: - or step in regard to
 13 contemplated dependence claims.
 14 MR MPOFU: Ja.
 15 CHAIRPERSON: Those who were injured
 16 would presumably also have claims –
 17 MR MPOFU: Absolutely.
 18 CHAIRPERSON: - if it is found, or never
 19 mind the finding, if ultimately a court were to find that
 20 they were injured in circumstances where those responsible
 21 for the injuries had acted unlawfully.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: So their participation in
 24 these proceedings would be as much –
 25 MR MPOFU: Absolutely.

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1 CHAIRPERSON: - an appropriate,
 2 reasonable and necessary anticipatory step in respect of
 3 those actions, and would be entirely analogous to the case
 4 of the people who are appearing, I think –
 5 MR MPOFU: Yes.
 6 CHAIRPERSON: - for the defendants.
 7 MR MPOFU: Absolutely.
 8 CHAIRPERSON: So I don't know whether – I
 9 don't want to stop you, obviously you want to carry on with
 10 the statement that was made, but I thought it appropriate
 11 at this early stage to indicate the puzzlement on my side
 12 in following what is happening, and I would hope that the
 13 decision that's been conveyed to you is not necessarily a
 14 final one and that the matter might well be able to be
 15 taken further before a final decision one way or the other
 16 is given. But please proceed and when you're finished I'll
 17 ask Mr Madlanga if there's anything he wishes to say.
 18 MR MPOFU: Thanks, Chairperson. That
 19 from the Chairperson and the Commissioners is more than
 20 what we would have bargained for, and we are very grateful.
 21 Any intervention, obviously it's not something that is in
 22 your complete powers, Chairperson and Commissioners, but
 23 that statement settles that issue of the so-called
 24 distinction.
 25 But I might add, Chairperson, that similarly with

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1 the arrested persons, those persons, the reason I would
 2 assume they were included in the Terms of Reference is
 3 because their arrest is directly linked to the issues here,
 4 and indeed as I mentioned, the reason why we managed to
 5 secure a long postponement, anticipating the finalisation
 6 of the Commission, was that the magistrate understood that
 7 whether the so-called provisional withdrawal of their
 8 charges will materialise, will depend among other things on
 9 the outcome of the Commission, and they too therefore have
 10 an equally direct interest in the outcome.

11 But more than that, Chairperson, the issue here
 12 is that these people, yes of course we concede upfront that
 13 the most affected persons are the people who lost their
 14 breadwinners, but the people who were there, the 300 people
 15 who were arrested and injured and lost some limbs, are
 16 equally traumatised, and these are people who are requiring
 17 counsel. If I can just relate, Chairperson, the
 18 consultation we had with about 200 of them at the koppie
 19 last week were, the emotions that ran through there, where
 20 grown men were crying tears trying to explain what had
 21 happened, you first start to try and discriminate and
 22 create categories of victims in these kind of
 23 circumstances, is in very bad taste. But that's the first
 24 reason, if it is not resolved, that we might not be able to
 25 continue.

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1 The second one is that we also received,
 2 unfortunately, yesterday afternoon, having made the request
 3 to the Presidency about the extension of the Terms of
 4 Reference to include Ms Pauline Masuhlo, and I'm sorry, we
 5 have not even briefed the family except by telephone, that
 6 the Presidency have turned down that request, and that in
 7 our view might necessitate some kind of legal action and
 8 unfortunately if that legal action materialises, one of the
 9 prayers we'll ask for would be that the Commission should
 10 not proceed, awaiting the inclusion. But of course there
 11 might be, I'm sure will find –

12 CHAIRPERSON: Mr Mpofu, I don't want to
 13 interrupt you, but I must say I have puzzlement about that
 14 one as well because if we have Terms of Reference and we're
 15 busy dealing with those Terms of Reference, the fact that
 16 someone wants to add an extra Term of Reference doesn't
 17 stop our inquiry into the existing Terms of Reference.

18 MR MPOFU: Ja.

19 CHAIRPERSON: So it's not for me to give
 20 advice to the judge that's called upon to consider that
 21 prayer if you include it, but I just express my puzzlement
 22 on the point. Please proceed.

23 MR MPOFU: Well, I'm sure that sentiment
 24 will find its way into the answering affidavit,
 25 Chairperson. But be that as it may, the issue is that –

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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 Masuhlo
 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

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1 something at this point?

2 MR MADLANGA SC SC: Thank you,
 3 Chairperson, Commissioners. Chair, we are learning for the
 4 first time that our colleagues encountered the problems
 5 that Mr Mpofu is referring to. Initially it was my learned
 6 friend and team mate, Mr Budlender, who made contact with
 7 the Legal Aid South Africa. So I have already whispered to
 8 him and asked him to do the same thing even now, not that
 9 we are undertaking that the application will be granted,
 10 but it will just be to make that initial approach and we
 11 will revert to my learned colleague. Thank you, Chair.

12 CHAIRPERSON: Thank you very much, Mr
 13 Madlanga. I think you can now proceed with your opening
 14 statement, Mr Mpofu.

15 MR MPOFU: Yes, I'm sorry, Chair, I'm
 16 sorry to do this. Another preliminary matter, well it may
 17 be a preliminary matter or part of the opening address, but
 18 some of the colleagues mentioned the issues around
 19 intimidation of witnesses and the difficulties in getting
 20 witnesses to testify in this Commission, and we'd like to
 21 place on record that at least five of our witnesses during
 22 the break since the last time we sat here, have been
 23 arrested. At least two of those are quite key witnesses,
 24 and this is something that, one of them was at least
 25 arrested in relation to one of the events that are being

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1 probed by the Commission, and that raises a whole lot of
 2 issues, apart from the difficulty of having those people to
 3 testify here, one of which is a matter of principle,
 4 Chairperson, namely that if the reason why the Police who
 5 shot dead so many people are not being prosecuted is that
 6 one has to await the outcome of this Commission, which is
 7 what we get told, then what is sauce for the goose, is
 8 sauce for the gander, and we do not understand why then
 9 people should be – obviously we cannot stop the Police from
 10 doing their work, but if now we have a double whammy of a
 11 situation where people are prevented actively from
 12 participating in these proceedings, but are also being
 13 charged in relation to the very issues that are being
 14 probed here. That we're just placing on the record, will
 15 be as an impediment to our work.

16 CHAIRPERSON: Well, I'd also heard and
 17 read in the newspapers of the arrests to which you refer,
 18 at least some of the arrests to which you refer.

19 MR MPOFU: Yes.

20 CHAIRPERSON: And it was reported to me
 21 that one person at least who was regarded as an important
 22 witness, had been arrested, and there was a suggestion that
 23 would have an adverse effect on the work of the Commission.
 24 So I think it's appropriate for me at some stage to call
 25 upon Mr Semenya – I don't know if he's got instructions,

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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

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1 the 34 people had actually been killed at the scene that we
 2 all saw on television, which we now collectively know as
 3 scene 1, or Groot Koppie - in our team that's what it's
 4 called – and that the other 18 or so, being the majority of
 5 the people who had died, had been killed at Klein koppie,
 6 and that is contained in the evidence of Brigadier Van Zyl,
 7 who testified in the bail application and whom we
 8 anticipate will also be called to testify here, and these
 9 already created the signs of what our approach will be,
 10 which I will outline, not in great detail as this is only
 11 an opening statement.

12 CHAIRPERSON: Can I interrupt you for a
 13 moment?

14 MR MPOFU: Yes.

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

18 MR MPOFU: Ja.

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

21 MR MPOFU: Yes.

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

24 MR MPOFU: Yes.

25 CHAIRPERSON: So 137 is scene 1.

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1 MR MPOFU: Yes.

2 CHAIRPERSON: 138 is scene 2. Is that
 3 it?

4 MR MPOFU: Yes.

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

7 MR MPOFU: And the terminology –

8 CHAIRPERSON: - that's already been
 9 handed –

10 MR MPOFU: Yes, Chair.

11 CHAIRPERSON: Thanks.

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

19 CHAIRPERSON: I'm sorry, Mr Tokota
 20 reminds me that the interpreter has been sitting here very
 21 patiently and you and I have been having a conversation
 22 which, and Mr Madlanga took part for a short time as well
 23 and the poor interpreter has got to remember everything
 24 that's been said. I think we should give him a chance now
 25 before you carry on.

<p style="text-align: right;">Page 215</p> <p>1 MR MPOFU: Yes, before he speaks, I had 2 already made a deal with him that we'll cover paragraphs, 3 won't do it sentence by sentence as some of the colleagues, 4 but at this stage I think he's long overdue. Thank you, 5 Chair. 6 [09:32] MR MAHLANGU: Thank you. 7 MR MPOFU: Thank you very much, 8 Chairperson. Chairperson, I don't want to waste time. 9 I'll go into the, what I call the broad theses of our 10 submissions here, and they will be centred around what is 11 contained on page 3 of my written document, namely that the 12 main causes of the massacre are the South African Police 13 Services, and where applicable, the other agencies of 14 government, and Lonmin – 15 CHAIRPERSON: I think it might be helpful 16 if you dealt with some of the material which appears on the 17 earlier pages – 18 MR MPOFU: Yes. 19 CHAIRPERSON: Because after all, the 20 people who are following this who, television broadcast, 21 for example – 22 MR MPOFU: Oh, thank you, Chair. 23 CHAIRPERSON: - haven't got the advantage 24 of having read your document. 25 MR MPOFU: This document, yes, thank you,</p>	<p style="text-align: right;">Page 217</p> <p>1 that we are willing to share the insights with the 2 Commission. So if we are not here, it will be not because 3 of our choice, and justice I must say we will get. Whether 4 we get it here or we'll get it in another forum or in 5 international criminal court of justice where we may lay 6 charges against the Police who shot our people, then that's 7 what we will do. But that's just an aside. 8 Now we then come to page 3, Chairperson, where we 9 say the main causes are SAPS and Lonmin, and that some of 10 the contributory causes include what one might term the 11 sordid history of the mining industry in South Africa, and 12 I touch upon it very briefly, and then to some extent these 13 issues of labour relations and trade unions, and so on. 14 But we agree with our colleagues that those issues cannot 15 be elevated to the primary causes of what happened. 16 We then, having defined those, what I call the 17 PCs, Chair, then we go to the meat of our submissions, 18 which is the 10 points that we are going to gear our 19 evidence towards. Everything, every witness we call will 20 be geared towards proving one or more of the 10 points that 21 we have defined, and I will, with your indulgence, go 22 through those 10 points. 23 The first point, Chairperson, is that – if maybe 24 at this point before I do the 10 points, ja. The first of 25 the 10 points, Chairperson, is a broad one that says that</p>
<p style="text-align: right;">Page 216</p> <p>1 Chair. 2 CHAIRPERSON: You don't have to read 3 everything, but I thought there were some points that you 4 made for example on page 2 which are worthy of being 5 repeated aloud for the benefit of people who are watching 6 the proceedings from afar. 7 MR MPOFU: I'm indebted to you, 8 Chairperson. Indeed we have said there that apart from the 9 deceased families, who are the primary victims, we 10 represent the next important and numerically plenty 11 categories of victims of the Marikana Massacre. 12 All the parties we represent have an obvious and 13 direct interest – we've dealt with that – in the 14 identification of the underlying causes of the massacre, 15 the perpetrators at all levels and whatever restorative 16 justice may be available. In short they seek the truth for 17 themselves and for their colleagues who passed away, and if 18 I may pause there, Chairperson. We have offered our 19 people, obviously to Mr Ntsebeza's team, because certainly 20 his clients are not here to speak for themselves. 21 We say if there is going to be any reconciliation 22 at the end, it is primarily these parties who must 23 reconcile with the perpetrators, broadly defined. 24 These two factors place us in a unique position – 25 I've already addressed this, Chairperson, and I will say</p>	<p style="text-align: right;">Page 218</p> <p>1 this tragedy could and should have been avoided, and by 2 that we will show with the evidence dealing with the Police 3 methods that were employed, or should have been employed, 4 in relation to some of the guidelines and codes that define 5 how the Police should act in these kinds of situations, and 6 we will seek a conclusion at the end that says that this 7 could have been avoided. 8 The second point is that – and it's one that I 9 alluded to earlier, and it's a very, very broad and 10 important point – that at the heart of this was the toxic 11 collusion between the SAPS and Lonmin at a direct level. 12 At a much broader level it can be called a collusion 13 between the State and capital and that this phenomenon is 14 at the centre of what has occurred here, Chairperson, and I 15 would like to just point, Chairperson, to a few pointers. 16 Already at the bail application it became clear that the 17 monitoring that was done by the Police to make the 18 decisions about when to shoot the people down, was done at 19 an operational centre which was based at Lonmin mine 20 premises. 21 Some of the minutes of the planning that took 22 place towards the shooting, at about half past 1 on the 16th 23 it is recorded in the minutes of the Joint Operations 24 Committee of the Police that Lonmin Security has been 25 briefed adequately. This is now two hours before the fatal</p>

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1 happenings. The pattern even with these recent arrests,
2 Chairperson, that I referred to earlier, the pattern has
3 been that the person goes to work now in the past two
4 weeks, they get identified by Lonmin Security and then they
5 disappear, or they get held at some barracks or something
6 of that nature at Number 1 Shaft, which is some kind of
7 intermediary holding or office for the Police to come and
8 take the defenceless victims.

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

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1 and in 1946 under the leadership of the African Mineworkers
2 Union, the African workers, 70 000 African workers also
3 went on a massive strike and the government sent 16 000
4 policemen and arrested, like they did to our, the people we
5 represent, some of the miners under an act called the War
6 Measures Act. So this has happened, this collusion between
7 capital and the State has happened in systematic patterns
8 in the history of, sordid history of the mining industry in
9 this country.

10 Part of that history included the collaboration
11 of so-called tribal chiefs who were corrupt and were used
12 by those oppressive governments to turn the self-sufficient
13 black African farmers into slave labour workers. Today we
14 have a situation where those chiefs have been replaced by
15 so-called BEE partners of these mines and carrying on that
16 torch of collusion.

17 Chairperson, we have in our possession emails
18 that were being exchanged between the mine management, the
19 government, Minister of Minerals and Energy, which talk
20 about discussions with the Minister of Safety & Security,
21 or Police I think it's called, at the centre of which is a
22 gentleman called Cyril Ramaphosa, who advised that what was
23 taking place are plainly – I'm quoting now, "dastardly
24 criminal acts and must be characterised as such." In line
25 with this characterisation there needs to be concomitant

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1 action to address the situation.

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

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

23 The third point, Chairperson, is that what
24 happened here was premeditated murder of defenceless
25 people, and that any suggestion that it was a spontaneous

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1 act is gainsaid by the evidence. We have a situation where
2 it is said that in this meeting at half past 1 on the 16th,
3 that if plan 3, or stage 3 of the operation will have to be
4 implemented and that the discussions around that had gone
5 as far high up as the Commissioner of Police and the
6 Minister. In the minutes of that meeting, Chairperson, the
7 Provincial Commissioner – about whom I will say something
8 later, I'm reading from the minute, it's of A197/3 in the
9 Police bundle –

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

12 MR MPOFU: Yes, the meeting was on the
13 16th, I'm sorry.

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

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

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1 the Minister of Police on the current situation and actions
 2 that will be taken.”
 3 [10:12] And that the living conditions that you observed,
 4 Chairperson, of eight grown African males being lumped into
 5 one room with no other facilities are also justified on
 6 this basis that well, they have a comfortable bed in their
 7 real homes and they are just here to sell their labour, and
 8 that is one of the underlying factors for the wages against
 9 which the people were protesting in the first place, and on
 10 that score, at that level, Chair, much as we would like to,
 11 we cannot blame the South African Police Services. The
 12 South African Police Services is simply an agent of a
 13 government that has allowed this to continue 20 years into
 14 democracy. Not that we can blame Lonmin at that level,
 15 Chair, because again Lonmin is simply a microcosm of what I
 16 earlier called capital which has benefited from such a
 17 system. But we'll show, we'll bring an expert if we have
 18 to, to show that there are underlying causes that go beyond
 19 what we see here, but that, with the greatest respect, does
 20 not excuse, it does not excuse the primary, what we've
 21 referred to as the primary parties, from their
 22 responsibility for the specific tragedy that occurred in
 23 Marikana.
 24 The last point, Chair, is that – and we'll make
 25 this point directly and indirectly, that the decision to

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1 charge the protesters with murder of their fellow
 2 protesters under the so-called doctrine of common purpose,
 3 was callous, insensitive and a form of using the poor as
 4 scapegoats.
 5 CHAIRPERSON: I don't think it's
 6 necessary for you to cover paragraph 10 and 11 at this
 7 stage. If the Terms of Reference are subsequently extended
 8 I'll give you an opportunity to say something then, but not
 9 necessary at this point. You may now wish to move on to
 10 paragraph 12.
 11 MR MPOFU: Ja. Thank you very much,
 12 Chair. Yes, I'll jump the paragraph 10 and 11.
 13 Chairperson, I want to, before I move to paragraph 12, just
 14 make this remark. Yours, as has already been said, and
 15 your fellow panellists and honourable Commissioners, is an
 16 unenviable task and if I never get a chance to say this,
 17 Chairperson, I want to say that all efforts have to be done
 18 to get to the bottom of what happened. There was, I was
 19 reminded of the importance of this when last, in the past
 20 two weeks there was a commemoration of the death or murder
 21 of Samora Machel somewhere in Mpumalanga and the government
 22 had instituted the Margo Commission to look into that.
 23 CHAIRPERSON: Yes.
 24 MR MPOFU: And all the statements that
 25 were being made last week were that people had accepted

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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.
 9 There was also, I referred back to the massacring
 10 of miners in the 40s and the 20s. At that stage there was
 11 something called the Lansdowne Commission which was put in
 12 place and it had recommended, among other things, that the
 13 mining people should be paid a living wage, the miners.
 14 This was in 1943, if I'm not mistaken, Chair, and the
 15 government and the Chamber of Mines in particular rejected
 16 the findings of that Lansdowne Commission, and part of the
 17 history that I've mapped can be traced back to the failure
 18 of that Lansdowne Commission. So let us use the Margo
 19 Commission and the Lansdowne Commission as examples of what
 20 hopefully will not be the outcome of a commission of this
 21 nature.
 22 Having said that, Chairperson, I would like to
 23 say that I, as we say in the concluding paragraph, that
 24 because inter alia of the impediments that we face of
 25 resources to consult with 300 people at these distances -

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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 Mpofo. 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 Now Ms Chabedi, do you wish to address us?

2 MS CHABEDI: Thank you, Chairperson,
3 Commissioners. Chairperson, I don't intend reading the
4 entire statement into the record. I'll however highlight
5 four points which are contained in the statement, which are
6 contained in paragraphs 2, 4, 8 and 9. The DMR welcomes
7 the inquiry and is committed to assisting the Commission
8 insofar as its proceedings relate to the DMR or require the
9 assistance of the DMR.

10 4, the DMR is in a position to make submissions
11 to the commission regarding the history of the mineral
12 resources industry in South Africa and how the DMR
13 statutory mandate was implemented from time to time,
14 particularly in relation to Lonmin.

15 On page 2, paragraph 8, because the DMR was not
16 involved in the incident, its submission will be confined
17 to – Chairperson, I see there it's written fourth team,
18 it's actually referring to the second team. The Commission
19 is respectfully invited at its convenience to call on the
20 DMR for further assistance, should it be required. Thank
21 you. Thank you, Chairperson.

22 CHAIRPERSON: Thank you, Ms Chabedi. Is
23 there any other party who wishes to make an opening
24 statement?

25 MS KGOROEDIRA: Yes, Mr Chair. We act

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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 KGOROEDIRA: 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.

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1 I suggest you hand them over to Ms Pillay, one of the
2 evidence leaders, and she can maybe take the matter further
3 from there.

