

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 16 20 NOVEMBER 2012 PAGES 1751 TO 1823

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 20 NOVEMBER 2012]
 2 [09:36] CHAIRPERSON: Good morning, the commission
 3 resumes. You will see a notice in front of you which says,
 4 switch your cell phones off, would you please switch your
 5 cell phones off? Brigadier, you're still under oath?
 6 BRIG BREYTENBACH: Yes, Chairperson.
 7 CHAIRPERSON: To speak the truth to the
 8 commission. I think, Mr Gumbi is going to cross-examine
 9 this morning, is that correct?
 10 MR GUMBI: Yes, Chairperson, I am ready.
 11 CHAIRPERSON: Are you ready for your cross-
 12 examination?
 13 MR GUMBI: Yes, Chairperson.
 14 CHAIRPERSON: Would you please proceed?
 15 CROSS-EXAMINATION BY MR GUMBI: Thanks very
 16 much, Chairperson. Brigadier, before I could even start
 17 with my cross-examination I would like to introduce myself
 18 to you. My name is Louis Gumbi, instructed by Mafuma
 19 Attorneys, I represent POPCRU in these proceedings. Okay,
 20 Brigadier, I have a few questions for you. I've gone
 21 through the training offered to various units within the
 22 SAPS and I've picked up that there are no negotiation skill
 23 training or conflict resolution training offered to SAPS
 24 members or offered to those various units, is that correct?
 25 BRIG BREYTENBACH: That is not correct, it

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1 is not reflected there but it is a standalone course called
 2 hostage negotiation and conflict resolution course. It is
 3 presented by the South African Police Service, I did not
 4 put the details in there because it is not as part of the
 5 outfit or the standard training for them, individuals get
 6 selected and trained for that.
 7 MR GUMBI: Will I be correct, Brigadier,
 8 that that course is not offered as a basic course or a
 9 standardised one, there are few members who are selected?
 10 BRIG BREYTENBACH: That is correct, yes, it
 11 is not part of the training cycle for one of those
 12 specialised units, but individuals from those units can be
 13 nominated and have attended, I am convinced that they have
 14 attended, some of them.
 15 MR GUMBI: Is there any criteria that is
 16 used to nominate those individuals?
 17 BRIG BREYTENBACH: It is dependent on the
 18 unit commanders to nominate them and as I said, it is not
 19 part of the basic training for those specialised units.
 20 MR GUMBI: Training offered to these
 21 various units you've presented before this commission, on
 22 completion of their training, the members of SAPS, are they
 23 advised about the whole critical condition, are they going
 24 to meet after completion of their training?
 25 BRIG BREYTENBACH: If you talk about basic

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1 training, yes, they enter into a memorandum of agreement
 2 and members are prepared for whatever functions that they
 3 are going to be doing. There is lot of communication
 4 during course and interaction with trainers so that they
 5 understand what are the functions that they are going to
 6 perform. Then we also have the websites of the police
 7 where members can get more information on the duties that
 8 are performed. Also the members enter into a job
 9 description where they sign and understand the functions
 10 that they will be performing.
 11 MR GUMBI: But they are prepared also
 12 mentally?
 13 BRIG BREYTENBACH: I believe so, yes.
 14 MR GUMBI: Brigadier, I wanted to put to
 15 you some certain facts that is alleged, that will be placed
 16 before this commission, then I want your comment on the
 17 SAPS training or the role of the SAPS in labour dispute
 18 situations between the employer and the employee and I
 19 would deal with those facts and you'll comment after that,
 20 after asking the question. It is alleged before this
 21 honourable commission that before the 16th of August 2012
 22 strikers were on strike, that is mine strikers, because
 23 they demanded a salary of R12 500 from Lonmin, okay. It is
 24 further alleged that the senior police officers went there
 25 and they tried to persuade the employer and those striking