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

19 [10:32] As already indicated, I am Advocate Karabo Bareng
20 Kgoroedira. I am led by Rusty Mogagabe SC, who is not
21 present today. I am assisted by Adv Mphiri Masilo and we
22 shall be acting on behalf of the parties I've already
23 mentioned. Lonmin Platinum Marikana operations are
24 situated on a farm called Wonderkop. This farm is Farm
25 JQ400 portion 2 which is situated on the western limb of

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1 the Merensky Platinum Reef, commonly known as the Platinum
2 Belt. Lonmin had entered into a notarial lease agreement
3 with the Bapo Ba Mogale Traditional Community and that this
4 was preceded by the Mining Charter and the Mineral
5 Petroleum and Resource Development Act. However, the
6 spirit of the current Mining Charter with specific
7 reference to local community government, job creation and
8 local economic empowerment underpinned the basis upon which
9 the Bapo Ba Mogale Traditional Community accepted the
10 proposal to have the mines established for example, Lonmin,
11 and operated on their land. The farm Wonderkop is a sub-
12 village of the Bapo Ba Mogale Traditional Community land
13 and falls within the jurisdiction of Kgosi Bob Edward
14 Mogale and his royal family and the traditional community
15 land. This is also where the massacre of the 16th of August
16 2012 occurred, which is termed the Marikana massacre by the
17 media.

18 Marikana, originally termed Marakaneng, is in
19 fact a small town a few kilometres away from Wonderkop Farm
20 and is actually the border of the Bafokeng Villages and the
21 Bapo Villages and the Royal Bafokeng Villages fall under
22 Rustenburg and Royal Bapo falls within the jurisdiction of
23 Madibeng and Brits. Accordingly the land on Lonmin
24 Platinum, on which Lonmin Platinum Mines, Marikana
25 operations were its largest platinum operations in South

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1 Africa are situated and on which the massacre occurred
2 belongs to the Bapo Ba Mogale Traditional Community. It is
3 so that to the extent that the Kgosi and his royal family,
4 this is on the basis on which the Kgosi and his royal
5 family and the traditional community wish to join these
6 proceedings in that it is their land, that this Commission
7 seeks to put under scrutiny.

8 I would now like to deal with the notarial lease
9 agreement between Lonmin and the Traditional Community.

10 As already communicated, Lonmin had a notarial
11 lease agreement in order to lease the land of the Bapo Ba
12 Mogale Traditional Community in exchange for payment of
13 royalties and also undertook to meet a socio-economic
14 obligation in the Bapo Ba Mogale Traditional Community area
15 in terms of the Mining Charter, the South African Mining
16 Charter and its basic conditions in terms of which their
17 mining licence was issued. Presently the concerns of Kgosi
18 Bob Mogale, his royal family and the traditional community,
19 are that Lonmin is exploiting minerals on the land which
20 belongs to the tribe or Traditional Community, fails to
21 meet its obligations and undertaking made by it in relation
22 to social and infrastructural development of the community,
23 and initially failing to give preference to members of the
24 community regarding employment opportunities within the
25 Lonmin Mine.

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1 I would now like to elaborate on the issues that
2 I have raised. One was, the first one is the social and
3 labour plans. Mr Chairperson, it is trite law in this
4 country that every mining licence application must be
5 accompanied by a social and labour plan, commonly known as
6 the SLP. This is a social contract between the regulator
7 which in this case is the Department of Mineral Resources,
8 the mining companies involved and the traditional community
9 in the specific area in which the company intends to mine.
10 The social contract is intended to ensure that the mining
11 companies meet the objectives of the mining charter, or
12 rather the South African Mining Charter namely, to utilise
13 and expand existing skills base for the empowerment of the
14 historically disadvantaged South Africans and to serve the
15 traditional community involved, to promote employment and
16 advance the social and economic welfare of the mine
17 communities and major labour sending areas.

18 Now, Mr Chairman, Lonmin will come and tell this
19 Commission how they have grade SLP plans and excellent
20 programmes geared towards the achieving of the Mining
21 Charter and they may even employ best experts to do so. Mr
22 Chair, they may also inform this Commission how they have
23 spent millions of rands to achieve these objectives.
24 Sadly, the Bapo Ba Mogale Traditional Community will ask
25 this Commission to take a tour around their village at some

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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 KGOROEDIRA: 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 KGOROEDIRA: Thank you, Mr Chair.

16 MR MAHLANGU: I've got it. Just the one
17 simple word Bapo Ba Mogale.

18 MS KGOROEDIRA: Thank you very much,
19 Sir.

20 CHAIRPERSON: If that was the only
21 problem we had to solve with this Commission our job would
22 be very easy, but carry on.

23 MS KGOROEDIRA: Thank you, Sir. Thank
24 you, Mr Chair. As I said, sadly, the Bapo Ba Mogale
25 Traditional Community will ask this Commission to take a

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1 tour around their village at some stage, to see for
2 yourselves that an area situated on the western limb of the
3 Merensky Reef termed the Platinum Belt, in which rich
4 deposits of mineral resources exploited by several mining
5 companies have nothing to show for their presence, save for
6 traditional land being infested by migrant labourers as
7 well as job seekers, without any form of consideration from
8 mines who happen to be the cause and attraction of these
9 occupiers of the land.

10 Sadly, Mr Chairperson, the Bapo Ba Mogale
11 Traditional Community still struggles for some of the basic
12 rights, such as water and sanitation. It is these social
13 struggles that may be attributed to the boil that has been
14 simmering around the mining community, as the Bapo Ba
15 Mogale Traditional Community is frustrated by Lonmin and
16 workers are frustrated by Lonmin to no avail.

17 Mr Chair, and Commissioners, we will lead
18 evidence to the various attempts by both the traditional
19 community leadership, the youth, and other members of the
20 traditional community where Lonmin was requested to meet
21 its social contractual obligation. We will also lead
22 evidence of the continued and constant refusal by Lonmin
23 management which was bold enough to say to the Bapo people,
24 Ba Mogale Traditional community they will not lift a finger
25 until there is social cohesion in the traditional

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1 community.

2 [10:52] We will lead evidence to show that Lonmin, on the

3 land of the Bapo Ba Mogale traditional community, had been

4 operating for a considerable period of time - to be

5 specific, since the '70's, without any regard for the

6 social conditions of the communities on whose land they

7 operate, despite recently creating a burden of informal

8 settlements on the land of Bapo traditional community.

9 You will also hear, Mr Chairperson and

10 Commissioners, how Lonmin overlooked Bapo Ba Mogale

11 community in the share interest opportunities and continues

12 to do so. Now, Mr Chair, I would also now like to talk

13 about the events preceding the Marikana massacre. The

14 events which occurred in the Marikana tragedy are actually

15 preceded by the members of the traditional community, and

16 particularly the youth, venting their dissatisfaction and

17 their anger, mainly concerning, amongst other issues it had

18 with Lonmin, wages, Lonmin overlooking or disregarding the

19 Bapo Ba Mogale locals in respect of employment

20 opportunities, and issues relating skills development for

21 the community and the locals.

22 It is the very same issues that have previously

23 led to violence in the area, unrest in the traditional

24 community, and destruction of property, as well as the

25 temporary closing down of Lonmin's operations earlier on,

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1 before the tragedy. These incidents also resulted the loss

2 of life. The aforesaid violence and unrest has always been

3 imminent in the area and lives have always been previously

4 lost.

5 It is so unfortunate that on the 16th of August

6 2012, there was even more bloodshed on the Bapo Ba Mogale

7 traditional community land. It is the humble submission

8 that we seek to make on behalf of Kgosi Bob Mogale, the

9 royal family and his traditional community, that this is

10 only the tip of the iceberg, and urgent intervention by the

11 government was necessary. Accordingly, Mr Chairperson and

12 Commissioners, the Kgosi and the traditional community of

13 Bapo Ba Mogale welcome this Commission of Inquiry. Now,

14 I'd like to talk about the role of -

15 CHAIRPERSON: It's now 11 o'clock, I'm

16 proposing to take the tea adjournment soon. If, what

17 you're going to talk about will take you just a couple of

18 minutes, I suggest you do it now. If it's going to take

19 longer than that, it might be appropriate to take the tea

20 adjournment now, but you must tell me what you think

21 appropriate.

22 MS KGOROEDIRA: Mr Chair, we can take a

23 tea break.

24 CHAIRPERSON: Very well. The Commission

25 will adjourn for 15 minutes.

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1 [INQUIRY ADJOURNS INQUIRY RESUMES]

2 [11:24] CHAIRPERSON: The Commission resumes.

3 Before you proceed, may I ask you whether what you are

4 going to say, relates - what you are going to say now,

5 relates to the first theme that we're investigating at this

6 stage, namely the actual shootings on the 16th and what led

7 up to them, or whether it relates to the second theme which

8 is Lonmin's involvement in the creation of the

9 circumstances which gave rise to the ultimate killing on

10 the 16th? If it relates to the second theme, and it may

11 also be linked with one of the later themes regarding the

12 responsibility of the Department of Mineral Resources,

13 which would involve monitoring or failing to monitor the

14 compliance with the Mining Charter, if it relates to those

15 issues, then I don't think it's necessary for you to speak

16 us about it today. There will be a meeting tomorrow, I

17 don't know if you've been informed, there will be a meeting

18 tomorrow of the representatives of the parties at which

19 endeavours will be made to work out time limits, arranging

20 for the exchange of information, and also, generally

21 speaking, devising procedures to shorten the proceedings,

22 possibly by the submission of agreed bundles of document

23 and things of that kind. So it sounds to me, from what you

24 were going to say, that it's more relevant to the later

25 stages, themes 2 and 4, so I put that to you. Is my

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1 assessment of that correct?

2 MS KGOROEDIRA: It is correct, indeed,

3 Sir.

4 CHAIRPERSON: Well, then it seems to me

5 then it would be appropriate for you just to close off then

6 what you were going to say, with full reservation of your

7 right, subsequently, when we come to those other themes, to

8 make a further opening submission dealing with the points

9 that you were proposing to make now. Is that appropriate?

10 MS KGOROEDIRA: Indeed, Mr Chair, and

11 thank you, Mr Chair and Commissioners. In closing, Mr

12 Chair, I would just like to mention something that touched

13 my heart. On the 18th of October this year, 2012, we had a

14 meeting with Mr Commissioner Tokota SC and Adv Malunga to

15 discuss the terms of reference and how the Bapo Ba Mogale

16 traditional community will play a role in this part and, as

17 Commissioner today, Mr Tokota Advocate SC said to the chief

18 or the king, Kgosi Bob Mogale, he asked him, "In your

19 words, what do you want to see happen?" And I'm about to

20 quote him in Tswana, and I would like Mr Interpreter to

21 interpret it in English -

22 CHAIRPERSON: I think a number of the

23 people present are also Xhosa speaking, so the interpreter

24 must interpret it from the Setswana into English and also

25 isiXhosa -

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1 MS KGORO EADIRA: In English and Xhosa and
 2 Tswana and, yes, Mr Chair, thank you. He said, "God's
 3 people help me, Lonmin is killing my children. My children
 4 are suffering from hunger. They do not have jobs. Please
 5 help me about Lonmin." He said, "My land has become
 6 confused. It's confused by Lonmin." And that's all he
 7 said, and that's all he could say, repeatedly, for 20
 8 minutes. That's all his response was.

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

14 CHAIRPERSON: Thank you very much, Adv
 15 Kgoroeadira.

16 MS KGORO EADIRA: Thank you, Mr Chair.

17 CHAIRPERSON: Is there anyone else who
 18 wishes to make an opening statement – any other party?
 19 Please put yourself on record and then make the statement
 20 that you wish to make, having indicated the party for whom
 21 you're making it.

22 MR RAMPILE: Thank you, Judge. My name
 23 is Tshepiso Rampile instructed by Nkaiseng Attorneys
 24 Incorporated from Vanderbijlpark, and I represent the two
 25 security officers, Mr Frans Mabelane and Mr Hassan Fundi,

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1 who are Lonmin's security officers. I represent the
 2 families in this very tragic event. In our case, the two
 3 deceased were – or met their deaths on the 12th of August at
 4 or near Wonderkop Hostel. The two of them, at the time
 5 they met their deaths, were security officers who were off-
 6 duty and were called to come and give backup, because there
 7 was a strike or a movement of people in that area. This is
 8 probably the two deaths that the families have instructed
 9 me, have not been covered in this Commission –

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

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

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

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1 participate and to assist us in coming to what we all hope
 2 will be the correct conclusion in respect of that aspect,
 3 you're free to do so.

4 MR RAMPILE: Ja, that is correct, Judge,
 5 and we admit that. The perception of the family is not as
 6 result of any fault by the Commission, it is just an issue
 7 that as things are being said about - the reference to less
 8 significance, they refer to just how the matter is
 9 addressed in the media, not by the Commission. We are
 10 fully aware that this matter is part of the terms of
 11 reference of the Commission, Judge, so thank you for that,
 12 Judge.

13 And the reason why they become concerned as this
 14 evolves, is that is as though either their deaths are less
 15 significant, or it is as though they were in the wrong, one
 16 way or another. And it is the view of the family, and,
 17 Judge, the truth is it will not be the first Commission
 18 that I am involved in. I have been involved in the Talbot
 19 Commission, where the recommendation of the Talbot
 20 Commission did not take us anywhere, in my view. I'm of
 21 the view, and I submit, with respect, that this synergy
 22 would like this Commission, when it makes recommendations,
 23 that the causes of the deaths of their families, not only
 24 be investigated and the truth about those causes be found,
 25 but that a solution that leads to closure of the families

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1 be actually, not only recommended, but be implemented.

2 This is my submission, Judge, both the strikers
 3 or all the workers, including these security officials, had
 4 a common purpose, a positive, common purpose to ensure that
 5 their families enjoy a constitutional state that we have
 6 attained in 1994. It would be beneficial if these families
 7 can have an understanding of how people working together
 8 can be so dehumanised as to kill one another in the manner
 9 in which this has happened, and I'm going to describe how
 10 it happened.

11 There were two bodies that were found at
 12 Wonderkop Hostel. One body, according to the investigation
 13 by the police, was burnt beyond recognition, with serious
 14 hacking on the head and the upper body. The other body was
 15 half-burnt, with the upper body seriously hacked. The
 16 question that I think the Commission would have to delve
 17 into is, how do co-workers come to that point? Is it not
 18 because the conditions of all of them are such that they
 19 have been commodified?

20 Now, let us look at exactly why they were called
 21 back to work when they were off. The families instruct me
 22 that a few number of them, had to actually face thousands
 23 of people, as security. Now, in Labour Law terms, they
 24 were just being diligent workers with trust that was
 25 supposed to mutual in an employment relationship. The

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

1 like lives being taken in the manner in which these two
 2 security died, leaves a lot to be thought about.
 3 Lastly I would go to the families of these two
 4 deceased security officers, and wish to indicate that the
 5 families would like to also present their evidence and give
 6 an indication - and I was looking at the docket giving the
 7 value of the car and the pistol and the other car that got
 8 burnt, and then two security officers, but what it actually
 9 means is that the whole future of these two security
 10 officers' families has changed direction, never again to go
 11 the same direction again. It is unfortunate because these
 12 families do not have means, and as a result we aren't able
 13 to prepare and consult in the manner in which we would like
 14 to, but Judge, I would really, if there is a possibility
 15 that some interim recommendations could be made on these
 16 families, and I believe that that would be in order,
 17 because the extent of hurt and the extent of just
 18 devastation that I saw in some of the members of the family
 19 really needs attention.
 20 CHAIRPERSON: Yes, thank you for that
 21 comment, and I'm grateful that you've brought it to our
 22 attention. May I suggest that you facilitate contact
 23 between the families and the evidence leaders, who are
 24 appointed by the Commission to assist it, and who have
 25 already done a vast amount of work in relation to the

1 gathering of evidence, which is relevant to the Terms of
 2 Reference. What you've been talking about is clearly
 3 covered by the Terms of Reference, and so I'm sure that the
 4 evidence leaders will be only too pleased to meet with your
 5 clients, to take such information or statements from them
 6 as they're able to give, and to present the evidence, which
 7 you have mentioned, to the Commission, because, as I've
 8 said, it's directly relevant to one of the Terms of
 9 Reference. So please convey that to your clients, and then
 10 I suggest you contact Mr Madlanga, who will, I presume,
 11 delegate one of the members of his team to deal
 12 specifically with it, if he hasn't done so already, for
 13 this specific aspect.
 14 MR RAMPILE: Thank you, Judge. I will do
 15 that, Judge, and I think it's very important, even though
 16 the fact that they have been left out for so long actually
 17 makes them ask a lot of questions, and I will do that,
 18 Judge. But I really would really would like to impress
 19 that they are of the view that they would like, to the
 20 extent humanly possible, that their grief and the
 21 experiences of families are properly presented before this
 22 Commission.
 23 CHAIRPERSON: I'm sure that will be done.
 24 MR RAMPILE: Thank you, Judge.
 25 CHAIRPERSON: Thank you for bringing it

1 to our attention again.
 2 MR RAMPILE: Thank you, Judge.
 3 CHAIRPERSON: And as you know, the
 4 Department of Social Development is involved in giving
 5 assistance, counselling and so forth, to the bereaved
 6 persons, and your clients clearly fall in that category.
 7 MR RAMPILE: Yes.
 8 CHAIRPERSON: If they have not yet
 9 received the benefit of the services being provided by the
 10 Department of Social Development, I suggest that again
 11 contact be made with them so that the department will be
 12 able to assist them also.
 13 MR RAMPILE: As it pleases, Judge. That
 14 is the evidence that we will then present through the
 15 channels that you have indicated, Judge, and we appreciate
 16 the time. We have not prepared anything in writing, Judge,
 17 but we will do so after we've spoken to the evidence
 18 leader, and probably were enabled to do so to assist that
 19 process. Thank you, Judge.
 20 CHAIRPERSON: Thank you. Is there anyone
 21 else who wishes to say something on behalf of any of the
 22 parties before I call upon Mr Semanya, who has indicated
 23 that he wishes to say something, I think in response to
 24 points that's been made earlier?
 25 MR BURGER: Chairperson and Members of

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1 the Commission, I'd just like to place my name on record,
 2 Jonathan Burger instructed by the Wits Law Clinic,
 3 representing the Council for the Advancement of the South
 4 African Constitution, CASA. I'm here under watching brief.
 5 Thank you.

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

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

23 What unfortunately has happened is we have been
 24 listening to sound bites, which are hardly helpful for what
 25 this Commission is supposed to do. We have been told about

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1 people killed like vermin, things like toxic collusions,
 2 extrajudicial executions, racist, backward, ridiculous
 3 conduct. All of this, Chairperson, with the greatest of
 4 respect, is not helpful.

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

18 MR SEMENYA SC: Chair and members of the
 19 Commission, this is not intended to be a criticism. It is
 20 definitely intended to convey that we were not acquiescing
 21 to the nature of presentations that have been made. We
 22 also kept restraint, purely so that we can facilitate the
 23 hearing, but we should not be understood to have made
 24 common agreement with volatile statements that have been
 25 uttered.

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1 CHAIRPERSON: I don't think, in this
 2 context, silence by any of the other parties present, while
 3 one party is making presentation, can be regarded as
 4 acquiescence or consent or admission of any kind.

5 MR SEMENYA SC: Thank you, Chair, that
 6 was the first thing. The second thing in relation to Mr
 7 Xolani Nzuza, who is Mr Mpofo's client who is in custody,
 8 I'm advised that all access, legal access permissible, has
 9 been extended to his legal team. He is in custody on
 10 charges of murder. To the extent that his evidence will
 11 become relevant and necessary to this Commission, the South
 12 African Police are giving the undertaking that he will be
 13 brought here, he would have the opportunity to testify, if
 14 he so intends, and no obstruction of whatever kind will
 15 face him. Thank you.

16 CHAIRPERSON: Thank you, Mr Semenya. I
 17 take it that the Police will ensure that any subpoena that
 18 is served on any witness will be complied with without any
 19 interference or obstruction of any kind. I didn't need any
 20 assurance because I thought it went without saying, but
 21 thank you for the assurance, which is on record. Mr Mpofo,
 22 do you want to say something? Is it relevant what we're
 23 busy with, because I'd like to get on with the inquiry?

24 MR MPOFU: Yes.

25 CHAIRPERSON: We've been busy with

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1 opening statement. We're now, another issue has arisen,
 2 but if you want to say something briefly –

3 MR MPOFU: Very, very briefly, Chair. It
 4 is just apropos Mr Semenya's brief statement. The first
 5 one, I think has been dealt with, and we would like to
 6 support you and the panel on giving us the latitude to make
 7 the statements, and having given the longest latitude to
 8 SAPS for obvious reasons, in making those statements, and
 9 we also did not object when we were told about friendly
 10 fire and such things.

11 The second thing, Chair, is the issue of Mr
 12 Xolani Nzuza. As I just want to make it clear, I will
 13 obviously liaise with my learned colleague, Mr Semenya, and
 14 his team, but the gravamen of what I was raising was not so
 15 much the issue of subpoenas and all that. As it happens,
 16 we don't need him to give evidence today, for example. So
 17 the issue was the mere fact that his arrest pertains to the
 18 matters that this Commission is asked to investigate, and
 19 the disproportionate and inequality inherent in that,
 20 because the Police, who actually shot people in broad
 21 daylight, have not been charged, and as we understand it,
 22 the reason is that the Commission is still going on, and
 23 that was, as we said, the issue that we raised in relation
 24 to the 272 people. That's what I was raising, not this
 25 issue about subpoenas and all that.

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1 CHAIRPERSON: Alright, okay. That
 2 concludes the opening statement section of our hearings. I
 3 now call upon Mr Budlender - who I understand has accepted
 4 responsibility for this - to present the video footage
 5 which has been made available to the Commission by the
 6 various media houses. I don't know if he also has video
 7 footage from the South African Police, but anyway he will
 8 explain what video footage he's got, and he will then
 9 present it to us.

10 MR BUDLENDER SC: Thank you, Chairperson.
 11 The video footage which we will show now, is all derived
 12 from television news services. There is nothing from the
 13 Police, and we will deal with that in due course during the
 14 hearing. Can I just say that as far as the viewing of the
 15 material is concerned, the Commissioners have the screen in
 16 front of them. As far as the counsel for the parties are
 17 concerned, they may find it easier to turn around and look
 18 at the screen which is directly behind them, which is a bit
 19 closer, and members of public have screens on the side.
 20 Chairperson, this presentation is focused on the
 21 events only of the 16th of August. To the extent that there
 22 is other relevant footage available on other days, that
 23 will be presented in due course, as we deal with that.
 24 What we have done, Chairperson, is we have put
 25 together a series of clips from television news footage.

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1 The material is inevitably repetitive to some extent, and
 2 I've tried to reduce the repetition to a minimum. I have
 3 also tried to keep to a minimum the commentary by the
 4 parties who were involved on the merits of the argument.
 5 I've tried to keep out the editorial comment as much as I
 6 can.
 7 [12:04] Just one other preliminary remark, Chair and that
 8 is that the Commissioners wish to have any clip replayed
 9 that can be done, it was be replayed at a slower speed or
 10 stopped at any point that the Commissioners find
 11 convenient.

12 CHAIRPERSON: Sorry, may I extend that
 13 invitation also to any of the parties. If any of the
 14 parties wish any particular clip to be re-shown or shown
 15 again at a slower speed, then they must please indicate.

16 MR BUDLENDER: Chair, then we start with
 17 two which were screened on E-News just over an hour or two
 18 [inaudible] the 16th of August and I draw attention to what
 19 people will see which is the time of the screening is shown
 20 on the left hand side of the film. It's at 14:33 and 14.34
 21 that afternoon and the evidence will be that the deployment
 22 of the barbed wire, which triggered the events commenced
 23 just an hour later. So can we have -

24 CHAIRPERSON: Mr Budlender, can I ask you
 25 would it help if the lights in the auditorium are dimmed?

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1 Would it make it easier for the people concerned to see?
 2 Could they do the lights on the stage possibly.

3 MR NTSEBEZA SC: Mr Chairman, can I just
 4 make a request before we show, are shown any footage. As I
 5 indicated I would like to be sure that there are people who
 6 will council the members of the family in the event
 7 anything that they might see, might traumatise them to an
 8 extent where such service is necessary. I would like to be
 9 sure that they are here.

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

20 MR BUDLENDER: Yes, yes Chairperson. The
 21 first footage then is as I say from E-News at 14:33 on the
 22 16th of August 2012.
 23 [News footage being shown]
 24 Then Chairperson, the next piece is a minute
 25 later also on E-News it contains, it includes some footage

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1 of what was happening an hour before the shootings and some
 2 explanation by the news reporter on what he done to try and
 3 find out what was going to happen.
 4 [News footage being shown]
 5 Chair, the next piece is a further piece of
 6 context to what happened on that day. It's again from E-
 7 News.
 8 [News footage being shown]
 9 Chair, perhaps I can just pause to make sure that
 10 everyone is assisted who needs assistance. There are
 11 people here. I must apologise I hadn't realised that
 12 footage was on that clip. I hadn't thought we had reached
 13 the shooting yet.

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

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

23 CHAIRPERSON: May I ask the interpreter
 24 to ask those present who are vitally, personally involved
 25 if they would not wish to have an opportunity to leave

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1 because it obviously is very distressing for them?
 2 MR BUDLENDER: May I interrupt the
 3 interpreter to say that there will be a number of films
 4 showing the shootings from different angles.
 5 CHAIRPERSON: Mr Ntsebeza, you have
 6 indicated you wish to say something?
 7 MR NTSEBEZA SC: Mr Chairman, I would
 8 like to suggest that perhaps a helpful process would be for
 9 the commission to have a short adjournment, an arrangement
 10 be made in another room where I believe there was a short
 11 circuit link to what is happening here and that is where
 12 the families and the councillors should probably be, so
 13 that we can proceed relatively smoothly because I can, I
 14 can anticipate that -
 15 CHAIRPERSON: Yes, thank you Mr Ntsebeza.
 16 MR NTSEBEZA SC: With the footages that
 17 will come.
 18 CHAIRPERSON: I think that's an excellent
 19 suggestion. I think we should implement it. As you heard
 20 neither Mr Budlender nor I knew that or realised that what
 21 we saw would be shown before we were satisfied that
 22 therapists and so forth were in position. But we will take
 23 a short adjournment, we will only resume when we are told
 24 that we are able to proceed and that what Mr Ntsebeza has
 25 suggested has in fact been implemented.

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1 [INQUIRY ADJOURNS INQUIRY RESUMES]
 2 [13:59] CHAIRPERSON: Good afternoon, everybody.
 3 The Commission resumes. I understand that arrangements
 4 have been made for the footage to be shown in a separate
 5 room nearby and that members of the families will be able
 6 to attend there, and receive counselling and assistance,
 7 should it be required. Mr Budlender, are you able to
 8 proceed?
 9 MR BUDLENDER: Yes, we are, Chairperson.
 10 Can I just say, just to make - put it beyond any doubt that
 11 we will be showing further footage of the shootings, and if
 12 there are people who feel that it may be upsetting to them
 13 to watch that they need to know that is coming now.
 14 CHAIRPERSON: Mr Ntsebeza, you indicated
 15 you wished to say something.
 16 ADV NTSEBEZA SC: Thank you very much,
 17 Chairman and Commission. I've just been told that firstly,
 18 Chairperson, no, I just want to say we re grateful to,
 19 particularly Ms Pillay for the efforts that she has done
 20 over lunch to arrange, to put all these arrangements in
 21 place. We are even quite ready to let the arrangement go
 22 ahead today. There's just a slight difficulty. Most of
 23 the people who come from the Eastern Cape I understand is
 24 isiXhosa, and no other language, and the only, the social
 25 workers who will be dealing with them are Tswana speaking

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1 people, but you know, that will not hold up anything
 2 because, for today, but I am again being told that
 3 arrangements are being put in place. May I just also
 4 indicate that, as I understand that post-mortem reports
 5 will be shown, I believe probably on Monday, I am not so
 6 sure, I didn't talk to Mr Budlender. Our attorneys have
 7 again arranged with the families and have indicated to them
 8 that post-mortem results, I mean reports may also have that
 9 kind of traumatic effect on them and what they have elected
 10 to do, and I think this has been arranged again, is that
 11 their attorneys will have a table where they will take the
 12 families one by one, they will see what they might have had
 13 to see when the post-mortem reports are flighted. I just
 14 wanted to put that on record. I thank you very much for
 15 the opportunity. Thank you very much.
 16 MR BUDLENDER: Thank you, Mr Chairman,
 17 may I just clarify further, one matter which I mentioned
 18 before we adjourned at lunch time, that was that I
 19 mentioned that all of the footage which we are showing
 20 comes from news broadcasts, television broadcasts, that is
 21 the position. I said that we do not have any South African
 22 Police Service footage. I should have qualified that to
 23 say we have no South African Police Service footage of the
 24 events at Scene 1 and Scene 2. There is certain footage at
 25 other times and at other places, but we have no Police

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1 footage of Scene 1 and Scene 2. That will no doubt be
 2 dealt with at a later time. May I then proceed,
 3 Chairperson. What we saw shortly before the adjournment,
 4 was the build up, some of the context and then the - a clip
 5 of the shooting at Scene 1, which I think is the one which
 6 is best known as the one which has been seen very
 7 frequently on television.
 8 Now the next clip which also comes from E-News,
 9 shows - seems to show some of the build up or scene setting
 10 which preceded the shooting at Scene 1. This appears to be
 11 events immediately preceding Scene 1.
 12 [News footage being shown]
 13 Thank you. That's not terribly clear but it's
 14 shown more clearly, the scene-setting at Scene 1, in the
 15 next two clips. The next clip shows the line of Police
 16 members being formed shortly before the shooting, one sees
 17 the line being formed and then one hears the shooting
 18 following shortly after that. This takes a short while to
 19 find this place because it's part of a longer piece of film
 20 footage. It may take a few seconds for the technician to
 21 find it. So this is the line of police members being
 22 filmed before the shooting, and the shooting then following
 23 immediately, or shortly afterwards. This also comes from
 24 E-News.
 25 [News footage being shown]

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1 So that, Chairperson, is the police line formed,
 2 and then the shooting which followed, and then the next
 3 clip shows the same, roughly the same period of time to the
 4 right of the police line, if I can call it that, it shows
 5 the Nyalas moving into place before the shooting on the
 6 side of the kraal, and then again, one hears the shooting
 7 taking place, the volley of shooting.
 8 [News footage being shown]
 9 That too, Chairperson, was from ETV, and the next
 10 clip shows that same movement of the Nyalas moving into
 11 line, moving into position on the side of the kraal shortly
 12 before the shooting. It's from Al Jazeera, and in many
 13 ways, it's the most revealing clips that we have available,
 14 because it shows what was taking place immediately before
 15 the shooting, and it may be helpful to view this more than
 16 once. Can I - you will see on the clip 1 of the protesters
 17 or strikers has an handgun, that is shown on the Police
 18 presentation which we will see later, but you will see -
 19 what you see, if I can anticipate, so it's understood what
 20 is seen, one sees the strikers or protesters moving down.
 21 They are being fired at from behind the - or through the
 22 Nyalas and then they go - they seem to accelerate and they
 23 go down into the place where they meet the volley of fire.
 24 [News footage being show]
 25 CHAIRPERSON: - that clip again, it does

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1 seems to show a critical part. Could we have the Al
 2 Jazeera clip again, please.
 3 MR NTSEBEZA SC: Mr Chairman, can the
 4 interpretation be both in Tswana and IsiXhosa.
 5 MR MAHLANGU: I was made to understand,
 6 Mr Chairperson, that the families from the Eastern Cape
 7 have now been accommodated in a separate room that time,
 8 but I will do so if it's necessary.
 9 CHAIRPERSON: Let's ask, perhaps you
 10 could interpret what I am saying into Xhosa, would the
 11 people who are here in the - are there people here in the
 12 auditorium who would wish what is being said to be
 13 interpreted, not only into Setswana but also into IsiXhosa?
 14 If so, would they raise their hands.
 15 MR MAHLANGU: I see quite a number of
 16 hands have gone up.
 17 [News footage being shown]
 18 Chair, that is the footage we have, which appears
 19 to eliminate the events immediately before the shooting.
 20 The shooting itself was filmed from a number of angles,
 21 which give different perspectives. The first one I wish to
 22 show is the film which was, I think most frequently seen
 23 which was shown on E-News.
 24 [News footage being shown]
 25 Chair, what ETV did, was they put together a

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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

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1 what seems to be Scene 2. There seems to be only that and
 2 I would like to show that now. This is all we have of what
 3 seems to be Scene 2. That's SAPS footage - I beg your
 4 pardon, television footage.
 5 [Television footage being shown]
 6 That, I am afraid is all we have. It does seem
 7 to be seen through - Chair, that is the footage we propose
 8 to show of Scene 1 and Scene 2. There are two pieces which
 9 we wish to show to round this off. The first is that on
 10 the morning after these events the South African Police
 11 Service held a media conference, which was addressed by the
 12 Provincial Commissioner, Lieutenant-General Mbombo, and she
 13 set out the Police account of what had happened the
 14 previous day. This is from the SABC.
 15 [News footage being shown]
 16 The wrong clip, Chair. There's a clip which I'll
 17 have to show on another occasion. Yes. I seem to have
 18 marked the wrong clip. We will find it and show it on
 19 another occasion. We then conclude, just to make it clear,
 20 there is footage of the Provincial Commissioner of Police
 21 at the media conference the following day, explaining what
 22 has happened, giving the Police account of what had
 23 happened the previous day. That will be on a disc which we
 24 will distribute to everybody and we can show it in due
 25 course. And then the last clip is really, just to round

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1 this off, is a piece from the BBC.
 2 [News footage being shown]
 3 MR BUDLENDER: Chair, those are
 4 presentations, video presentations we wish to make. I will
 5 see if I can locate –
 6 CHAIRPERSON: Can the Interpreter not
 7 interpret what the Commissioner said on the last clip that
 8 we saw?
 9 MR BUDLENDER: Can we show that last clip
 10 again?
 11 [News footage being shown]
 12 MR BUDLENDER: Can I just ask the
 13 technician whether he has another SABC clip on – he found
 14 it? Thank you, could we have that then. This is the
 15 Commissioner speaking at the media conference, immediately
 16 on the day after.
 17 [News footage being shown]
 18 CHAIRPERSON: Again, what the
 19 Commissioner says, should I think be interpreted into
 20 IsiXhosa and to Tswana, once we've seen and heard it. It
 21 is quite long as I recall, Chair, it's over a minute, I
 22 think, so we may then have to pause it, or perhaps we can
 23 run it and then you can decide how to deal with it.
 24 [News footage being shown]
 25 MR MAHLANGU: Mr Chair, with all due

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1 respect, it's – I can't get it very clear, I don't
 2 understand what she's saying, she is not very clear to me.
 3 If it could be replayed again, or if there's a – unless
 4 there is possibly a written, somebody who has the speech
 5 written by the Commissioner, I really cannot get clarity on
 6 what she is actually precisely saying.
 7 MR BUDLENDER: Chair, perhaps the best
 8 thing to do, I assume that the Police Service has a full
 9 recording of that media conference. Perhaps they could
 10 make it available to us, and in fact the prepared speech.
 11 The Provincial Commissioner was clearly speaking off
 12 prepared notes. It's the National Commissioner, as I said.
 13 CHAIRPERSON: The National Commissioner
 14 was clearly reading from a prepared speech so the text of
 15 that should be available and you are asking Mr Semenya and
 16 his team to make it available and then at a subsequent
 17 hearing, it can be read out and interpreted by the
 18 Interpreter.
 19 [14:39] MR BUDLENDER: That is so, Chairman.
 20 Chair, those are the – I am sorry. That's all we propose
 21 to show today, as far as television footage is concerned.
 22 CHAIRPERSON: Thank you, Mr Budlender, I
 23 think Mr Semenya, you indicated you wanted to say
 24 something.
 25 MR SEMENYA SC: Indeed, Chair. And

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1 really, we are seeking guidance. We don't want to make any
 2 comment about the evidentiary value of all the commentary
 3 that has been following the pictorials but it is important
 4 to the extent that they will be interpreted that certain
 5 sections of those comments made by other individuals in the
 6 footages, be translated for the audience as well.
 7 CHAIRPERSON: When are you suggesting it
 8 should be done, Mr Semenya? Speaking for myself, I am
 9 prepared to accept that the voice over, the commentary by
 10 the news readers or presenters, have no evidential value at
 11 all and can be disregarded, but there may be parties who
 12 wish to contend something different, to persuade me that I
 13 am wrong with my prima facie view, but when do you suggest
 14 that the material be translated for the benefit of those
 15 who are in the auditorium? It might be easier for the
 16 Interpreter, because if someone were to transcribe what's
 17 said, he would then be given the opportunity later to
 18 translate it, but I am in your hands. What suggestions do
 19 you have to make?
 20 MR SEMENYA SC: Firstly, Chair, we will
 21 make available the transcript from which the National
 22 Commissioner was speaking, but as we shall see further
 23 video footage, there are utterances from among the
 24 protesters as well, very indicative of explaining their own
 25 conduct as well. We are just inviting, that perhaps with

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1 your ruling we would have that as well interpreted, because
 2 it would be relevant further down.
 3 CHAIRPERSON: Yes, I agree with you.
 4 That would be relevant, and clearly when that is shown the
 5 Interpreter will be asked to interpret it. If somebody is
 6 in possession of the transcript of what is heard, it might
 7 help the Interpreter. Sorry, Mr Semenya, I am not sure I
 8 understand you correctly. Are you talking about further
 9 footage we are going to see, or are you suggesting that
 10 there were things audible on what we saw today, which
 11 emanated from the protesters or strikers, or whatever one
 12 wants to call them, which is relevant?
 13 MR SEMENYA SC: I am referring to footage
 14 that will follow, now that we understand the commentary
 15 from journalists has no evidential value, that takes care
 16 of that aspect. But to the extent that that utterances
 17 from the Police will be interpreted, they might hold some
 18 evidentiary value in the future, those we will have
 19 interpreted. But equally, there will be footage of miners,
 20 some of whom are speaking Fanagalo and we might just have
 21 to obtain appropriate interpretation for that, we would
 22 like also that interpreted.
 23 CHAIRPERSON: I find it an appropriate
 24 request. I don't know whether our multilingual interpreter
 25 can speak Fanagalo, but I'll be surprised if he doesn't.

<p style="text-align: right;">Page 267</p> <p>1 MR MAHLANGU: Unfortunately I do. 2 CHAIRPERSON: Mr Bizos, I think you 3 indicated you want to say something. 4 MR BIZOS SC: Chairman, as helpful as the 5 film may be, unexplained by persons who could be identified 6 on the film, making comprehensive statements as to 7 precisely where they were in relation to one another, as an 8 example. It's going to be impossible to really get any 9 valid answer in cross-examination or in examination-in- 10 chief as to what has happened. The proposal that I am 11 making is that I hear that there is other film. I don't 12 know why, if there is other films, or the South African 13 Police have not made it available to our friends on the 14 other side. Oh, you have done it? And then I don't know 15 whether that will be shown. In order to identify people 16 and to ask them relevant questions having regard to what 17 appears on the screen, let me give an example. It's not 18 worth saying that there was a crowd with sticks or seeing 19 that, if we don't know how far away they were from the 20 Police, as to whether there were any Police vehicles 21 between them and where the Police were standing. We do not 22 know, and we did not hear whether anybody ordered the 23 firing to stop. The people that started firing must be 24 interrogated gently, where were they? Did anybody order 25 them to fire, or was it every man for himself to decide</p>	<p style="text-align: right;">Page 269</p> <p>1 statements, I see that my learned friend is smiling, maybe 2 he has already done it, knowing this is the way in which he 3 prepares himself, so that we can have on the map, where 4 were the people that are shown on Al Jazeera, and where 5 were the people that were on this particular – so that we 6 will be able to form a picture of where the, we believe the 7 truth lies. 8 CHAIRPERSON: There was a composite map 9 indicating where the cameras were on some of the footage 10 provided by ETV, and it might be possible for that to be 11 printed and for the various policeman that were involved to 12 perhaps indicate where they were at the time, as far as 13 they can remember on that map or enlarged map. Mr 14 Budlender, have you any comments to make in respect of what 15 Mr Bizos is suggesting? 16 MR BUDLENDER: Chair, yes, but we can 17 only do one thing at a time prepare, we can't show the 18 films and have the witnesses and have the maps 19 simultaneously. We thought we would be helpful to start 20 with the available objective evidence which is available to 21 show, this is what happened, and which can't really be 22 disputed, and of course there are maps and there are 23 diagrams and there are statements and it will be presented 24 in due course and the next witnesses which my learned 25 friend will present will talk, will produce photographs and</p>
<p style="text-align: right;">Page 268</p> <p>1 whether he is going to shoot to kill or not? So that if 2 this film or these films are to be of any evidential value, 3 quite a lot of work has to be done and statements taken 4 from both sides of the fence, so to speak, so that it can 5 be either corroborated or contradicted by the film, 6 otherwise, we will stand here and the witness will say, 7 well, there was a big crowd, and they had sticks. 8 Without having information about where they were 9 positioned, who made the decision to shoot, it's not going 10 to be of particular value, and this is why I suggest that 11 the evidence leaders should, with respect, call on the 12 persons that appear to identify themselves and to make 13 statements. Similarly, if the Police can identify, and I 14 am sure that it will be easier for them to identify the 15 people that shot, that we can have statements, we can 16 compare them to what appears on the films. There's a lot 17 of work to be done. For instance, I looked at my watch in 18 the hope of agreeing or informing myself, for how far, how 19 long did the shooting last before some good policeman 20 shouted out, "cease fire." He wasn't listened to, on the 21 face of it. But we need that sort of detail to be agreed 22 on, made available to us and we be given an opportunity to 23 test the veracity of the witnesses on both sides. Another 24 comment, we were informed that good maps exist of the area. 25 It may well be very useful for the purpose of taking the</p>	<p style="text-align: right;">Page 270</p> <p>1 maps and show where it is, but we can only do one thing at 2 a time. 3 CHAIRPERSON: I understand that. But 4 really the question is, has what Mr Bizos has suggested 5 been done, or would it be done by the time the relevant 6 witnesses come and give evidence? 7 MR BUDLENDER: Chair, the next witnesses 8 will be the forensic, Police forensic experts who will talk 9 about what they found on the scene after the shootings. 10 That includes maps, it includes photographs and all of that 11 material has been given to all of the parties. We can all 12 make our best guess from that as to where the Al Jazeera 13 camera was or where the ETV camera was. In fact, one can, 14 if one was on the in loco inspection one can work it out 15 quite directly, but it will all be presented. There has 16 been no attempt to map where precisely the Al Jazeera 17 camera was, if that's what's being asked but there are maps 18 in the possession of the parties which will shortly be 19 presented by the next witnesses. 20 CHAIRPERSON: As I understand what Mr 21 Bizos is saying. Assuming you were to call a policeman, 22 let's call him Constable X, for brevity, he would like to 23 know when Constable X goes in the box, "you can see me on 24 one of the television clips, you can see me on the Al 25 Jazeera clip, I am the man on the left-hand side, is this,</p>

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1 that and the other." That's the kind of evidence he'd
 2 like, so that when the witnesses go in the box, where their
 3 evidence is capable of being checked against a TV clip, the
 4 relevant information for its necessary checking to be done,
 5 should be available. That is, as I understand it, he
 6 wants. Now, if it hasn't been done yet, the suggestion is
 7 that by the time Constable X goes into the witness-box,
 8 attempts should be made to get that information. That's
 9 the point. I take it, from you say, it hasn't been done
 10 yet, but it should be possible to do it at some stage in
 11 the not too distant future. Is that correct?