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1 mining workers to sit down and resolve these issues of
 2 which dispute the employees were demanding.
 3 It is further alleged that the employer avert the
 4 employees' wage demand falls outside the collective
 5 bargaining structure, so he was not prepared to negotiate
 6 with those striking miners. Do you get those facts?
 7 BRIG BREYTENBACH: Yes.
 8 MR GUMBI: So, Brigadier, I wanted to know
 9 from you whether the SAPS or is it highly possible that the
 10 senior officials of the SAPS, they are trained to persuade
 11 the employer who is not willing to listen the wage demand
 12 of his employee?
 13 BRIG BREYTENBACH: If I understand the
 14 question correct, you asked where senior officers are
 15 trained specifically to persuade people to participate in
 16 negotiation.
 17 MR GUMBI: Labour dispute negotiation.
 18 BRIG BREYTENBACH: Labour dispute
 19 negotiation, yes. I cannot comment on that, I don't have
 20 knowledge that people have done or specific people have
 21 done such courses, but taking from the seniority of the
 22 level that you are speaking from, these officers are
 23 constantly in meetings and I think that they have acquired
 24 certain negotiation skills and meeting skills that can
 25 assist in such regard.

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1 MR GUMBI: Okay, are they trained in
 2 conflict resolutions and mechanisms or situations?
 3 BRIG BREYTENBACH: There are such courses,
 4 I cannot say if those particular officers have undergone
 5 the courses.
 6 MR GUMBI: If it is proven before this
 7 commission that on that day in question senior members of
 8 the police officials tried to persuade the employer and the
 9 employee and also they tried to facilitate negotiations
 10 between the employer and the employee, including the
 11 unions, what will be your comment?
 12 BRIG BREYTENBACH: I would say that was the
 13 responsible action from those police officers.
 14 MR GUMBI: And that would be part of trying
 15 to find the peaceful solution to a dispute like that.
 16 MR GUMBI: So do they go beyond their
 17 mandate as police officers?
 18 BRIG BREYTENBACH: Yes, I would say so and
 19 although it is expected of them to do everything possible
 20 to find peaceful solutions to such incidents and as I said,
 21 that would be the responsible thing and maybe they have
 22 gone further than they should have gone.
 23 MR GUMBI: Thanks, Chairperson, I don't
 24 have any further questions.
 25 CHAIRPERSON: Thank you, is there anybody

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1 else who represent any of the parties, who wishes to cross-
 2 examine? I'll only give you my leave if you turn your
 3 microphone on. Granted.
 4 CROSS-EXAMINATION BY MR BIZOS SC: Thank
 5 you. Brigadier, during the apartheid era there was
 6 shooting at a crowd in the Eastern Cape and a commission of
 7 inquiry was established headed by Mr Justice Kannemeyer and
 8 he dealt in great detail on the use of the type of weapon
 9 that ought and ought not to be used, do you remember that?
 10 BRIG BREYTENBACH: I can recall the
 11 Kannemeyer Commission, that there was one, but the details
 12 not, unfortunately.
 13 MR BIZOS SC: Well, what his Lordship said
 14 in that case, because shotguns were used with SSG pellets,
 15 for the benefit of all of us, SSG is the most dangerous
 16 piece of lead that is put into a cartridge. There is bird
 17 shot, there is buck shot and there is SSG, do you know
 18 that?
 19 BRIG BREYTENBACH: I know that there is
 20 ammunition like SSG.
 21 MR BIZOS SC: And his Lordship was against
 22 the use of SSG on the basis that there are only 16 to 18
 23 pieces of lead in the cartridge which qualified it as
 24 deadly ammunition, would you accept that, that that is the
 25 SSG?

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1 BRIG BREYTENBACH: That's correct, yes.
 2 MR BIZOS SC: He condemned the use of any
 3 ammunition which would cause death, do you remember that?
 4 BRIG BREYTENBACH: I have to take it from
 5 you, yes.
 6 MR BIZOS SC: Yes, and nor should they use
 7 buck shot, but if they had to a shotgun with a bird shot is
 8 a useful attack against a dangerous crowd, do you recall
 9 that?
 10 BRIG BREYTENBACH: No, I do not recall but
 11 I can take it from you.
 12 MR BIZOS SC: Because a bird shot will not
 13 kill, it may theoretically injure an eye which is a serious
 14 injury, but unless it is used within a very short distance
 15 it will not kill, would you agree with that?
 16 BRIG BREYTENBACH: I am not a ballistic
 17 expert but I think it makes sense what you are saying, Sir,
 18 that if it is used on a close range it will definitely
 19 kill, but I do not want to comment because I am not a
 20 ballistic expert on ammunition.
 21 MR BIZOS SC: But you would accept that and
 22 if need we will lead evidence, but the more important thing
 23 is that I was informed overnight by a source that I trust,
 24 one of your ex colleagues, that despite the fact that a
 25 shotgun with bird shot was an effective firearm to use for