12 MR BUDLENDER: Chair, it may be possible
 13 for some of the Police witnesses to identify themselves on
 14 some of the videos, I don't know, but we will all have the
 15 opportunity to say to – each team will have the opportunity
 16 too say to the witness, "where were you? Here is the film,
 17 where were you there?" Mark yourself. So – but it seems
 18 to me it will be, we can't expect that we will be able to
 19 identify each of the policemen in relation to a piece of
 20 video footage, but we will all have the opportunity to try.

21 CHAIRPERSON: I understand that, it would
 22 also be helpful, this is something that I can say to Mr
 23 Semenya, I take it's been done already, but if it hasn't
 24 maybe it should be done by the time Police witnesses give
 25 evidence, they should all have an opportunity to see all

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1 the media footage. So you don't want Constable X to say, I
 2 am sorry, I can't tell you where I was, because I haven't
 3 seen the media footage. That is the kind of answer, which
 4 while it might be true, would be very irritating. So
 5 perhaps we can avoid irritation on that front. Is that
 6 correct, Mr Semenya?

7 MR BUDLENDER: Chair, we are having
 8 copies made of all the video footages which we've shown
 9 this afternoon, and set will be available to each of the
 10 teams so they will be able to consult with their witnesses
 11 on the video footage.

12 CHAIRPERSON: Thank you, Mr Budlender. I
 13 understand, Mr Madlanga, that you are going to lead the
 14 next item of evidence.

15 MR MADLANGA SC: That is so, indeed,
 16 Chairman. May I ask to call Lieutenant-Colonel Cornelius
 17 Jacobus Botha.

18 ADV NTSEBEZA SC: Chair –

19 CHAIRPERSON: Yes?

20 ADV NTSEBEZA SC: - I wouldn't like to
 21 be, again be one of those instances that might be
 22 irritating, but just – I do understand that, Mr Chairman,
 23 it might just assist that we adjourn for a couple of
 24 minutes for the other family members, who were not here to
 25 come here.

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1 CHAIRPERSON: The Commission will adjourn
 2 for five minutes.

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

10 CHAIRPERSON: Mr Mpofu, sorry, I think we
 11 adjourned the Commission, but apparently it has been
 12 overruled. Mr Mpofu.

13 [14:59] MR MPOFU: Chair just a slight issue, I
 14 just didn't want to lose the opportunity if we are now
 15 going to move to something else. Just so that we are on
 16 the same page in respect of what has been raised, my
 17 understanding is that, Chair what is being done by the
 18 evidence leaders is to give us the kind of landscaping of
 19 the footage that is available, not yet leading the evidence
 20 in respect of that. They and SAPS and ourselves will have
 21 specific witnesses in respect of everything that has been
 22 shown and those people can then be interrogated. That is
 23 the first, my understanding -

24 CHAIRPERSON: And to enable you to
 25 consult with your witnesses and lead them intelligibly

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1 MR MPOFU: Absolutely.

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

4 MR MPOFU: Yes.

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

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

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

24 MR MPOFU: Thank you, Chair.

25 MR SEMENYA SC: Everybody has been

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

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

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

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

20 [INQUIRY ADJOURNS INQUIRY RESUMES]

21 [15:10] CHAIRPERSON: The commission resumes.
 22 Lieutenant-Colonel, do you wish to swear or affirm?

23 LT-COL: I will swear, Sir.

24 CHAIRPERSON: Do you swear the evidence
 25 you will give in this, for this commission will be the

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1 truth, the whole truth and nothing but the truth please
 2 raise your right hand and say so help me God. Say so help
 3 me God.

4 LIEUTENANT COLONEL CORNELIUS JOHAN BOTHA:
 5 So help me God.

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

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

14 LT-COL BOTHA: Mr Chairperson, I'm a
 15 Lieutenant-Colonel in the South African Police Service
 16 attached to the provincial crime scene processing team,
 17 Phokeng. I have 28 years service in the South African
 18 Police Service of which I have been employed as a
 19 fingerprint expert, official draftsman, photographer and
 20 video camera operator for the past 26 years. I have
 21 successfully completed a theoretical and practical training
 22 course as a fingerprint expert, official draftsman,
 23 photographer and video camera operator at the local
 24 criminal record centre, Uppington and also the SAPS
 25 criminal record centre, Pretoria.

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1 MR MADLANGA SC: Colonel, I see that you
 2 are reading from something. Are you reading from your
 3 statement?

4 LT-COL BOTHA: I'm reading from my
 5 statement, Sir.

6 MR MADLANGA SC: Mr Chair, commissioners
 7 -

8 CHAIRPERSON: I have no objection to his
 9 reading from his statement.

10 MR MADLANGA SC: Yes.

11 CHAIRPERSON: For his evidence-in-chief.

12 MR MADLANGA SC: Yes, continue, Colonel.

13 LT-COL BOTHA: I have successfully
 14 completed an advanced crime scene course, blood stain
 15 pattern analysis reconstruction course and have also been
 16 awarded status as a fingerprint expert.

17 MR MADLANGA SC: And would the course in
 18 crime scene, would that qualify you to become what is known
 19 as a crime scene technician?

20 LT-COL BOTHA: It would qualify me as a
 21 crime technician and also a criminalistic expert.

22 MR MADLANGA SC: Can you explain the
 23 latter, the criminalistic expert? What is that?

24 LT-COL BOTHA: Mr Chair, if you complete
 25 your training in the criminal record centre, all the

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1 modules, then you become a criminalistic expert and I am a
 2 criminalistic expert in the SA Police Service.

3 MR MADLANGA SC: Can you also read
 4 paragraph 3 of your statement?

5 LT-COL BOTHA: I'm instructed in
 6 photography, video recording, measuring and drawing of
 7 plans, collection of forensic exhibits, investigations in
 8 fingerprinting, identification, classification, filing and
 9 comparison of fingerprints and I regularly perform duties
 10 of this nature.

11 MR MADLANGA SC: Now I want to find out
 12 how matters unfold when a crime scene technician arrives at
 13 a scene. Do you get there and do your job without being
 14 shown around by anybody or without being shown anything?

15 LT-COL BOTHA: Mr Chair, normally when a
 16 crime scene technician or a senior investigator arrives at
 17 a scene there will be, there is normally policemen
 18 available that will show you the scene and according to
 19 those points that you are shown and obviously your own
 20 observations, you will process the crime scene.

21 MR MADLANGA SC: So sometimes you make
 22 your own observations on things that you might not have
 23 been shown by the police that you found at the scene?

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

25 MR MADLANGA SC: Has it ever happened

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1 that a crime scene technician misses something that he or
2 she ought to have seen?
3 LT-COL BOTHA: Mr Chair, it does happen.
4 MR MADLANGA SC: Based on the evidence
5 that you have already given, if you were to miss something
6 that the police that are at the scene would have observed
7 but did not show you, what would happen in that instance?
8 Would they show it to you or would they not show it to you?
9 LT-COL BOTHA: Mr Chair, it all depends
10 on the situation. If I find something or if I miss
11 something later, and the person that showed me the scene
12 are not there, he will know about it. If he is there and
13 he sees me missing it, he will obviously show it to me.
14 MR MADLANGA SC: Could you please just
15 read paragraph 5 of your statement into the record?
16 LT-COL BOTHA: This is on a specific
17 scene, must I just read that paragraph?
18 MR MADLANGA SC: Yes -
19 LT-COL BOTHA: Because it leads to
20 paragraph 4.
21 MR MADLANGA SC: Alright, no, let us go,
22 let's go to the slides.
23 LT-COL BOTHA: Okay, Mr Chair, I was
24 requested by the evidence leaders of the commission to do a
25 Google map on the incidents that happened in a certain area

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1 in Marikana, which I have prepared. That can be seen now.
2 MR MADLANGA SC: Chair, may I just
3 indicate to the commissioners and colleagues that this is
4 now in the pack that was circulated yesterday and people
5 can decide where they want to look, whether it's on the
6 pieces of paper that they have in front of them or at the
7 screens or at the bigger one there. Thank you. Please
8 take us through the markings that you have on that map,
9 Colonel?
10 CHAIRPERSON: Before we proceed, Mr
11 Madlanga.
12 MR MADLANGA SC: Yes?
13 CHAIRPERSON: Do you want his statement
14 to go in as an exhibit?
15 MR MADLANGA SC: Yes.
16 CHAIRPERSON: The essential thing is, to
17 ask him to confirm it's correct if he is prepared so to
18 confirm.
19 MR MADLANGA SC: Yes.
20 CHAIRPERSON: Then we make it an exhibit
21 and then we have a pack of photographs, maps and so forth,
22 we could possibly, I take it that's an exhibit as well. If
23 you want these statement to go in that could be Exhibit A,
24 the pack of photographs, maps and whatever could be Exhibit
25 B.

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1 MR MADLANGA SC: Yes, Chair.
2 CHAIRPERSON: And someone could number
3 the individual pages so we have B1 and B22 and that sort of
4 thing.
5 MR MADLANGA SC: Yes.
6 CHAIRPERSON: I think from a housekeeping
7 point of view, we should do that.
8 MR MADLANGA SC: That's going to be done,
9 Chair.
10 CHAIRPERSON: Right.
11 MR MADLANGA SC: They are also going to
12 be included in the volumes, the several volumes that we
13 have and will be numbered consecutively according to the
14 numbering that we already have.
15 CHAIRPERSON: Yes, for the purposes of
16 the record -
17 MR MADLANGA SC: But yes, as exhibits
18 yes, yes Chair.
19 CHAIRPERSON: So have you put his
20 statement to him? Has he confirmed his statement is
21 correct?
22 MR MADLANGA SC: Chair, I was still going
23 to do that because I wanted, I wanted him to read paragraph
24 5 when we get to the scene and then I would have him
25 confirm the statement at that point.

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1 CHAIRPERSON: Alright.
2 MR MADLANGA SC: But thank you for that,
3 Chairman. Can you please take us through the lettering
4 that is appearing on the map, Colonel?
5 LT-COL BOTHA: Mr Chairman, I was
6 requested to mark out specific cases and points which I
7 marked out with alphabetical letters and also distances.
8 I'm going to explain it now. A on the Google map, the
9 marker A is the position of Marikana CAS 107/8/2012 and
10 Wonderkop hostel.
11 MR MADLANGA SC: And do you have any idea
12 what that case is about?
13 LT-COL BOTHA: That is the case where the
14 two security guards were allegedly killed, Mr Chair. Mr
15 Chair, then on the 13th there was an incident at Marikana
16 where a railway line is of interest, that is B, it is the
17 position of the railway line.
18 MR MADLANGA SC: Colonel, on recollection
19 I think you were in attendance at the inspection in loco on
20 the 2nd of October, that is so?
21 LT-COL BOTHA: That's correct, Mr Chair.
22 MR MADLANGA SC: Ja, I do not know if you
23 have had sight of some video footage that forms part of the
24 SAPS presentation, that is still going to be shown.
25 LT-COL BOTHA: Mr Chair, I actually

<p style="text-align: right;">Page 283</p> <p>1 explained this point to you on the day of the 2 reconstruction. 3 MR MADLANGA SC: Yes. 4 LT-COL BOTHA: Next to the railway line. 5 MR MADLANGA SC: Yes, now what I want to 6 make about the railway line, in the SAPS video footage that 7 I'm referring to, there is a general who is addressing the 8 workers close to a railway line. Would this be the railway 9 line? 10 LT-COL BOTHA: That is correct, Mr Chair. 11 MR MADLANGA SC: Please continue with the 12 lettering. 13 LT-COL BOTHA: Mr Chair, C is the 14 position of Marikana CAS 118/8/2012, that is the murder of 15 a police official. D is the position of Marikana CAS 16 119/8/2012, that is where a seriously injured police 17 official was removed from the scene which allegedly later 18 died at hospital. Mr Chair, F is the position of Marikana 19 CAS 116, ag sorry E, E is the position of Marikana CAS 20 117/8/2012 that was the body of a civilian member. Point F 21 is the position of Marikana CAS 116/8/2012, the position of 22 a civilian member. 23 MR MADLANGA SC: When we moved C, D and E 24 that was your scene, is that not so? 25 LT-COL BOTHA: That is correct, Mr Chair.</p>	<p style="text-align: right;">Page 285</p> <p>1 Marikana CAS 137/8/2012. 2 MR MADLANGA SC: And which one is that? 3 LT-COL BOTHA: Mr Chair, I think it's 4 known as the scene at the kraal. 5 MR MADLANGA SC: Point K? 6 LT-COL BOTHA: Point K is the position of 7 Marikana CAS 138/8/2012. 8 MR MADLANGA SC: And would that be scene 9 2? 10 LT-COL BOTHA: That is scene 2, Mr 11 Chairman. 12 MR MADLANGA SC: And L? 13 LT-COL BOTHA: Mr Chair, I was also 14 requested to show the position of the Number officers at 15 Wonderkop, which will be point number L. 16 [15:30] MR MADLANGA SC: Thank you. Is there 17 anything that we might have left out on the map itself? 18 LT-COL BOTHA: Just the measurements. 19 MR MADLANGA SC: Yes. 20 LT-COL BOTHA: Measurements, Mr Chairman, 21 that is how the crow flies straight B to C is 600 metres. 22 That is the railway line until the scene where the first, 23 where the policemen were found dead at the scene. 24 MR MADLANGA SC: Perhaps Colonel, you 25 confirm that all of those are the measurements?</p>
<p style="text-align: right;">Page 284</p> <p>1 MR MADLANGA SC: Yes. We then crossed 2 that dirt road and moved across where your colleague, Mr 3 Moshwana pointed out a spot where he had found a deceased 4 person, would that be the F that you are referring to just 5 now? 6 LT-COL BOTHA: That is correct, Mr Chair. 7 MR MADLANGA SC: Please continue. 8 LT-COL BOTHA: Point G is the position of 9 Marikana CAS 115/8/2012 the body of a civilian member. 10 MR MADLANGA SC: Who had attended to 11 scene G? 12 LT-COL BOTHA: Captain Moshwana attended 13 to this scene. 14 MR MADLANGA SC: Yes? 15 LT-COL BOTHA: Point H is the position of 16 the koppie at Wonderkop where the alleged gathering took 17 place. 18 MR MADLANGA SC: Is that the koppie 19 closest to the kraal, kraal where scene 1 took place? 20 LT-COL BOTHA: That is correct, Mr Chair. 21 MR MADLANGA SC: I? 22 LT-COL BOTHA: Point I is the position of 23 Marikana CAS 121/8/2012 that is the, I refer to it as the 24 civilian that was dead with a skull of a cow on his chest 25 and I attended to that scene. Point J is the position of</p>	<p style="text-align: right;">Page 286</p> <p>1 LT-COL BOTHA: Ja, that is the 2 measurements. 3 MR MADLANGA SC: Yes, yes. So we are 4 done with that Google map. 5 LT-COL BOTHA: Okay. 6 MR MADLANGA SC: Yes, can we move onto 7 your next slide? 8 LT-COL BOTHA: Mr Chairperson, I took an 9 aerial photograph as the Google map is very high up, to 10 show the incidents that happened on the 13th just to show 11 the relation at ground level. It's self explanatory. 12 CHAIRPERSON: Mr Madlanga, I don't want 13 to interrupt you unduly, but in order to make it easier for 14 those of us who have the read the transcript later, it 15 might be helpful at this stage if we were to call his 16 statement, that he has been reading from Exhibit A, call 17 this bundle of documents, Exhibit B and he is now on what 18 would be Exhibit B3, on B3. B1 was this aerial photograph, 19 with this, the key or the explanation is B2 and B3 will now 20 be the slide that he is now referring to. I think this 21 will make it easier for us later when we read the 22 transcript. If you can carry on like that as he gives his 23 further evidence. 24 MR MADLANGA SC: Mr Chairman, the 25 statement perhaps should be C. Yes the statement should be</p>

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1 C and this should be B, yes.

2 CHAIRPERSON: The statement is C, this

3 bundle that we are looking at is B.

4 MR MADLANGA SC: Yes.

5 CHAIRPERSON: And A is already in, that's

6 the bundle of -

7 MR MADLANGA SC: Post-mortem reports.

8 CHAIRPERSON: Those are the post-mortem

9 reports. I think one or two are still outstanding.

10 MR MADLANGA SC: The post-mortem reports

11 yes.

12 CHAIRPERSON: Thank you.

13 MR MADLANGA SC: So we are now at B3,

14 Chair. Please continue, Colonel.

15 LT-COL BOTHA: Mr Chair, I took aerial

16 photos to show Marikana CAS 115 it is more to the north-

17 eastern side of the photo. 116 is more to the southern

18 side. Marikana CAS 117 is also to the southern side. CAS

19 118 is more to the bottom of the photo and CAS 119 is

20 between CAS 118 and 117.

21 MR MADLANGA SC: Let's move to the next

22 one, B4?

23 LT-COL BOTHA: Mr Chair, that's also an

24 aerial photo of the same area. It's just CAS 116 and 119.

25 116 was processed by Captain Moshwana, I just placed it on

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1 the aerial photo as it's visible on the photo. I will

2 describe the points from A to CCC as I have marked them. A

3 is the body of Marikana CAS 118/8/2012 that is the

4 policeman.

5 CHAIRPERSON: I'm sorry to interrupt you,

6 in other words you are reading B4 together with B5? B5

7 gives the explanation, what we used to call in the old

8 days, the key to the photographs, is that right?

9 LT-COL BOTHA: I am, the photos is D4,

10 but I'm reading D5.

11 CHAIRPERSON: B?

12 LT-COL BOTHA: Sorry B.

13 MR MADLANGA SC: Please continue.

14 LT-COL BOTHA: YY is the body of the

15 civilian person that was on the scene. C was the position

16 of a stun grenade. Then in the little block that is marked

17 E and GG that is just exhibits but I have used that as the

18 two sides of the block, I found the following exhibits, 10

19 times 9 millimetre cartridge cases, two times rubber

20 bullets of a shotgun, that is the blue rubber balls, three

21 times cartridge cases shotgun. Three times shotgun

22 cartridge cases. Two small pools of blood that were very

23 close to each other, it's actually the point GG. That is

24 also the point allegedly where the injured policeman was

25 removed to hospital, CAS 119/8/2012.

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1 MR MADLANGA SC: Then what you referred

2 to as the arc from edge of E to Z?

3 LT-COL BOTHA: Mr Chair, the arc from the

4 edge of E to Z I found the following exhibits, 11 shotgun

5 cartridge cases, one it's like a piece of paper that was

6 folded or ruffled up with possible dagga in it, one

7 ballistic round,

8 MR MADLANGA SC: And what do you mean by

9 that?

10 LT-COL BOTHA: A ballistic round is a

11 round that is used to set off a rifle grenade, it's

12 normally a gas rifle grenade.

13 MR MADLANGA SC: Yes?

14 LT-COL BOTHA: One shotgun cartridge,

15 that is a bullet that is not fired. Two times R5 cartridge

16 cases. Point KK is a shoe and I'm just indicating that

17 because it's on the outer edge of the scene. Mr Chair,

18 then if you take from GG a line to QQ and a line to YY, and

19 then a line from E to RR to CC, that whole area that widens

20 to the front I found the following exhibits, eight times

21 shotgun cartridge cases, two times R5 cartridge cases, one

22 times R5 cartridge, then I named the following four times

23 gas rubber. I will have to explain, Mr Chair. It is

24 apparently allegedly some sort of gas grenade that the

25 police can fire off, the shoots off like a round 40 mil

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1 rubber black, piece of rubber, that then distributes the

2 gas, I'm not sure, I have asked for the explanation that

3 comes from a gas grenade apparently. Two times stun

4 grenades, two times gas grenade holders, two times, I don't

5 know I think the term is kieries, knopkieries, Mr Chair, a

6 woollen cap, a sharpened iron, piece of sharpened iron, a

7 stun grenade handle, one blanket, and then one shotgun

8 rubber, that is the inside of a rubber bullet of a shotgun.

9 Mr Chair, I can just mention, between A and C there is a

10 letter B, there was a short spear, if I can call it a spear

11 about a metre, metre and a half that was lying between A

12 and B. I see I haven't included it on my key. So it was

13 between A and C in a straight line.

14 MR MADLANGA SC: Now please proceed, to 6

15 and the key at 7.

16 LT-COL BOTHA: Mr Chair, B6 is just

17 another aerial photo of the same area but it excludes CAS

18 116 as the house does not appear on the photo. It is only

19 CAS 117 and the Marikana - 2 - CAS 119 that is described

20 there. The key is the same -

21 MR MADLANGA SC: The same yes.

22 LT-COL BOTHA: Than the previous photo.

23 It must just include B and -

24 MR MADLANGA SC: Now please proceed to

25 B8.

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1 CHAIRPERSON: Sorry, Mr Madlanga?
 2 MR MADLANGA SC: Yes?
 3 CHAIRPERSON: I'm not sure whether I'm
 4 following correctly but in my copy of the documents, after
 5 what I think is B6 is a document headed explanation of
 6 [inaudible] it appears to be virtually the same as 5 except
 7 it's, this is now B6.
 8 LT-COL BOTHA: Correct, it's the same.
 9 CHAIRPERSON: It's the same scene and so
 10 the marks are virtually the same.
 11 LT-COL BOTHA: Ja.
 12 CHAIRPERSON: I now follow, thank you.
 13 LT-COL BOTHA: That's correct, Mr Chair,
 14 it just excludes CAS 116. Because the house of CAS 116
 15 does not appear as on the previous photo.
 16 MR MADLANGA SC: And B8?
 17 LT-COL BOTHA: Mr Chair on the 14th of
 18 August 2012 I attended to a scene, on the 14th of August
 19 2012, I have attended to a scene behind the koppie at
 20 Wonderkop Marikana. I have prepared the aerial photo and
 21 the description is actually on the photo. The body can be
 22 seen on the photo where it's marked at as body and next to
 23 the N of north I put the caption there that says hilltop
 24 that is edge of, the back of the hill at Wonderkop
 25 Marikana.

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1 MR MADLANGA SC: That would be the
 2 southern side of the koppie?
 3 LT-COL BOTHA: That would be the southern
 4 side of the koppie, Mr Chair.
 5 MR MADLANGA SC: Is there anything you
 6 wish to say about B9?
 7 LT-COL BOTHA: No, Mr Chair, the further
 8 photos were prepared by someone else.
 9 MR MADLANGA SC: Thank you. May I ask
 10 you to just confirm if it is so, the truthfulness of the
 11 content of your statement?
 12 LT-COL BOTHA: My statement reads
 13 correct, Mr Chairman. There is a few small changes in the
 14 sentencing of my qualifications but otherwise it's correct.
 15 MR MADLANGA SC: And would that be in
 16 accordance with how you read the statement?
 17 LT-COL BOTHA: That is how I read it, I
 18 changed it as the small changes yes.
 19 MR MADLANGA SC: And those who should
 20 look at the transcript?
 21 LT-COL BOTHA: Ja.
 22 MR MADLANGA SC: Yes, now in paragraph 14
 23 you mentioned attending to a scene or at a scene on the 13th
 24 of August and then in paragraph 5 you indicate who it is
 25 that indicated some points to you, that being Brigadier Van

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1 Zyl is that so?
 2 LT-COL BOTHA: That is correct, Mr Chair,
 3 when I arrived at the scene brigadier Van Zyl met me there
 4 and he pointed out the scene to me.
 5 MR MADLANGA SC: Thank you Chair,
 6 commissioners -
 7 CHAIRPERSON: I'm sorry, Mr Madlanga.
 8 MR MADLANGA SC: Yes?
 9 CHAIRPERSON: I would find it easier
 10 later on I think, if we could incorporate into Exhibit C
 11 the exhibit numbers to which he refers. Now for example in
 12 para 6 he refers to an aerial photograph. I take it that's
 13 B8? In para 5 he talks about a photo plan that he, he
 14 refers to photographs he took, measurements and a photo
 15 plan. Can we just for the sake of completeness get what,
 16 what the B numbers are? So when we read it next time, it
 17 will be easier to follow.
 18 MR MADLANGA SC: What B1 relates to,
 19 etcetera?
 20 CHAIRPERSON: I think the only thing he
 21 refers to, photographs and plans and so forth that he
 22 refers to are in paras 5 and 6.
 23 MR MADLANGA SC: Yes.
 24 CHAIRPERSON: We haven't got yet to para
 25 7. So para 5 he talks about the scene, which is I take it

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1 depicted on B3 and B4, is that right? No, no para 5 is
 2 that B3 and B4?
 3 MR MADLANGA SC: Chairperson, may I
 4 suggest this, unless there is going to be anything
 5 contentious about it, what I would suggest is that perhaps
 6 then he depose to a sworn statement in which reference to
 7 all of those will be made -
 8 CHAIRPERSON: Okay, at the same time.
 9 MR MADLANGA SC: In the manner in which
 10 you suggest, Mr Chair.
 11 CHAIRPERSON: That seems a sensible
 12 suggestion.
 13 MR MADLANGA SC: Yes, thank you, thank
 14 you. That is the evidence of the Colonel, Chairperson,
 15 thank you.
 16 CHAIRPERSON: There is also a reference
 17 in para 7 of the statement to an aerial video recording he
 18 made on the 16th of August. Are you going to lead that
 19 evidence later?
 20 MR MADLANGA SC: That is the video
 21 footage that my learned friend, Mr Budlender referred to
 22 and which he said it does not show scenes 1 and 2. It is
 23 that video, but then the truthfulness of paragraph 7 in the
 24 sense of him having taken that has been confirmed. But at
 25 this stage I don't propose to lead him on that, Chair.

<p style="text-align: right;">Page 295</p> <p>1 CHAIRPERSON: I see, alright thank you.</p> <p>2 MR MADLANGA SC: Yes, that is the</p> <p>3 evidence, Chair commissioners.</p> <p>4 CHAIRPERSON: Mr Semenya, any questions</p> <p>5 you wish to ask the witness?</p> <p>6 MR SEMENYA SC: Yes, Chairperson.</p> <p>7 Colonel, from my consultations it appears that the mapping</p> <p>8 of the photographs as we have them, has been the best</p> <p>9 attempt at identifying what you found on the scene, is that</p> <p>10 correct?</p> <p>11 [15:50] LT-COL BOTHA: Just rephrase the</p> <p>12 question, please? I don't understand.</p> <p>13 MR SEMENYA SC: This represents the best</p> <p>14 attempt by your team of identifying evidentiary material,</p> <p>15 as you found the scene, is that right?</p> <p>16 LT-COL BOTHA: Mr Chair, I was requested</p> <p>17 by the evidence leaders to prepare the photos in this way.</p> <p>18 MR SEMENYA SC: When the evidence later</p> <p>19 shows that there was more bullets fired and therefore more</p> <p>20 cartridges than are indicated on your pictures, that would</p> <p>21 not be necessarily incorrect, am I right?</p> <p>22 LT-COL BOTHA: If we're talking about the</p> <p>23 two scenes that I've attended, that would not necessarily</p> <p>24 be incorrect.</p> <p>25 MR SEMENYA SC: Neither are you intending</p>	<p style="text-align: right;">Page 297</p> <p>1 other material that might have evidential value?</p> <p>2 LT-COL BOTHA: Mr Chair, we've searched</p> <p>3 the scene quite thoroughly, but you have to draw a line</p> <p>4 somewhere. I mean, you can't search all the way to</p> <p>5 Marikana. You have to, you draw the line somewhere, and I</p> <p>6 searched on what was pointed to me, and then if you find</p> <p>7 something on your own observations further, or even on the</p> <p>8 edges, then you carry on until you find nothing anymore,</p> <p>9 and then you decide, well, this is where I draw the line,</p> <p>10 but it was searched thoroughly.</p> <p>11 CHAIRPERSON: Thank you.</p> <p>12 MS HEMRAJ SC: Colonel, can I just</p> <p>13 inquire, how long after each incident occurred, did you</p> <p>14 attend to the scene and conduct those searches?</p> <p>15 LT-COL BOTHA: Mr Chair, I'm not quite</p> <p>16 sure what time the policemen scene occurred. If I'm not</p> <p>17 mistaken - I haven't written it down now, I can go have a</p> <p>18 look and give you the precise time - I attended to the, I</p> <p>19 started attending to the policemen's, or the three CAS-</p> <p>20 numbers, 117, 118 and 119 at about 15:00, give or take a</p> <p>21 few minutes. The one of the body of the person, we were</p> <p>22 actually in the air when we saw the body, and then I took</p> <p>23 an aerial photo. You can see it was quite late during the</p> <p>24 day because of the shade. Again, I can go have a look</p> <p>25 precisely how late, but I must make an estimate now, it</p>
<p style="text-align: right;">Page 296</p> <p>1 to convey that you had picked up all the bullets that were</p> <p>2 fired, I mean cartridges of all bullets fired. That's not</p> <p>3 what you're contending?</p> <p>4 LT-COL BOTHA: Sorry, can you just</p> <p>5 explain the question, please?</p> <p>6 MR SEMENYA SC: It is not your evidence</p> <p>7 necessarily that all the cartridges you indicate on your</p> <p>8 plans, are all that was discharged on the day, correct?</p> <p>9 LT-COL BOTHA: Mr Chair, those were the</p> <p>10 cartridge cases that I've collected on the crime scene, the</p> <p>11 amounts that I've given.</p> <p>12 MR SEMENYA SC: There could be more,</p> <p>13 that's all I'm asking?</p> <p>14 LT-COL BOTHA: Well, that's the ones that</p> <p>15 I found. If there are more - there might be more, I'm not</p> <p>16 sure.</p> <p>17 CHAIRPERSON: There may be some you</p> <p>18 didn't find?</p> <p>19 LT-COL BOTHA: There might be some we</p> <p>20 didn't find. It's possible.</p> <p>21 MR SEMENYA SC: Those are the questions,</p> <p>22 Chair.</p> <p>23 CHAIRPERSON: Thank you. Before someone</p> <p>24 else asks questions, did you search the scene as thoroughly</p> <p>25 as you could to find bullets and cartridge cases and any</p>	<p style="text-align: right;">Page 298</p> <p>1 must have been more or less 5 o'clock in the afternoon, if</p> <p>2 I look at the shade.</p> <p>3 CHAIRPERSON: Mr Burger, do you have any</p> <p>4 questions for the witness?</p> <p>5 MR BURGER SC: Yes. Colonel, on Exhibit</p> <p>6 B1 you have as point A the place where the two security</p> <p>7 guards were slain.</p> <p>8 LT-COL BOTHA: That's correct.</p> <p>9 MR BURGER SC: That, as you understand</p> <p>10 it, would have happened on the 12th of August?</p> <p>11 LT-COL BOTHA: Allegedly it happened on</p> <p>12 the 12th of August, Mr Chair.</p> <p>13 MR BURGER SC: We were yesterday during</p> <p>14 one of the openings told that two workers, two marchers,</p> <p>15 were also shot during that incident. Now I must say that</p> <p>16 came as news to my team, we didn't know of that. Can you</p> <p>17 help the Commission? Do you know anything about two</p> <p>18 additional people who were shot during that incident on the</p> <p>19 12th of August in that vicinity?</p> <p>20 LT-COL BOTHA: Mr Chair, if we say shot,</p> <p>21 do we mean shot and killed, or shot?</p> <p>22 MR BURGER SC: As we understand the</p> <p>23 opening, they were shot and killed, and they were referred</p> <p>24 to as marchers.</p> <p>25 LT-COL BOTHA: Mr Chair, I did not attend</p>

<p style="text-align: right;">Page 299</p> <p>1 to the scene of the 12th, but I don't know about – well, I 2 won't know about all the cases, but I don't know about such 3 a case. 4 MR BURGER SC: Thank you, Chair. 5 CHAIRPERSON: Mr Tip? 6 MR TIP SC: Thank you, Mr Chair. 7 Colonel, I understand that we're going to come back to the 8 aerial video recording that you made on the 16th. Is that 9 correct? 10 LT-COL BOTHA: I'm not sure, it depends 11 on the evidence leaders. 12 MR TIP SC: I just wanted to get some 13 clarity, if possible. Did you make that recording yourself 14 whilst aboard the police helicopter? 15 LT-COL BOTHA: Yes, Mr Chair, I made the 16 recording myself. I was in the police helicopter. 17 MR TIP SC: Can you give us an indication 18 of approximately from what time to what time your recording 19 was made by you? 20 LT-COL BOTHA: Mr Chair, if I remember 21 correctly, it's either 15:58 or 16:58. I can also confirm 22 that, but I know it's 41 minutes long. I cannot remember 23 the starting time precisely now. 24 MR TIP SC: As far as you were able to 25 tell at the time, did you capture the entire operation on</p>	<p style="text-align: right;">Page 301</p> <p>1 LCRC that took the photos and processed the scene. 2 MR BRUINDERS SC: Do you have a name of 3 that person? 4 LT-COL BOTHA: It's Warrant-Officer 5 Opperman. 6 MR BRUINDERS SC: If we would like to 7 know more about what he saw and what he found, we'd have to 8 talk to him? 9 LT-COL BOTHA: That is correct, Mr Chair. 10 MR BRUINDERS SC: Then you also referred 11 to what you called civilians who were found and whom you 12 show on B1, is that right? 13 LT-COL BOTHA: That is correct, Mr Chair. 14 MR BRUINDERS SC: Are we to understand 15 that these civilians are not people that you found on the 16 scene? 17 LT-COL BOTHA: They were on the scene, 18 number E, the one marked as E, I found on the scene. It 19 was indicated to me by Brigadier Van Zyl. 20 MR BRUINDERS SC: Was that on the 13th? 21 LT-COL BOTHA: That was on the afternoon 22 of the 13th of August. 23 MR BRUINDERS SC: Did Brigadier Van Zyl 24 point any other bodies out to you? 25 LT-COL BOTHA: He showed me the body of</p>
<p style="text-align: right;">Page 300</p> <p>1 your video recording? 2 LT-COL BOTHA: No, Mr Chair, definitely 3 not. The video – we determined that the video actually 4 started after the shooting at scene 1 already happened. 5 MR TIP SC: Is that because the 6 helicopter was not yet on the scene, or because you had not 7 switched on the video recorder? 8 LT-COL BOTHA: No, Mr Chair, it was, I 9 was just a passenger in the chopper. I started recording 10 immediately when we got into the air. 11 MR TIP SC: Thank you, Mr Chair. 12 CHAIRPERSON: Mr Bruinders? 13 MR BRUINDERS SC: Can I come back to a 14 question asked to you by Mr Burger? When were the two 15 bodies found, whom you say were security officers, at A? 16 LT-COL BOTHA: Mr Chair, I wasn't on the 17 crime scene. The point was just shown to me. I took a – 18 because I was requested to take, to prepare a Google map 19 for the evidence leaders, the member that attended to the 20 scene showed me the point. I took the reading and I placed 21 it on the map. 22 MR BRUINDERS SC: When you talk about the 23 member on the scene, would that be the person who 24 investigated that scene and found the bodies? 25 LT-COL BOTHA: That will be the member of</p>	<p style="text-align: right;">Page 302</p> <p>1 the policeman, also informed me that there are two other 2 bodies, and due to the fact that it's a vast scene and I 3 was alone at that stage, I called for members of the LCRC 4 to attend to the other two bodies. 5 MR BRUINDERS SC: So just so that we 6 understand you, are C and E the bodies that you saw? 7 LT-COL BOTHA: Yes, Mr Chair, C and E 8 were the bodies that I saw on the crime scene. 9 MR BRUINDERS SC: They were pointed out 10 to you by, you said Brigadier? 11 LT-COL BOTHA: Brigadier Van Zyl. 12 MR BRUINDERS SC: Who is he? 13 LT-COL BOTHA: If I'm not mistaken, he's 14 the Provincial Detective Head of the North West Province. 15 MR BRUINDERS SC: What time was it when 16 he pointed out the two bodies to you on the 13th? 17 LT-COL BOTHA: Mr Chair, it was shortly 18 after I arrived at the scene, and again I said I can go and 19 confirm precisely what time I arrived. I seem to remember 20 it was just before or just after 3 o'clock in the 21 afternoon, and it would have been just after I arrived at 22 the crime scene. 23 MR BRUINDERS SC: How long before you was 24 Brigadier Van Zyl on the scene? 25 LT-COL BOTHA: I have no idea, Sir.</p>