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1 crowd control, your seniors in not too distant past have
 2 withdrawn the shotgun even with bird shot to the objection
 3 of people who had experience that it was an effective
 4 weapon and it should not have been withdrawn, what do you
 5 say to that?
 6 BRIG BREYTENBACH: I would say that a buck
 7 shot or a bird shot, as you call it, falls under –
 8 MR BIZOS SC: No, there is a difference
 9 between a buck shot and a bird shot.
 10 BRIG BREYTENBACH: A bird shot falls, does
 11 not fall within less legal ammunition because it can kill
 12 and I believe that that is why it was removed from use and
 13 replaced with rubber ball ammunition.
 14 MR BIZOS SC: But instead of R4 and R5 and
 15 R6 wouldn't it have been a less dangerous arm to use for
 16 the control of crowds? Do you recall that there was a
 17 debate within the police force whether it was a wise
 18 decision to withdraw shotguns?
 19 BRIG BREYTENBACH: I recall that there was
 20 a debate on withdrawing all lead ammunition, which is the
 21 bucks or the AAA and the bird shot, and that it was
 22 subsequently withdrawn, because it was considered lead
 23 ammunition and replaced with rubber ammunition. As to the
 24 specific ballistic effect of bird shot I cannot comment
 25 because I am not a ballistic expert.

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1 MR BIZOS SC: Do you know whether there are
 2 still people within the police force that actually condemn
 3 the decision to substitute a bird shot with other more
 4 lethal ammunition and guns?
 5 BRIG BREYTENBACH: No, I have not come
 6 across such a person.
 7 MR BIZOS SC: And you don't want to express
 8 a personal opinion?
 9 BRIG BREYTENBACH: No, I do not want to express a
 10 personal opinion, Sir.
 11 MR BIZOS SC: - Mr Chairman.
 12 CHAIRPERSON: Mr Madlanga, do you have any
 13 re-examination for the witness?
 14 MR MADLANGA SC: Not re-examination, Chair,
 15 because we did not lead the witness, Mr Budlender has a few
 16 questions for this witness, thank you very much.
 17 CHAIRPERSON: Okay, sorry, I am terribly
 18 sorry. We indeed have Mr Semenya who led the witness,
 19 you're quite right.
 20 MR MADLANGA SC: Thank you, Chair.
 21 CHAIRPERSON: And Mr Semenya is not here,
 22 but I see he sent someone from the bench, from the
 23 substitute's bench to run on the field and take over from
 24 him, but do I understand you to say that Mr Budlender would
 25 like to ask questions now?

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1 MR MADLANGA SC: Yes, yes.
 2 CHAIRPERSON: Okay, it is actually by way
 3 of cross-examination?
 4 MR MADLANGA SC: Yes, Chair, thank you.
 5 CHAIRPERSON: Mr Budlender?
 6 CROSS-EXAMINATION BY MR BUDLENDER SC:
 7 Thank you, Chairman. Brigadier, a few questions about how
 8 the training system operates first, where are the POP's
 9 personnel trained?
 10 BRIG BREYTENBACH: The POP's personnel is
 11 trained at Mankwe Operation on Tactical Academy, just
 12 outside Rustenburg. Such courses are also presented in
 13 Cape Town in Faure by the provincial training section.
 14 Those are the primary areas where it is presented.
 15 [09:56] MR BUDLENDER SC: Does the police college
 16 have any role in training of POPs personnel?
 17 BRIG BREYTENBACH: Only during basic
 18 training, the areas that I alluded, where they do a
 19 theoretical discussion with the members on POPs training,
 20 but not the Police Academy in Tshwane, is that the one
 21 you're referring to?
 22 MR BUDLENDER SC: No, what we use to know
 23 as the South African Police College, does that still have a
 24 function in relation to this?
 25 BRIG BREYTENBACH: Sir, we've got 24 at