<p style="text-align: right;">Page 303</p> <p>1 MR BRUINDERS SC: He got there before 2 you?</p> <p>3 LT-COL BOTHA: He was on the scene when I 4 arrived there.</p> <p>5 MR BRUINDERS SC: The other two bodies 6 that Brigadier Van Zyl told you about, did he show them, or 7 point them out to your colleagues?</p> <p>8 LT-COL BOTHA: Mr Chair, I'm not sure. 9 My colleagues arrived and I was already busy processing my 10 scene. So I don't know who showed them the other two 11 bodies.</p> <p>12 MR BRUINDERS SC: What are the names of 13 your colleagues?</p> <p>14 LT-COL BOTHA: The person that processed 15 those two scenes, is Captain Moshwana.</p> <p>16 MR BRUINDERS SC: When you got to that 17 particular scene around 3 o'clock on the 13th, did you 18 yourself see any injured?</p> <p>19 LT-COL BOTHA: No, Mr Chair, I did not 20 see any injured people; there were only deceased people on 21 the scene.</p> <p>22 MR BRUINDERS SC: Did Brigadier Van Zyl 23 speak of any injured people when he was pointing out 24 certain things to you?</p> <p>25 LT-COL BOTHA: I was shown where the</p>	<p style="text-align: right;">Page 305</p> <p>1 CHAIRPERSON: Before you move on, I 2 understand you can't give an exact number, but can you 3 place us somewhere in the ballpark? Were there about 4 three, six, 10, 20?</p> <p>5 LT-COL BOTHA: Mr Chair, there were 6 definitely more than three. If I must think, I think there 7 were more than six, but if I have to say 10, more or less 8 10, plus-minus 10. I cannot say, it's not three or four, 9 it was more than that.</p> <p>10 [16:10] CHAIRPERSON: Thank you, that gives us an 11 idea.</p> <p>12 MR BRUINDERS SC: Do you remember what 13 vehicles you saw?</p> <p>14 LT-COL BOTHA: I can recall that some of 15 the vehicles were Kombis.</p> <p>16 MR BRUINDERS SC: Any other vehicles?</p> <p>17 LT-COL BOTHA: No, there were a police 18 bakkie of Marikana. I can't recall – again, I didn't 19 really notice that because that wasn't part of my scene.</p> <p>20 MR BRUINDERS SC: How many policemen were 21 there on the scene?</p> <p>22 LT-COL BOTHA: Sir, again there were an 23 amount of policemen on the scene, more than 10, maybe more 24 than 20. I cannot, I did not count them. Some of them 25 were in the vehicles, some of them were out of the</p>
<p style="text-align: right;">Page 304</p> <p>1 injured policeman was taken away. There were two small 2 pools of blood on the scene. I cannot recall that he told 3 me of any other injured people on that scene there, 4 specifically.</p> <p>5 MR BRUINDERS SC: When you got to that 6 scene, did you see any police vehicles?</p> <p>7 LT-COL BOTHA: Mr Chair, there was quite 8 an amount of police vehicles and members on the side of the 9 road.</p> <p>10 MR BRUINDERS SC: How many vehicles?</p> <p>11 LT-COL BOTHA: I cannot tell you how many 12 vehicles, I did not count the vehicles.</p> <p>13 MR BRUINDERS SC: You say quite a number, 14 and I don't want to press you for an exact number, but can 15 you give any idea, were these more than 10, more than 20, 16 more than 30 vehicles?</p> <p>17 LT-COL BOTHA: Sir, I'm going to have to 18 guess if I want to give a total. There were a number of 19 police vehicles parked on the side of the road, which you 20 can see on the photo. I honestly cannot remember how many 21 vehicles. I'm going to take a wild guess if I say now how 22 many vehicles.</p> <p>23 MR BRUINDERS SC: I wouldn't press an 24 experienced policeman like you to take a wild guess, so I'm 25 going to move on.</p>	<p style="text-align: right;">Page 306</p> <p>1 vehicles. I can't really say.</p> <p>2 MR BRUINDERS SC: These policemen that 3 you saw there were not part of your investigating team?</p> <p>4 LT-COL BOTHA: No, they weren't part of 5 my investigation team.</p> <p>6 MR BRUINDERS SC: Where were they from?</p> <p>7 LT-COL BOTHA: I have no idea, Mr Chair.</p> <p>8 MR BRUINDERS SC: Could you tell – I take 9 it you looked at them?</p> <p>10 LT-COL BOTHA: I obviously did look at 11 them.</p> <p>12 MR BRUINDERS SC: When you did, could you 13 tell what units they were from?</p> <p>14 LT-COL BOTHA: Mr Chair, I can remember 15 that there were members from POPs Unit because, well there 16 were members from POP Unit because there were Nyalas also. 17 I cannot, I don't know if there were members from any other 18 units. I can't remember, I did not look at them like that 19 to remember from where they are, so I can't tell you that.</p> <p>20 CHAIRPERSON: I'm sorry, if I can just 21 interpose for a moment. You talk about POP, members from 22 POP. That's the Public Order Policing sector?</p> <p>23 LT-COL BOTHA: Yes, Mr Chair, that's 24 Public Order Police.</p> <p>25 CHAIRPERSON: Now the Nyalas are those</p>

<p style="text-align: right;">Page 307</p> <p>1 vehicles which Public Order Policing use?</p> <p>2 LT-COL BOTHA: Sorry, Mr Chair?</p> <p>3 CHAIRPERSON: Nyalas, or they the</p> <p>4 vehicles that the Public Order Police section use?</p> <p>5 LT-COL BOTHA: Mr Chair, they also use</p> <p>6 them, and I can remember I recognised one of the POP</p> <p>7 members, that's why I know. It's not because only there</p> <p>8 are Nyalas. There was a POP member that I recognised. He</p> <p>9 knew me as Colonel, so he was from POP. The rest I don't</p> <p>10 really know.</p> <p>11 MR BRUINDERS SC: I hate to be a nag, but</p> <p>12 how many Nyalas were there?</p> <p>13 LT-COL BOTHA: Sir, I can remember one</p> <p>14 standing at a dead body, and there was one next to the</p> <p>15 road. There might have been more. I can't remember.</p> <p>16 MR BRUINDERS SC: It's rather a novel way</p> <p>17 of taking instructions, but could I peer across the rows to</p> <p>18 ask my attorney whether there's anything else he'd like me</p> <p>19 to ask this witness, Mr Chair?</p> <p>20 CHAIRPERSON: You can do that, or you can</p> <p>21 get out of your seat and go and ask the attorney. Mr</p> <p>22 Bruinders, it's already past the time that we normally</p> <p>23 adjourn for tea. Would you appreciate it if we took the</p> <p>24 tea adjournment now, you can get instructions for as long</p> <p>25 as you like. Mr Bizos, who I'm going to call upon to</p>	<p style="text-align: right;">Page 309</p> <p>1 was in the veld, where in the veld was it?</p> <p>2 LT-COL BOTHA: By the body, by C.</p> <p>3 MR BRUINDERS SC: B is what you say the</p> <p>4 position of the railway line is, not so?</p> <p>5 LT-COL BOTHA: Just say again?</p> <p>6 MR BRUINDERS SC: B is what you say the</p> <p>7 position of the railway line is.</p> <p>8 LT-COL BOTHA: I went to the point and I</p> <p>9 Googled it and that is where it came out and it looks like</p> <p>10 it's a railway line, yes.</p> <p>11 MR BRUINDERS SC: You are reasonably</p> <p>12 familiar with that area?</p> <p>13 LT-COL BOTHA: Sorry, ask the question</p> <p>14 again, sorry?</p> <p>15 MR BRUINDERS SC: My question is, you are</p> <p>16 reasonably familiar with that particular area between the</p> <p>17 points B, G, F and so on?</p> <p>18 LT-COL BOTHA: Well, the first time I saw</p> <p>19 the area was when I visited the scene. It's not a place</p> <p>20 that I've seen before.</p> <p>21 MR BRUINDERS SC: I understand. How long</p> <p>22 did you spend there that afternoon?</p> <p>23 LT-COL BOTHA: Mr Chairman, I can</p> <p>24 confirm, but I think it's more or less five hours that I</p> <p>25 spent there.</p>
<p style="text-align: right;">Page 308</p> <p>1 cross-examine next, if he wishes to do so, could also get</p> <p>2 himself ready. Thereafter we'll have Mr Ntsebeza and Mr</p> <p>3 Mpfu. So I suggest we take a 10-minute adjournment at</p> <p>4 this stage.</p> <p>5 [INQUIRY ADJOURNS INQUIRY RESUMES]</p> <p>6 [16:35] CHAIRPERSON: The Commission resumes. Mr</p> <p>7 Bruinders, you were cross-examining the witness.</p> <p>8 MR BRUINDERS SC: Thank you, just a few</p> <p>9 more questions. Is it possible for us to have B1 up on the</p> <p>10 screen? Now Colonel, could you point to where it was that</p> <p>11 you saw the vehicles, on B1?</p> <p>12 LT-COL BOTHA: Mr Chair, if I must draw a</p> <p>13 line, then it's more or less between D, E and F on that</p> <p>14 gravel. You can see there's a road running there, on that</p> <p>15 road.</p> <p>16 MR BRUINDERS SC: So that which looks</p> <p>17 like a yellow line is a road?</p> <p>18 LT-COL BOTHA: It's a road, yes.</p> <p>19 MR BRUINDERS SC: Is that the only place</p> <p>20 that you saw vehicles on that day?</p> <p>21 LT-COL BOTHA: While I travelled to that</p> <p>22 point there was a Nyala in the veld. There were vehicles</p> <p>23 parked on that road. I can't remember seeing vehicles at</p> <p>24 any place else.</p> <p>25 MR BRUINDERS SC: When you say the Nyala</p>	<p style="text-align: right;">Page 310</p> <p>1 MR BRUINDERS SC: And in those five hours</p> <p>2 you walked around roughly the points B, C, F, G, D, E,</p> <p>3 etcetera?</p> <p>4 LT-COL BOTHA: No, Mr Chair, I did not go</p> <p>5 to B. I did not then know that there was a discussion at B</p> <p>6 or that a point B existed. I posted the scene where the</p> <p>7 bodies were found. I did not go to F. I did not go to G.</p> <p>8 MR BRUINDERS SC: So you won't know that</p> <p>9 – or firstly, do you know which way the railway line runs?</p> <p>10 Could you point it out to us on B1?</p> <p>11 LT-COL BOTHA: No, well which way the</p> <p>12 trains can go on it, or which way it runs? It can go both</p> <p>13 ways. Look, I know –</p> <p>14 MR BRUINDERS SC: Which way does the</p> <p>15 railway line run –</p> <p>16 LT-COL BOTHA: On the photo –</p> <p>17 MR BRUINDERS SC: Does it run from the</p> <p>18 left to the right of that photograph, or does it run from</p> <p>19 the bottom to the top?</p> <p>20 LT-COL BOTHA: Oh, okay. Sorry. Sorry,</p> <p>21 Mr Chair. It runs from the, just there by the side of B it</p> <p>22 goes from the left to the right.</p> <p>23 MR BRUINDERS SC: And is there a dirt</p> <p>24 road that runs parallel to that railway line in the same</p> <p>25 direction?</p>

<p style="text-align: right;">Page 311</p> <p>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.</p>	<p style="text-align: right;">Page 313</p> <p>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 19 don't know from where he is, I presume it was a police 20 member that had a camera with him in the chopper. 21 MR BRUINDERS SC: Did you see him take 22 photographs? 23 LT-COL BOTHA: I did, I do think he did 24 take photographs, yes. 25 MR BRUINDERS SC: Besides you, anybody</p>
<p style="text-align: right;">Page 312</p> <p>1 MR BRUINDERS SC: You didn't know who he 2 was? 3 LT-COL BOTHA: I didn't recognise him. 4 He, like in the Police when they know you're a colonel or 5 whatever, they show respect to you. He greeted me as 6 Colonel. I don't, I didn't recognise him. 7 MR BRUINDERS SC: And after you greeted 8 each other, did you speak to him? 9 LT-COL BOTHA: No, I just greeted him and 10 then I went, it was when I arrived there, then I went to 11 Brigadier Van Zyl. 12 MR BRUINDERS SC: On 16 August, where did 13 you take the helicopter from? 14 LT-COL BOTHA: The helicopter was at the 15 JOC at, I think they call it Wonderkop, I'm not precisely 16 sure of the address. 17 MR BRUINDERS SC: That is where you 18 boarded the helicopter? 19 LT-COL BOTHA: Ja, that's where I boarded 20 the helicopter, yes. 21 MR BRUINDERS SC: Did you have to wait 22 for it? 23 LT-COL BOTHA: No, the helicopter was 24 there. I got into it when they said we're going to fly. 25 MR BRUINDERS SC: So you got to the JOC</p>	<p style="text-align: right;">Page 314</p> <p>1 take video footage? 2 LT-COL BOTHA: No, I took video footage. 3 I gave my camera to the, Warrant-Officer Venter that was 4 sitting right in front of me and she was, she took some 5 photos because I couldn't handle both cameras together. 6 MR BRUINDERS SC: Besides you, did 7 anybody else take video footage? 8 LT-COL BOTHA: Mr Chair, not that I know 9 of. I, according to me I took video footage. 10 MR BRUINDERS SC: So in this chopper were 11 a pilot and four of you? 12 LT-COL BOTHA: That is correct, Mr Chair. 13 MR BRUINDERS SC: You took video footage. 14 LT-COL BOTHA: I took video footage, yes. 15 MR BRUINDERS SC: Two of you took 16 photographs. 17 LT-COL BOTHA: I do know that Warrant- 18 Officer Venter took photos because it was with my camera. 19 I presume the other guy took photos because he had a camera 20 with him. 21 MR BRUINDERS SC: What did the fourth 22 officer do? 23 LT-COL BOTHA: The person who was sitting 24 between me and the person on the other side with the 25 camera.</p>

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1 MR BRUINDERS SC: What was he or she
 2 doing in the chopper?
 3 LT-COL BOTHA: I don't know what the
 4 duties of the person was. It was Brigadier Fritz.
 5 MR BRUINDERS SC: Where is Brigadier
 6 Fritz from?
 7 LT-COL BOTHA: I think he's from the
 8 Special Task Force because he is wearing the clothes of the
 9 Task Force.
 10 MR BRUINDERS SC: And forgive me for
 11 asking this again, but you say you didn't know what he was
 12 doing in the chopper?
 13 LT-COL BOTHA: I don't know what his
 14 duties was in the chopper. He spoke on the radio and with
 15 people on the ground and stuff like that. I don't know
 16 what his duties, his specific duties was in the chopper.
 17 MR BRUINDERS SC: So let's forget about
 18 his duties for the moment. Let's just find out what he was
 19 actually doing there. You say that he spoke on a radio?
 20 LT-COL BOTHA: Yes, he did speak on a
 21 radio.
 22 MR BRUINDERS SC: To who?
 23 LT-COL BOTHA: To some people on the
 24 ground.
 25 MR BRUINDERS SC: Do you know who they

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1 were?
 2 LT-COL BOTHA: No Sir, I don't know.
 3 MR BRUINDERS SC: What was he saying to
 4 them?
 5 LT-COL BOTHA: I cannot remember the
 6 conversations because there was a lot of talking that I
 7 hear.
 8 MR BRUINDERS SC: What else did he do
 9 besides speak on the radio?
 10 LT-COL BOTHA: Sat between us and he
 11 spoke on the radio.
 12 MR BRUINDERS SC: I have no further
 13 questions.
 14 CHAIRPERSON: Mr Bizos.
 15 MR BIZOS SC: Thank you. Colonel Botha,
 16 what time did you arrive at the scene on which there was to
 17 be an operation on the 16th of August? What time did you
 18 arrive?
 19 LT-COL BOTHA: Sir, again I'll have to
 20 confirm it, I think it was about 20 to 3, 3 o'clock, give
 21 and take a few minutes, but more or less in the vicinity of
 22 3 o'clock.
 23 MR BIZOS SC: You used the word
 24 "operation" in paragraph 7 of your statement. Were you
 25 invited to come and record the operation?

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1 LT-COL BOTHA: I was called by Brigadier
 2 Van Zyl and said that he's going to need me for a video,
 3 and then I –
 4 MR BIZOS SC: I'm sorry, I didn't hear.
 5 LT-COL BOTHA: Brigadier Van Zyl –
 6 MR BIZOS SC: Yes?
 7 LT-COL BOTHA: And then I went to the Ops
 8 Room.
 9 MR BIZOS SC: He wanted you for what?
 10 I'm sorry, you said something that I didn't hear. What did
 11 he want you for?
 12 LT-COL BOTHA: Brigadier Van Zyl phoned
 13 me and said that he is going to need me for a video, to
 14 make a video, possibly make a video, and then I went to the
 15 JOC.
 16 MR BIZOS SC: And you got there before 3
 17 o'clock?
 18 LT-COL BOTHA: I think just before 3
 19 o'clock, ja.
 20 MR BIZOS SC: Yes. Did he tell you the
 21 nature of the operation that you may be called upon to
 22 film?
 23 LT-COL BOTHA: Mr Chair, I met Brigadier
 24 Van Zyl and if I recall correctly he said they're going to,
 25 the operation is going to take place to disarm and disperse

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1 the people and I might be called on to record that.
 2 MR BIZOS SC: Record that. Now what time
 3 did he tell you that?
 4 LT-COL BOTHA: It must have been just
 5 after I arrived there.
 6 MR BIZOS SC: Did you discuss with the
 7 person that asked you to be there or any of your colleagues
 8 what was the nature of the operation that you were expected
 9 to film?
 10 LT-COL BOTHA: No, I did not discuss it
 11 with anyone. I was given the information by the brigadier.
 12 MR BIZOS SC: What did he tell you, what
 13 operation were you to film? The police having a good day,
 14 an afternoon, or what were they going to do?
 15 MR MADLANGA SC: Mr Chair –
 16 MR BIZOS SC: What were you supposed to
 17 film?
 18 MR MADLANGA SC: Mr Chairman, I think the
 19 witness did answer that the operation was to disarm and
 20 disperse the people.
 21 CHAIRPERSON: Yes, I had that answer as
 22 well. What concerns me is we're now in the middle of a
 23 thunderstorm and I'm not sure how, with what degree of
 24 accuracy or clarity the proceedings are being recorded. So
 25 perhaps those responsible for recording the proceedings –

<p style="text-align: right;">Page 319</p> <p>1 you hear clearly? Right, then we can carry on. You're</p> <p>2 correct, he gave the answer, to disarm and disperse the</p> <p>3 people. Please carry on, Mr Bizos.</p> <p>4 MR BIZOS SC: I'm sorry, with the rain</p> <p>5 [inaudible] not hearing the answer. To disperse –</p> <p>6 LT-COL BOTHA: Disarm and disperse.</p> <p>7 MR BIZOS SC: To disarm and disperse.</p> <p>8 Did he tell you more or less when he expected that</p> <p>9 operation to commence?</p> <p>10 LT-COL BOTHA: No, Mr Chair, he just said</p> <p>11 I must wait and they will call on me when they need me.</p> <p>12 MR BIZOS SC: When were you told that you</p> <p>13 were to board the helicopter?</p> <p>14 LT-COL BOTHA: Mr Chairman, I cannot</p> <p>15 remember the exact time. The people went to the chopper</p> <p>16 and Brigadier Van Zyl told me I must go because I'm going</p> <p>17 to make the recording.</p> <p>18 MR MAHLANGU: Mr Chairman, I did not hear</p> <p>19 the question.</p> <p>20 [16:55] CHAIRPERSON: Part of the problem we have</p> <p>21 is the recording may be clear, but it's difficult for us</p> <p>22 here in the auditorium to hear the questions and the</p> <p>23 answers. Mr Bizos, it's suggested that if you pull the</p> <p>24 microphone closer, what you say may be amplified and we</p> <p>25 will then hear it.</p>	<p style="text-align: right;">Page 321</p> <p>1 LT-COL BOTHA: Mr Chair, I was obviously</p> <p>2 interested in what I was going to film. I did not ask</p> <p>3 anyone how the operation was going to be done or giving me</p> <p>4 a planning or anything like that.</p> <p>5 MR BIZOS SC: Yes.</p> <p>6 LT-COL BOTHA: I got into the chopper;</p> <p>7 the chopper flew to the specific area and I filmed.</p> <p>8 MR BIZOS SC: What did you see was</p> <p>9 happening on the ground when you looked out of the chopper?</p> <p>10 LT-COL BOTHA: Mr Chair, when I started</p> <p>11 filming, through the small lens you can't really see a lot,</p> <p>12 but when I started filming and then afterwards you can see</p> <p>13 that, at scene 1, I can't even now remember if I started</p> <p>14 recording specifically at scene 1, that the shooting</p> <p>15 definitely already took place.</p> <p>16 CHAIRPERSON: In other words the incident</p> <p>17 –</p> <p>18 LT-COL BOTHA: Ja, the incident.</p> <p>19 CHAIRPERSON: - where the –</p> <p>20 LT-COL BOTHA: The incident already took</p> <p>21 place.</p> <p>22 CHAIRPERSON: - 34 people had been shot,</p> <p>23 that had already happened?</p> <p>24 LT-COL BOTHA: Not, not, the first</p> <p>25 incident, the first shooting.</p>
<p style="text-align: right;">Page 320</p> <p>1 MR BIZOS SC: Very well. Did you discuss</p> <p>2 with any of the persons that you met or boarding the</p> <p>3 helicopter or when you sat down, what is going to happen,</p> <p>4 what am I supposed to film?</p> <p>5 LT-COL BOTHA: No Sir, I did not discuss</p> <p>6 it with anyone.</p> <p>7 MR BIZOS SC: So you didn't know what you</p> <p>8 were going to do on the helicopter?</p> <p>9 LT-COL BOTHA: I knew what I was going to</p> <p>10 do in the helicopter. I was going to video graph a police</p> <p>11 operation.</p> <p>12 MR BIZOS SC: Without being told what the</p> <p>13 nature of the operation was and how it was going to be</p> <p>14 executed?</p> <p>15 CHAIRPERSON: Mr Bizos, I don't think</p> <p>16 that's a fair question. He said he was told the operation</p> <p>17 would be to disarm and disperse the people. So he knew</p> <p>18 what the nature of the operation was. The further point</p> <p>19 you make of course is valid, but the main part of the</p> <p>20 question I don't think is fair in the light of the evidence</p> <p>21 he's already given. So I suggest you reformulate the</p> <p>22 question so you don't encounter further trouble from me –</p> <p>23 MR BIZOS SC: Thank you, Mr Chairman.</p> <p>24 How did you, or what was it, were you not interested in any</p> <p>25 of the details that you had to film?</p>	<p style="text-align: right;">Page 322</p> <p>1 CHAIRPERSON: Oh, sorry.</p> <p>2 LT-COL BOTHA: Ja, and –</p> <p>3 CHAIRPERSON: Shooting at scene 1 had</p> <p>4 already happened?</p> <p>5 LT-COL BOTHA: Ja, ja, and in the veld</p> <p>6 behind scene 1 there was a lot of people, if I must call</p> <p>7 it, dispersing.</p> <p>8 MR BIZOS SC: I see. Did you film any</p> <p>9 people being shot? If we accept the correctness of your</p> <p>10 answer that you did not film the first shooting – I'm going</p> <p>11 to come back to that – did you record any of the shooting</p> <p>12 after the first shooting, so to speak?</p> <p>13 LT-COL BOTHA: Mr Chair, I don't know</p> <p>14 when the second shooting took place. I don't know if I</p> <p>15 filmed it. I didn't even know that there was a second</p> <p>16 shooting until I got onto the ground.</p> <p>17 MR BIZOS SC: So the film that you</p> <p>18 brought into being shows no shooting at all?</p> <p>19 LT-COL BOTHA: As far as I've got it,</p> <p>20 Sir, no it doesn't show any shooting at all.</p> <p>21 MR BIZOS SC: Why the uncertainty?</p> <p>22 LT-COL BOTHA: I'm not uncertain. I</p> <p>23 don't know if, when the shooting took place on the ground.</p> <p>24 So I don't know –</p> <p>25 MR BIZOS SC: No, no, the question was,</p>

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1 did you shoot any of the shooting, if I may –

2 LT-COL BOTHA: Mr Chair, I had a look at

3 the video with the evidence leaders and according to us I

4 did not.

5 MR BIZOS SC: Now would you agree if I

6 put it very bluntly that on this momentous occasion in

7 South Africa's history when 35 people were killed, a

8 colonel in the employ of the Police was on a helicopter

9 whilst this was happening, and his job was to film, but he

10 managed to avoid filming anything that showed that people

11 were being killed? Am I clear in my question, and if so,

12 what is your answer?

13 LT-COL BOTHA: I will not agree. I did

14 not fly the chopper, Mr Chair, and I filmed what I saw on

15 the ground. I said from the beginning when I started

16 filming, I film what I see on the ground. I did not know

17 there was a shooting happening, so I couldn't force the

18 chopper to fly to a shooting.

19 MR BIZOS SC: Colonel, would you agree

20 that if you had taken the trouble to be awake to any

21 situation in which 35 people were killed, that you failed

22 to record that bit of South African history?

23 LT-COL BOTHA: Mr Chair, I disagree.

24 MR BIZOS SC: What was the rank of the

25 officer sitting next to you on the helicopter?

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1 LT-COL BOTHA: It was a brigadier.

2 MR BIZOS SC: The brigadier giving orders

3 down below?

4 LT-COL BOTHA: Sir, he had conversations

5 with the people down below. I don't know, I can't recall

6 orders and what orders and how many orders he's given.

7 MR BIZOS SC: There was going to be an

8 operation. The brigadier on the helicopter, common sense

9 may lead us to the conclusion that he was controlling the

10 people on the ground because of the better view that he had

11 of the scene. Tell us one thing that he said of any

12 importance whilst you were sitting next to him.

13 LT-COL BOTHA: Mr Chair, I don't know

14 what the duties of the brigadier was; I have said it

15 before. I cannot remember what he said. I'm going to take

16 guesses if I now try and recall what he said. The best

17 will be to ask him.

18 MR BIZOS SC: Colonel, we now know that

19 35 people were killed whilst you were in that helicopter.

20 There was a brigadier sitting next to you, talking or

21 giving orders or guiding the people below. We'll make

22 allowances for the noise that a helicopter makes. How is

23 it that you didn't hear a thing that the brigadier told the

24 people below?

25 LT-COL BOTHA: Mr Chair, I did not say I

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1 did not hear a thing. I said if I must now recall his

2 words and quote his words, it's going to be – I can't do

3 that. I can't remember precisely what was said. That's

4 what I'm saying.

5 MR BIZOS SC: What was the subject matter

6 that he was broadcasting to the people below?

7 LT-COL BOTHA: What was the what?

8 CHAIRPERSON: The question is, what was

9 the subject matter of what he was broadcasting to the

10 people –

11 LT-COL BOTHA: Just explain "subject

12 matter" to me, please.

13 CHAIRPERSON: What was the topic that he

14 was talking about when he was speaking to the people? Can

15 you remember?

16 LT-COL BOTHA: Sir, I can, I cannot

17 remember what was said. I mean the chopper's noise is not

18 so loud that I cannot hear him, but if I have to recall

19 specifically words and things now, I cannot remember what

20 was said. He spoke to people on the ground every now and

21 then and I can't remember what was said.

22 MR BIZOS SC: Perhaps if I may speculate,

23 was he telling them, be careful, policemen, the crowd is

24 going to kill you? Or some of the people are running from

25 where they were onto the small koppie, chase them and kill

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1 them? This was [inaudible]. How come that it went above

2 your head?

3 LT-COL BOTHA: Mr Chair, the first that I

4 learned that there was a shooting at scene 1, ag, at scene

5 2, was when I got to the ground and I was told that people

6 were killed there.

7 MR BIZOS SC: Do you think that the

8 brigadier was as ignorant as you, and that the

9 communication –

10 CHAIRPERSON: Sir, before you say that, I

11 don't think it's appropriate for people to laugh when

12 questions are asked. This is an important part of the

13 case. Questions are being asked by counsel. Witness is

14 doing his best to answer them. I don't think it's

15 appropriate for people to laugh. Please bear that in mind.

16 Carry on, Mr Bizos.

17 MR BIZOS SC: Did you hear the question?

18 LT-COL BOTHA: Mr Chair, I was not

19 ignorant. The first, I'm again going to say, the first

20 that I realised that people were shot, especially at scene

21 2, was when I got onto the ground.

22 MR BIZOS SC: Would the brigadier have

23 had a clear view of what was happening below?

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

25 MR BIZOS SC: What is the purpose – you

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1 know, Colonel, you undervalue your intelligence. What
 2 would the purpose –
 3 CHAIRPERSON: I don't think it's
 4 appropriate to make comments, Mr Bizos. Just ask him
 5 questions.
 6 MR BIZOS SC: Sorry, I'll –
 7 CHAIRPERSON: Don't make comments. We
 8 can make comments later when we give the report.
 9 MR BIZOS SC: Or when we argue. I'm
 10 sorry.
 11 LT-COL BOTHA: Can I just –
 12 MR BIZOS SC: What was the purpose of
 13 there being communication between the person, the high-
 14 ranking officer on the helicopter and presumably the high-
 15 ranking officer below?
 16 LT-COL BOTHA: Can I just qualify my
 17 first question? I didn't sit in a position of Brigadier
 18 Fritz. That's why I said I don't know how his view was.
 19 He was sitting in the middle in the chopper, in the back
 20 seat.
 21 MR BIZOS SC: Did the pilot say anything
 22 what was happening below?
 23 LT-COL BOTHA: Sir, there was a lot of
 24 talk on the radio. People said for instance the, you can
 25 see the people were moving or running in certain directions

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1 on the ground and stuff like that, and they were –
 2 MR BIZOS SC: Just repeat that, please.
 3 LT-COL BOTHA: You could see that people
 4 were dispersing in the ground, on the ground. There are
 5 photos of that. So there was obviously a lot said on the
 6 police radios.
 7 MR BIZOS SC: Were there some people who
 8 were running on the ground who were shot dead and couldn't
 9 continue running?
 10 LT-COL BOTHA: Mr Chair, I did not see
 11 anyone being shot at the ground.
 12 MR BIZOS SC: Did you see anybody falling
 13 down on the ground?
 14 LT-COL BOTHA: I did not see anyone
 15 falling down on the ground. I saw what looked like bodies
 16 lying on scene 1, and that was, that was that.
 17 MR BIZOS SC: How many bodies did you see
 18 lying on the ground?
 19 LT-COL BOTHA: I cannot recall. I did
 20 see that there were bodies on the ground.
 21 MR BIZOS SC: How far from the place
 22 where there was the barbed, the razor wire, did you see the
 23 bodies on the ground?
 24 LT-COL BOTHA: At kraal, at the kraal, in
 25 front of the kraal.

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1 MR BIZOS SC: What distance from where
 2 the Police were to where you saw the bodies on the ground?
 3 LT-COL BOTHA: Mr Chair, I can just
 4 describe it as in front of the kraal.
 5 MR BIZOS SC: How far is that?
 6 LT-COL BOTHA: How far is that from?
 7 MR BIZOS SC: From where the Police were,
 8 were bodies on the ground?
 9 LT-COL BOTHA: Where the Police were at
 10 what stage? When the bodies were, when I saw the bodies
 11 lying on the ground?
 12 CHAIRPERSON: I think that's the
 13 question. When you saw the bodies lying on the ground near
 14 the kraal, there were obviously police in the vicinity, we
 15 know that. Did you see the Police from the helicopter?
 16 LT-COL BOTHA: You could see the Police
 17 on the ground, yes.
 18 CHAIRPERSON: Now what Mr Bizos wants to
 19 know is how far were the Police, or I suppose the nearest
 20 police from the bodies that you saw on the ground near the
 21 kraal?
 22 LT-COL BOTHA: So if I recall correctly
 23 there were police in that vicinity there by the kraal. So
 24 it must be close by.
 25 MR BIZOS SC: Did you see any bodies

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1 lying on the ground 50 yards away from where the Police
 2 were, the main body of the Police were?
 3 LT-COL BOTHA: No, Mr Chair.
 4 MR BIZOS SC: Or 100 yards away?
 5 LT-COL BOTHA: No, Mr Chair.
 6 MR BIZOS SC: 100 metres away?
 7 LT-COL BOTHA: I saw the bodies –
 8 MR BIZOS SC: Or 200 metres away?
 9 CHAIRPERSON: Mr Bizos, he's answering
 10 the question. Carry on with your answer, Colonel.
 11 LT-COL BOTHA: I saw the bodies in front
 12 of the kraal.
 13 CHAIRPERSON: And you say that was close
 14 to the Police?
 15 LT-COL BOTHA: Ja, there were policemen
 16 between them.
 17 MR BIZOS SC: There will be evidence that
 18 there were bodies spread from 100 metres to 800 metres in
 19 the open space there and there were wounded people in the
 20 open space there. Did you see none of them?
 21 LT-COL BOTHA: Sir, there was a lot of
 22 people on the ground. I could, I did, I cannot confirm
 23 that I saw wounded people or bodies lying 800 metres from
 24 the scene. I saw the bodies there in front of the kraal.
 25 MR BIZOS SC: As a criminal expert of

<p style="text-align: right;">Page 331</p> <p>1 your standing and rank, didn't you think that you should 2 show some interest of what had happened and whether there 3 were other bodies and what steps were being taken in order 4 to protect the crime scene? 5 LT-COL BOTHA: Sir, I was flying, making 6 a video. It's not that I was not interested, and the 7 chopper did not circle the whole time in, above that 8 specific scene. 9 MR BIZOS SC: Would you agree that you 10 were the most qualified policeman there on that day on the 11 importance of keeping the crime scene intact? 12 LT-COL BOTHA: Sir, there were four other 13 LCRC members on the ground and I did not know what their 14 movement was on the ground. 15 [17:15] MR BIZOS SC: We don't know who they 16 were, but I'm asking you whether, having regard to your 17 seniority, and having regard to your expert knowledge, did 18 you not show any interest that the crime scene should not 19 in any way be changed or insulted or anything like that? 20 LT-COL BOTHA: I presume that if there 21 are policemen on the ground, that that is the way that it 22 will happen. We are all trained policemen. 23 MR BIZOS SC: Some of them killing 24 people, did you expect them to investigate themselves? 25 LT-COL BOTHA: The members on the scene?</p>	<p style="text-align: right;">Page 333</p> <p>1 about the LCRC people. I'm talking about the normal 2 policemen on the ground. 3 MR BIZOS SC: Did it not occur to you 4 that the Police that had killed the people there may have 5 an interest in changing the nature of the crime scene for 6 their benefit? 7 LT-COL BOTHA: Mr Chair, again, at that 8 stage I did not know who shot whom and who are the suspects 9 and there were policemen on the ground, and policemen are 10 trained to look after crime scenes. 11 MR BIZOS SC: Are you familiar with the 12 Police Standing Orders, Colonel? 13 LT-COL BOTHA: Yes, Mr Chair. 14 MR BIZOS SC: Do you obey them? 15 LT-COL BOTHA: Yes, Mr Chair. 16 MR BIZOS SC: Do you know that Police 17 Orders provide for special procedures in relation to 18 investigation when they themselves may be suspects? Do you 19 know the orders? 20 LT-COL BOTHA: Mr Chair, it depends on 21 what orders you're talking about. I know that IPID will 22 investigate the case. 23 MR BIZOS SC: I beg your pardon? 24 LT-COL BOTHA: I know that IPID will 25 investigate the case, ja, but what other orders? I'm not</p>
<p style="text-align: right;">Page 332</p> <p>1 MR BIZOS SC: It's a simple question, 2 Colonel. 3 LT-COL BOTHA: Would the members on the 4 scene investigate themselves? Is that the question? 5 MR BIZOS SC: The question is, did you 6 expect the policemen, who may have been the suspects in the 7 killings, to protect the scene and not you whose business 8 it is to see to it that scenes are protected? 9 LT-COL BOTHA: Mr Chair, at that moment I 10 did not know who was suspects and who wasn't suspects. I 11 presume that policemen will protect crime scenes. That's 12 how we are trained. 13 CHAIRPERSON: Did I understand you 14 correctly to say that there were four LCRC people on the 15 scene on the ground? The LCRC stands for Local Criminal 16 Record Centre. Did I understand you correctly, or did I 17 misunderstand? 18 LT-COL BOTHA: That is correct, Mr Chair. 19 CHAIRPERSON: So when you said you 20 thought there were trained policemen there who'd make sure 21 that the scene wasn't contaminated, as it were, were you 22 referring to the Police in general, or to the four Local 23 Criminal Record Centre people whom you knew to be on the 24 ground? 25 LT-COL BOTHA: Mr Chair, I'm not talking</p>	<p style="text-align: right;">Page 334</p> <p>1 sure what you're talking about. 2 MR BIZOS SC: Well, let me tell you 3 broadly that the orders provide that a police officer can't 4 investigate himself. Didn't you know that? 5 LT-COL BOTHA: Mr Chair, that's correct. 6 That policemen that did the shooting cannot investigate 7 themselves, but I mean, when I'm in there I don't know who 8 did the shooting and who did not shoot. There were 9 policemen on the ground, a lot of policemen on the ground; 10 there were officers on the ground, that could look after 11 the crime scene. 12 MR BIZOS SC: I'll read you Standing 13 Orders General 262, quite an old, promulgated on the 16th of 14 September 2004, provides that whenever there is any 15 operation that is performed, the commander of the Joint 16 Operation Centre has certain obligations if any 17 irregularity was performed. Did you know that? 18 LT-COL BOTHA: Yes, Mr Chair. 19 MR BIZOS SC: And in order 13 – please 20 listen carefully – "The CJOC must ensure that debriefing 21 takes place after each event or gathering, and that record 22 is kept thereof." Do you agree with that? This was an 23 event or a gathering where terrible things happened. Would 24 you expect a debriefing to take place, to which you were 25 partly a witness?</p>

<p style="text-align: right;">Page 335</p> <p>1 LT-COL BOTHA: Mr Chair, when I got back 2 to the JOC I was briefed. 3 MR BIZOS SC: I beg your pardon? You 4 were debriefed? 5 LT-COL BOTHA: I was briefed by Brigadier 6 Van Zyl. 7 MR BIZOS SC: I'm talking about 8 debriefing, what happened after the operation. Were you 9 debriefed? Were you asked what do you know about this? 10 After all, you're an expert. 11 LT-COL BOTHA: Are we talking about when 12 I landed back on the ground that afternoon? 13 MR BIZOS SC: Yes, that's when I'm 14 talking about. 15 LT-COL BOTHA: I was, if we – I call it 16 brief. I was briefed by Brigadier Van Zyl of what 17 happened. 18 MR BIZOS SC: Oh, you use it that way, 19 okay. I can understand, you're right, briefing and 20 debriefing can, alternative ways of expressing oneself. 21 What did you say to the brigadier? 22 LT-COL BOTHA: I started planning to get 23 people from – I first - ja, I started planning to, because 24 it was, you could hear that it was a big scene, to get 25 people from all over the province so that we will be able</p>	<p style="text-align: right;">Page 337</p> <p>1 he gave me the instruction. 2 MR BIZOS SC: Now then, one would have 3 expected, if you are telling us the truth about these 4 matters – 5 MR MADLANGA SC: Mr Chair – 6 MR BIZOS SC: Colonel – 7 MR MADLANGA SC: Mr Chair, may I ask my 8 colleague Mr Bizos not to talk at the same time either with 9 the interpreter or the witness? There will – 10 MR BIZOS SC: I apologise and I'll try 11 and obey your directive. 12 MR MADLANGA SC: Because there will be 13 problems at the transcription. Thank you. 14 MR BIZOS SC: Okay. Please, Mr 15 Interpreter, finish. Thank you, Mr Interpreter. I'll 16 repeat the question. Are you saying that the brigadier 17 ignored this important Police Order, or are you going to 18 say that brigadiers don't have to comply with Police 19 Orders? 20 LT-COL BOTHA: What I'm saying is I did 21 not, I don't know what debriefing or – you used the word 22 "aftermath" - or what meeting took place. The brigadier 23 came out; he briefed me on what happened and I started 24 organising members from all over the province. I did not 25 give my video to him.</p>
<p style="text-align: right;">Page 336</p> <p>1 to process the crime scenes, and I phoned the four members 2 who, the commander of the four members that was there of 3 the LCRC and asked them to move into the crime scenes - I 4 cannot now remember if they were there already – and to 5 start video graphing immediately, please. 6 MR BIZOS SC: Did the brigadier ask you 7 to hand anything over to him? 8 LT-COL BOTHA: No, Mr Chair. 9 MR BIZOS SC: Didn't he ask you whether 10 you took a video of what happened? 11 LT-COL BOTHA: He gave me an instruction 12 to get in the chopper and make the video. He did not ask 13 me afterwards to give the video to him. 14 MR BIZOS SC: I'll read you paragraph 3, 15 or subparagraph 3 of Order 13. "A thorough evaluation must 16 be conducted and, if possible, video coverage must be 17 shown." Are you saying that this, the directive in the 18 Police Orders was ignored by the brigadier? 19 LT-COL BOTHA: Sir, I don't say the 20 brigadier ignored it. I, what I said is I did not give my 21 video to him. I'm not, he did not ask me my video. I did 22 not give him the video. 23 MR BIZOS SC: Did he know that you have 24 come there for the purposes of videoing the proceedings? 25 LT-COL BOTHA: He did know that because</p>	<p style="text-align: right;">Page 338</p> <p>1 MR BIZOS SC: Colonel, either the 2 brigadier didn't know of the existence of this Order, or he 3 deliberately avoided asking you whether you videoed the 4 proceedings or not – 5 MR MADLANGA SC: Mr Chairman, 6 Commissioners, I'm loath to again intervene but from what 7 my learned colleague read, or what he read from, he seems 8 to be saying that it is the duty of the CJOC to do all of 9 the things that he's referring to, and I am not aware at 10 this stage that the brigadier was the CJOC. Perhaps that 11 should be established first. 12 MR BIZOS SC: "Every level of command 13 must debrief the levels below it individually." So says 14 subparagraph 2 of Section 13 of the Order, Mr Chairman. I 15 don't know if my learned friend persists in his objection 16 to my question. 17 CHAIRPERSON: The witness has heard the 18 exchange between the two of you. Perhaps he can answer the 19 question. 20 MR BIZOS SC: Well, did he disregard the 21 Order? 22 LT-COL BOTHA: Sir, I cannot say that he 23 disregarded the Order. He did not ask my video from me. I 24 didn't give him my video. I don't know for what specific 25 reason. I kept my video with me.</p>