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1 this stage.
 2 MR BUDLENDER SC: They're all police
 3 colleges?
 4 BRIG BREYTENBACH: Yes. That's why I say
 5 if you refer to Police College, generally we talk about
 6 Tshwane, but in the basic academies they do the theoretical
 7 part in learning area 6.
 8 MR BUDLENDER SC: So when, if we talk about
 9 police college, that's really a collection of a number of
 10 different sites, all undertaking various training
 11 activities?
 12 BRIG BREYTENBACH: Yes, and they specialise
 13 in different field of training.
 14 MR BUDLENDER SC: Do you know whether the
 15 police college trainers, if I can call them that, have
 16 basic texts which they use for this training in Public
 17 Order Policing?
 18 BRIG BREYTENBACH: Like manuals, for
 19 instance?
 20 MR BUDLENDER SC: Manuals, textbooks,
 21 etcetera.
 22 BRIG BREYTENBACH: Yes, there is prescribed
 23 programme and though a detainee is very practical nature,
 24 there is learner guides and presenter guides.
 25 MR BUDLENDER SC: So there are presenter

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1 guides and there are learner guides, are you aware of any
 2 other materials which are used for the training? Written
 3 materials, that is?
 4 BRIG BREYTENBACH: No.
 5 MR BUDLENDER SC: And who trains those
 6 trainers?
 7 BRIG BREYTENBACH: Trainers, in the last
 8 period before the World Cup, the French were involved in
 9 training the crowd management trainers, and there's also
 10 crowd management train the trainer, as we call it, where
 11 members from POP units are called up by fellow POP members,
 12 experienced ones that is certified trainers.
 13 MR BUDLENDER SC: And what written
 14 materials would those who are training the trainers use for
 15 that purpose.
 16 BRIG BREYTENBACH: They would also use
 17 trainer handouts, and basically the same as I said for the
 18 platoon members.
 19 MR BUDLENDER SC: I understand that
 20 training in a matter like this is partly a matter of
 21 training from experience and teaching from experience, but
 22 is there any theoretical training which is provided by
 23 reference to standard textbooks for example?
 24 BRIG BREYTENBACH: That is the learner
 25 guides that we're referring to. Because this is huge

<p style="text-align: right;">Page 1763</p> <p>1 groups that is trained at any given time, they depend on 2 slide shows, discussions with members and that forms part 3 of the presenter's guides that they then utilise to train 4 the members, and a lot of the training is also done in 5 practise outside.</p> <p>6 MR BUDLENDER SC: No, I understand that, 7 what I'm interested in is on what materials, the people who 8 prepare the trainer's guides rely in preparing those 9 guides? It surely doesn't just come out of their heads, 10 they must derive it from somewhere?</p> <p>11 BRIG BREYTENBACH: That is where the 12 curriculum developers come in and they would do the 13 necessary research. As I mentioned, the French was closely 14 involved prior 2010 when the crowd management was sort of 15 revamped, and I believe that would be best if that question 16 is posed to curriculum developers.</p> <p>17 MR BUDLENDER SC: I understand. I assume 18 the curriculum developers would have access to materials, 19 what I could call primary materials, from which they would 20 derive the materials which they prepare and the guides 21 which are used?</p> <p>22 BRIG BREYTENBACH: I suppose so, yes, Sir.</p> <p>23 MR BUDLENDER SC: And where are the 24 curriculum developers based?</p> <p>25 BRIG BREYTENBACH: They're in Pretoria,</p>	<p style="text-align: right;">Page 1765</p> <p>1 which, on which Public Order Police are trained.</p> <p>2 BRIG BREYTENBACH: Yes.</p> <p>3 MR BUDLENDER SC: Do you know that that Act 4 had its origins in the work of the Goldstone Commission on 5 the prevention of public violence and intimidation?</p> <p>6 BRIG BREYTENBACH: No, I didn't know that.</p> <p>7 MR BUDLENDER SC: Have you ever heard of 8 the report prepared by the Goldstone panel on the lawful 9 control of gatherings in South Africa?</p> <p>10 BRIG BREYTENBACH: I've heard of it, I 11 haven't seen it.</p> <p>12 MR BUDLENDER SC: So, you know, in general 13 terms, that there were recommendations by an international 14 panel which was constituted for this purpose?</p> <p>15 BRIG BREYTENBACH: Yes.</p> <p>16 MR BUDLENDER SC: Then finally, Brigadier, 17 I want to make sure that I understand your evidence 18 correctly. I am correct in understanding that the Special 19 Task Force are not trained in public order policing?</p> <p>20 BRIG BREYTENBACH: That's correct, yes.</p> <p>21 MR BUDLENDER SC: Thank you, Chairperson, I 22 have no further questions.</p> <p>23 CHAIRPERSON: Any re-examination from the 24 side of the police? Mr Mathibedi, are you going to –</p> <p>25 MR MOTHIBEDI SC: Mr Chairman, TF</p>
<p style="text-align: right;">Page 1764</p> <p>1 based at our head office.</p> <p>2 MR BUDLENDER SC: So they would presumably 3 have access to materials at head office which they could 4 use for developing their guides?</p> <p>5 BRIG BREYTENBACH: I suppose so, yes.</p> <p>6 MR BUDLENDER SC: Alright, then to move to 7 another subject, do you know what training is given on the 8 pharmacological impact of teargas in –</p> <p>9 BRIG BREYTENBACH: No, not that I can 10 recall.</p> <p>11 MR BUDLENDER SC: Do you know whether any 12 training is given on the pharmacological impact of teargas?</p> <p>13 BRIG BREYTENBACH: No.</p> <p>14 MR BUDLENDER SC: Do you know whether any 15 training is given on the likely behavioural consequences of 16 being subjected to teargas?</p> <p>17 BRIG BREYTENBACH: No, I do not know that, 18 what I know is that – no, I do not know.</p> <p>19 MR BUDLENDER SC: Presumably the curriculum 20 developers would be the people to ask about that?</p> <p>21 BRIG BREYTENBACH: Yes, and also the 22 trainers that's actually presenting the course.</p> <p>23 MR BUDLENDER SC: Then I want to ask you 24 something about the Regulation of Gatherings Act. You 25 mentioned that this is one of the core legal instruments</p>	<p style="text-align: right;">Page 1766</p> <p>1 Mathibedi, no re-examination.</p> <p>2 CHAIRPERSON: No re-examination. He puts 3 himself on record just to say you've got nothing to say? 4 Alright, an example that I hope nobody follows. Thank you, 5 Brigadier. I take it you would like to be excused, unless 6 you want to stay in attendance to hear what happens next?</p> <p>7 BRIG BREYTENBACH: I'll attend in the 8 auditorium – in the seats on that side. Thank you very 9 much, Sir.</p> <p>10 CHAIRPERSON: Thank you, you're excused.</p> <p>11 BRIG BREYTENBACH: Thanks.</p> <p>12 [NO FURTHER QUESTIONS – WITNESS EXCUSED]</p> <p>13 CHAIRPERSON: Mr Mathibedi, do you wish to 14 lead any further evidence?</p> <p>15 MR MOTHIBEDI SC: Not at this stage, no, Mr 16 Chairman.</p> <p>17 CHAIRPERSON: No.</p> <p>18 MR MOTHIBEDI SC: Mr Chairman, with regard 19 to the ballistic report, my instructions are that it is 20 available, IPID was advised to go and collect it from the 21 forensics laboratory in Pretoria.</p> <p>22 CHAIRPERSON: That's - thank you very much. 23 Mr Madlanga, I take it you heard what Mr Mathibedi said?</p> <p>24 MR MADLANGA SC: Yes.</p> <p>25 CHAIRPERSON: You heard that. I don't know</p>

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1 whether you can send people to fetch it or whether IPID
 2 have to fetch it and you've got to get it from them, but
 3 anyway it's obviously necessary that we get it as soon as
 4 possible.

5 MR MADLANGA SC: Mr Chairman, I believe we
 6 will get it fairly urgently. It seems there are certain
 7 formalities with regard to us laying our hands on it.
 8 Yesterday, Mr Semenya had actually promised to give it to
 9 us yesterday still, but later in the day he said because
 10 these are IPID investigations on SAPS, it has to be given
 11 to IPID, and so we will get it from IPID, but we will make
 12 a follow up with them and make sure that we get it soon,
 13 Chair.

14 CHAIRPERSON: I'm sure a pair of scissors
 15 will be found which will be sharp enough to cut through the
 16 red tape.

17 MR BIZOS SC: Mr Chairman, could we get
 18 hard copies, because for some of us, we have no printing
 19 facilities here, so that will be delays in getting them.
 20 Would there be any hard copies available please?

21 CHAIRPERSON: I think Ms Pillay is the
 22 person to whom these questions have to be directed, but
 23 you've asked the question, now let's see whether she can
 24 answer it.