<p style="text-align: right;">Page 339</p> <p>1 CHAIRPERSON: To whom did you give your 2 video – I did what Mr Bizos was rebuked for. I spoke when 3 the interpreter was speaking. I'm sorry. To whom did you 4 give your video, Colonel?</p> <p>5 LT-COL BOTHA: Sir, procedure is that I 6 will keep my video with me and then it will be downloaded 7 later and it will be placed in a docket.</p> <p>8 CHAIRPERSON: Was all that done?</p> <p>9 LT-COL BOTHA: That was all done.</p> <p>10 CHAIRPERSON: Did anybody call for it 11 subsequently?</p> <p>12 LT-COL BOTHA: A copy was given to the SA 13 Police Service. If I remember correctly, a copy was given 14 to IPID; they requested that, and the evidence leaders saw 15 a copy of that.</p> <p>16 MR BIZOS SC: Please tell us what 17 question the brigadier asked when you say that he asked you 18 for your opinion. What did he ask you your opinion on?</p> <p>19 LT-COL BOTHA: Mr Chair, I did not say 20 that the brigadier asked me for my opinion.</p> <p>21 MR BIZOS SC: I'm sorry, I misheard you. 22 What did you say?</p> <p>23 CHAIRPERSON: As I understood him, he 24 said that the brigadier briefed him, in other words told 25 him what had happened. He then immediately sprang into</p>	<p style="text-align: right;">Page 341</p> <p>1 MR BIZOS SC: Were minutes kept at that 2 meeting?</p> <p>3 LT-COL BOTHA: Sir, I'm not sure if 4 minutes was kept. I'm sure that, it was actually members 5 coming together. I'm not sure if members, ag, if meetings 6 were, ag, minutes were kept.</p> <p>7 MR BIZOS SC: This was a momentous event 8 in which serious allegations were made against senior 9 police officers and the people who took part in the 10 shooting. Are you saying you don't remember whether 11 minutes were taken or – what did you say at this meeting?</p> <p>12 LT-COL BOTHA: Sir, this was part of the 13 preparation for the presentation of the SA Police Service, 14 which you will see.</p> <p>15 MR BIZOS SC: The question was, what did 16 you say at this meeting?</p> <p>17 LT-COL BOTHA: Well, I was there for a 18 week. We obviously discussed what happened, what was 19 taken, what photos was taken, was the scenes processed, all 20 the things like that, concerning me.</p> <p>21 [17:35] MR BIZOS SC: Did you say that, "We made 22 a mess with it?"</p> <p>23 LT-COL BOTHA: No.</p> <p>24 MR BIZOS SC: Did anybody else at that 25 meeting, after knowing that 35 people had been killed, say</p>
<p style="text-align: right;">Page 340</p> <p>1 action to arrange for people from the Local Criminal Record 2 Centre to be summoned to the scene to do the necessary to 3 record what was on the scene. That I understood to be the 4 evidence. I didn't understand him to go any further than 5 that, but if you wish to probe the matter further, you may 6 do so.</p> <p>7 MR BIZOS SC: Thank you.</p> <p>8 CHAIRPERSON: I would say, I think your 9 almost close to the end of this topic. You've got a fair 10 amount of material for cross-examining the brigadier when 11 he comes, but there other matters –</p> <p>12 MR BIZOS SC: I look forward to it.</p> <p>13 CHAIRPERSON: There are other matters to 14 cover with him.</p> <p>15 MR BIZOS SC: I look forward to it. Now 16 the Orders also provide that there has to be a meeting of 17 all concerned, all good practices as well as shortcomings 18 must be recorded as part of a learning process to enhance 19 good practices and address to prevent the recurrences of 20 identified mistakes. That's what the Order says. Was such 21 a meeting held?</p> <p>22 LT-COL BOTHA: Mr Chair, I must recall 23 now, I think a week after the incident I was part of a 24 Police contingent in Potchefstroom that debriefed this 25 whole situation.</p>	<p style="text-align: right;">Page 342</p> <p>1 that they have made a mess of it and they mustn't do it 2 again?</p> <p>3 LT-COL BOTHA: No.</p> <p>4 MR BIZOS SC: Have you ever heard in your 5 long police career that people should be trained in order 6 not to repeat mistakes or perform illegal acts, that there 7 are Police Standing Orders directing police officers of all 8 ranks to be trained properly as to how to behave, 9 particularly when they are dealing with large gatherings of 10 people? Have you ever heard of that?</p> <p>11 LT-COL BOTHA: All policemen are trained 12 in whichever direction he's working, Mr Chair.</p> <p>13 MR BIZOS SC: This sort of generalisation 14 you can't get away with when I ask the question.</p> <p>15 LT-COL BOTHA: Policemen are trained –</p> <p>16 MR BIZOS SC: I didn't ask you – were you 17 trained in the manner in which I have suggested? Making 18 generalisations when I ask the question of you, please 19 answer the question.</p> <p>20 LT-COL BOTHA: Are you asking if I'm 21 trained or if I heard that policemen must be trained?</p> <p>22 CHAIRPERSON: My understanding is, had 23 you heard at some stage that where an operation takes place 24 and things go wrong, that people should thereafter be 25 trained to ensure that the mistake isn't repeated? I think</p>

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1 that was the thrust of the –
 2 LT-COL BOTHA: Is that the question?
 3 Yes.
 4 MR BIZOS SC: Was any training article or
 5 any training booklet which indicated to you and the Police
 6 Force generally as to how to behave in relation to crowd,
 7 have you read anything about it?
 8 LT-COL BOTHA: Not me, because I'm not
 9 working in that, Sir.
 10 MR BIZOS SC: So insofar as Order 5 says,
 11 "Trainers and instructors must attempt the debriefings to
 12 review actions taken by members and to rectify improper
 13 conduct by means of service training in crowd management
 14 techniques," did you know about this order?
 15 LT-COL BOTHA: Yes, Sir.
 16 MR BIZOS SC: Did you or any of your
 17 superiors take any act as a result of the death of 35
 18 people on the 16th of March to avoid similar mistakes being
 19 made?
 20 CHAIRPERSON: 16th of August.
 21 MR BIZOS SC: I beg your pardon. 16th of
 22 August, yes.
 23 LT-COL BOTHA: Mr Chair, as I've said,
 24 that week was part of the building of the presentation of
 25 the SA Police Service. A lot of things were discussed.

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1 MR BIZOS SC: Did you absolve yourselves
 2 as a conclusion, or did you find yourselves wanting?
 3 LT-COL BOTHA: Just explain the question,
 4 Sir.
 5 MR BIZOS SC: Did you say, we did well by
 6 killing 35 people, or did you say that this mustn't happen
 7 again?
 8 LT-COL BOTHA: I will never say that we
 9 did well killing 34 people, and I obviously hope that it
 10 will not happen again.
 11 MR BIZOS SC: Thank you [inaudible].
 12 CHAIRPERSON: No more questions, Mr
 13 Bizos?
 14 MR BIZOS SC: Thank you.
 15 CHAIRPERSON: I've been asked by one of
 16 the Commissioners to take a short adjournment so he can
 17 make a phone call, so we'll take a short adjournment for
 18 five minutes for him to do that and we will then proceed, I
 19 think till 6 o'clock, if that's convenient, or not unduly
 20 inconvenient. Shall we take five minutes?
 21 [INQUIRY ADJOURNS INQUIRY RESUMES]
 22 [17:45] CHAIRPERSON: The Commission resumes. Mr
 23 Ntsebeza is next. Mr Ntsebeza, are you ready to cross-
 24 examine?
 25 MR NTSEBEZA SC: No, I'm not. I'm not,

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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 CHAIRPERSON: Are you in a position to
 8 cross-examine, Mr Mpofo?
 9 MR MPOFU: No, Chairperson, and very
 10 briefly, our impediment is that insofar as the issues of
 11 the 13th are concerned, the person who was arrested is our
 12 main witness. You might not remember him, Chairperson, but
 13 on the day he, he's the gentleman who kept on saying "We
 14 were being shot from a helicopter," and I think he
 15 interacted with you and we had called him to the scene
 16 specifically for this evidence.
 17 CHAIRPERSON: So what you're saying is
 18 you require to take instructions from him –
 19 MR MPOFU: And [inaudible] ja –
 20 CHAIRPERSON: He is in custody, but we've
 21 been told by Mr Semanya that you will be afforded every
 22 facility to take instructions from him.
 23 MR MPOFU: We will do so, Chairperson,
 24 and also hopefully try and get him here on the next
 25 occasion. So, and that –

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1 CHAIRPERSON: Alright. There are a few
 2 questions I'd like to ask you. The first is, I understood
 3 you to say you arrived at the place where the JOC was
 4 meeting at about 3 o'clock on the 16th. Is that correct?
 5 LT-COL BOTHA: Yes, Mr Chair.
 6 CHAIRPERSON: And you understood there to
 7 be an operation, an operation was going to take place which
 8 would involve the disarming and dispersal of the people on
 9 the hill. Is that correct?
 10 LT-COL BOTHA: That's correct, Mr Chair.
 11 CHAIRPERSON: You've been in the area for
 12 some days. You've been there on the 13th and again on the
 13 14th, so I take it you knew that there was a concentration
 14 of several thousand striking miners on the hill. Is that
 15 correct?
 16 LT-COL BOTHA: Yes, Mr Chair.
 17 CHAIRPERSON: Now the brigadier, you said
 18 asked you to come there to make a video recording of the
 19 operation. Is that correct? That's what you, as you
 20 phrase it – well you don't say it's the brigadier, but
 21 you've explained it was the brigadier. In para 6 you say
 22 you made a video, or an aerial video recording of the SAPS
 23 operation, and you told us that the brigadier in fact asked
 24 you to come there so you could make that recording. Is
 25 that correct?

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1 LT-COL BOTHA: That is correct, Mr Chair.
 2 CHAIRPERSON: What time did the
 3 helicopter take off?
 4 LT-COL BOTHA: Sir, I cannot remember. I
 5 don't know.
 6 CHAIRPERSON: Approximately?
 7 LT-COL BOTHA: I can have a look, I think
 8 I started making the video 15:58 or 16:58. I'm not sure,
 9 Sir. No, it must be 15:58.
 10 CHAIRPERSON: So effectively 2 minutes to
 11 4?
 12 LT-COL BOTHA: I do think so, ja. I
 13 stand to be corrected.
 14 CHAIRPERSON: And how long does it take
 15 for the helicopter to get from the place where it went up
 16 in the air, up to the scene, the hill?
 17 LT-COL BOTHA: If I must guess, two, five
 18 minutes. It's very close, Sir. A chopper will be, will
 19 get there very quickly.
 20 CHAIRPERSON: From what you've told us it
 21 sounds as if by the time you got to the scene the shooting
 22 was over?
 23 LT-COL BOTHA: Ja, if you look at the
 24 video, Sir, by the time that I got to the scene – well, by
 25 the time I first videoed the scene at the kraal the

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1 shooting already happened.
 2 CHAIRPERSON: Ja, and presumably if you'd
 3 seen the shooting taking place even before you were making
 4 the video, you'd remember that because it's the kind –
 5 LT-COL BOTHA: Yes, Sir, definitely.
 6 CHAIRPERSON: - the kind of incident that
 7 would –
 8 LT-COL BOTHA: I haven't seen it –
 9 CHAIRPERSON: - you would remember.
 10 Alright, so we can accept that your evidence is that when
 11 you got to the scene, the shooting was already over.
 12 LT-COL BOTHA: Yes, Mr Chair.
 13 CHAIRPERSON: And you then went on, you
 14 then flew on, as it were, to the second scene, and do I
 15 understand you correctly, the shooting must have been over
 16 there as well?
 17 LT-COL BOTHA: Sir, no, I'm not sure.
 18 What I'm saying is that the chopper flew in the area and I
 19 made a video what I can, what I could see on the ground.
 20 So I did not know – by now we know it's a small koppie and
 21 a big koppie and there was a shooting. By then I did not
 22 know that, so I'm not sure, or I don't know if I videoed it
 23 or not. It's difficult in a chopper because it's one-
 24 sided. If you fly the one side then you can only see the
 25 one side, you can only video the one side. When it turns,

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1 it's the other side.
 2 CHAIRPERSON: Alright. Now the brigadier
 3 had got you there in order for you to make a video record
 4 of the operation.
 5 LT-COL BOTHA: Yes.
 6 CHAIRPERSON: It appears from what you
 7 tell us that you weren't able to do that because what one
 8 can describe as the major part of the operation had
 9 apparently already taken place by the time you started
 10 making your recording.
 11 LT-COL BOTHA: Yes, Mr Chair.
 12 CHAIRPERSON: And when you got back to
 13 the JOC and you saw the brigadier, he didn't ask you did
 14 you succeed in making a video recording of the operation,
 15 as I understand you. He didn't ask you that question at
 16 all.
 17 LT-COL BOTHA: No Sir, I just made, I
 18 made a video recording but not specifically of that
 19 operation then, if we take it like that, ja.
 20 CHAIRPERSON: You were supposed to make a
 21 recording of the operation and from what you've told us –
 22 I'm not suggesting this is your fault, but you weren't able
 23 to do that.
 24 LT-COL BOTHA: That's correct, Sir.
 25 CHAIRPERSON: So the purpose of getting

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1 you there in fact failed.
 2 LT-COL BOTHA: If you look at it like
 3 that, Sir, yes.
 4 CHAIRPERSON: Now we know from one of the
 5 documents which was made available to us by IPID that
 6 Colonel Vermaak was calling for video material that
 7 afternoon, as I understand it, of the operation. Were you
 8 aware of that?
 9 LT-COL BOTHA: Sorry, Sir, Colonel
 10 Vermaak did what? I didn't hear.
 11 CHAIRPERSON: As far as I can recollect,
 12 in one of the documents we were given by IPID it was stated
 13 that Colonel Vermaak was asking for video material that
 14 very afternoon, of what had happened. He called for it.
 15 Did you know about that?
 16 LT-COL BOTHA: No, Sir, I don't know
 17 about that.
 18 CHAIRPERSON: Did I understand your
 19 evidence correctly that no-one actually asked you
 20 afterwards what you had recorded? You just, I understood
 21 you to say, downloaded what you'd recorded and it was put
 22 in the docket.
 23 LT-COL BOTHA: No Sir, afterwards I've
 24 given a copy to the SA Police Service –
 25 CHAIRPERSON: Yes, yes –

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1 LT-COL BOTHA: Ja, they've asked me –

2 CHAIRPERSON: That was to be put in the

3 docket, I take it.

4 LT-COL BOTHA: No, no, they've asked me.

5 No, mine is in my docket. They've asked me for a copy.

6 CHAIRPERSON: Oh, they asked you for a

7 copy. I see. Did anybody ask you if you'd succeeded in

8 actually recording the operation?

9 LT-COL BOTHA: No, Mr Chair.

10 CHAIRPERSON: Yes, thank you. There's

11 nothing further I propose asking you at this stage. I may

12 ask some questions later. My fellow Commissioners may do

13 so as well. Yes, before Mr Mpofo asks a question, my

14 colleague Advocate Hemraj would like to ask a question as

15 well.

16 MS HEMRAJ SC: Colonel, were you told

17 what time the proposed operation would commence?

18 LT-COL BOTHA: No, Ma'am, I wasn't told.

19 MS HEMRAJ SC: Did you know, Colonel, in

20 which area precisely the operation was going to take place?

21 LT-COL BOTHA: Yes, Commissioner, I knew.

22 MS HEMRAJ SC: And what area was that?

23 LT-COL BOTHA: I was told that the people

24 at the koppie will be disarmed and dispersed.

25 MS HEMRAJ SC: And when your chopper took

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1 off, did it go directly to that particular area?

2 LT-COL BOTHA: Yes, it flew directly

3 there.

4 MS HEMRAJ SC: Thank you.

5 CHAIRPERSON: As far as you could tell,

6 was the brigadier in charge?

7 LT-COL BOTHA: Sorry, Sir –

8 CHAIRPERSON: Who was in charge on the

9 scene as far as you were aware?

10 LT-COL BOTHA: On the scene?

11 CHAIRPERSON: Yes. Or at the JOC and

12 then at the hill itself.

13 LT-COL BOTHA: No, not the brigadier,

14 Sir. I think on the scene it was Brigadier Calitz. At

15 that moment, I haven't been in the JOC that day. The

16 brigadier briefed me outside, so I don't know who was in

17 the JOC in charge.

18 CHAIRPERSON: I see. Yes, Mr Mpofo, I

19 think you wanted to ask a question.

20 MR MPOFU: Thank you, Chairperson. Yes,

21 I just wanted to ask very non-contentious questions which

22 might help us in the consultation to prepare for the cross-

23 examination probably on a later occasion, just so that we

24 get rid –

25 SPEAKER: [Inaudible]

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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

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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? Ja, 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,

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1 4?

2 LT-COL BOTHA: I can't remember, sorry.

3 MR MPOFU: You don't know how it was

4 identified on the ground?

5 LT-COL BOTHA: I cannot remember. Yes, I

6 think it's chopper 1, if I'm not mistaken.

7 MR MPOFU: And do you know what became of

8 the footage that was taken by the LCRC members who were

9 filming from the ground?

10 LT-COL BOTHA: Sir, I'm not sure that

11 they made videos from the ground, so I don't know if there

12 are any footage of it.

13 MR MPOFU: You said you phoned the

14 commander of the LCRC to go and video the scene.

15 LT-COL BOTHA: No, what I mean is when I

16 arrived at the JOC and I learned that there was so much and

17 so many people killed, I immediately informed them to make

18 videos, yes, ja.

19 MR MPOFU: Where are those videos?

20 LT-COL BOTHA: It's available.

21 MR MPOFU: Okay, and correct me if I'm

22 wrong, I thought you had said that at the time when you

23 were in the air, there were also four LCRC members on the

24 ground?

25 LT-COL BOTHA: Yes, as far as I know they

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1 were on the ground, yes.

2 MR MPOFU: And what happened to their

3 recordings, if any?

4 LT-COL BOTHA: They, I, I'm not, I cannot

5 say that they, I think they were at a holding area - not

6 think, they were at a holding area.

7 CHAIRPERSON: That's not an answer to the

8 question. The question is, do you know what happened to

9 the videos - if there were any videos that they took, do

10 you know what happened to them?

11 LT-COL BOTHA: That's what I wanted to

12 say, I don't think they took any videos because they were

13 at holding area 1.

14 MR MPOFU: Okay.

15 LT-COL BOTHA: That's why you see

16 [inaudible].

17 MR MPOFU: Okay, I promise this is really

18 now the last question. Brigadier Van Zyl at the bail

19 application testified that they had been monitoring the

20 situation at the Joint Operation Centre which was located

21 at Lonmin, and I don't expect you to, because you said you

22 didn't go to the JOC, but do you know that the footage that

23 they were monitoring, who was taking it throughout the day

24 and what became of it? Would you have any knowledge of

25 that?

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

2 MR MPOFU: Thank you. Thank you, Chair.

3 CHAIRPERSON: I wonder if you can help me

4 on one point. You were asked to come and make a film of

5 the operation. You apparently left, the helicopter took

6 off, it would seem something like two minutes before the

7 shooting started. By the time you got there, we've agreed

8 it was over. What would you say if I were to put to you

9 it's my impression at this stage that whatever was planned

10 to be the operation either took place too early, or

11 something happened before the operation could actually be

12 completed or start? In other words, what you were supposed

13 to photograph had either happened by the time you got

14 there, or never happened because of what happened, because

15 of what took place? Do you understand the impression I

16 have, that I'm putting to you? Are you able to comment on

17 that at all?

18 LT-COL BOTHA: Mr Chair, what, if I had

19 to video graph the operation, whatever happened before that

20 was either the operation that, well it happened and I

21 didn't video graph it. So it was either too early or

22 something, I don't know.

23 [18:05] CHAIRPERSON: - said we'd stop at 6.

24 It's already after 6. I had hoped that we could finish

25 your evidence today, Colonel. I'm sorry we haven't been

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1 able to do so. We will resume on Monday morning. There

2 are various reasons why we can't continue over the next

3 three days. The main one is this auditorium is not

4 available. We're adjourning now until 9 o'clock on Monday

5 morning, the 29th, when you will be able to continue with

6 your evidence. The Commission adjourns.

7 [INQUIRY ADJOURNED]

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