25 MS PILLAY: Mr Chairperson, we'll first

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1 have, we'll have a look at the size of the document and
 2 what the nature of the document, whether it's capable of
 3 being printed in hard copy and if it is, we'll definitely
 4 make copies for whichever parties don't have access to
 5 photocopiers.

6 CHAIRPERSON: I don't know how long it's
 7 going to be, but presumably it's going to deal, I take it,
 8 with practically every bullet or bullet fragment that was
 9 found, and I don't know how many were found, and then, I
 10 take it, it will relate back to the firearms which were
 11 used during the operation, and which firearm was used to
 12 fire which bullet, so it may be quite a longish document
 13 actually, but anyway – but never mind how long it is, it
 14 may be that Mr Bizos and his colleagues will need it and,
 15 as he correctly says, a hard copy may well be very
 16 necessary for him. Anyway that's a matter you can deal
 17 with outside the auditorium.

18 CHAIRPERSON: Mr Madlanga?

19 MR MADLANGA SC: Mr Chairman,
 20 Commissioners, the arrangement between the evidence leaders
 21 and SAPS was that after the Brigadier, SAPS would lead yet
 22 another witness, and that was to have been a witness that
 23 was to deal with firearms, the use of firearms, what effect
 24 each firearm has on a human being, how each type of firearm
 25 ejects cartridge cases and so on and so on. This morning

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1 Mr Mathibedi says that he's not ready to lead that witness.
 2 The reason is that they have decided to add something to
 3 the witness that initially we had agreed that the witness
 4 would deal with, and that that addition has necessitated
 5 that they precognise the witness prior to calling him
 6 today, and he says that they will only be ready to call
 7 that witness tomorrow. Chairperson, Commissioners and
 8 colleagues, what we also intended doing is for my
 9 colleagues, Matthew Chaskalson and Charles Wesley to play
 10 some video footage. They have put a collection which is
 11 fairly lengthy and our belief is that this is footage that
 12 should be viewed by our learned colleagues and the
 13 Commission, prior to some of the witnesses being led.

14 So because of what my learned friend told us only
 15 this morning, I would suggest that the commission adjourn
 16 for a short while, and I hope it won't be too long, and we
 17 will indicate when we will be ready with the video footage.

18 CHAIRPERSON: Very well, the Commission
 19 will – well, the Commission will adjourn for a short while,
 20 and will resume after we have been told that the evidence
 21 leaders are ready to proceed with the videos that they wish
 22 to show us.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [10:58] CHAIRPERSON: The commission resumes. Mr
 25 Chaskalson, I believe you will be presenting the videos, is

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1 that correct?

2 MR CHASKALSON: That is correct, Mr
 3 Chairperson. We have a series of videos for each day from
 4 the 9th of August to the 16th of August and in view of the
 5 fact that at a later stage the parties may want to refer to
 6 specific videos, our suggestion would be that we give each
 7 video for each day an annexure number, so if the 9th of
 8 August –

9 CHAIRPERSON: An exhibit number?

10 MR CHASKALSON: An exhibit number, I beg
 11 your pardon, Mr Chairperson, so that if the 9th of August
 12 becomes Exhibit U, then there will be Exhibit U1 and
 13 Exhibit U2 on the 9th.

14 CHAIRPERSON: We already have an Exhibit U
 15 and in fact there is something I omitted to deal with
 16 earlier, Ms Pillay is very kindly looking after the
 17 exhibits, the labelling for us. We reserved a letter for
 18 an exhibit that we haven't yet got yet, so I hope we'll get
 19 that perhaps in the course of the day, if possible or
 20 tomorrow anyway, but the next one then is V, is that
 21 correct?

22 MS PILLAY: That is correct, Mr
 23 Chairperson.

24 CHAIRPERSON: So we work it then that the
 25 9th will be Exhibit V, is that correct? W will be the 10th,

1 X will be the 11th, Y will be the 12th, Z will be the 13th,
 2 AA will be the 14th, BB will be the 15th –
 3 MR CHASKALSON: Mr Chairperson, we don't
 4 have videos from the 15th or we won't be showing videos from
 5 the 15th, we do have some but we are not proposing to show
 6 them.
 7 CHAIRPERSON: - that for the moment, BB
 8 will then be the 16th, but if there is a possibility we'll
 9 use some of the 15th, then maybe we must, you know make it
 10 easier if they're in sequence. Is there a possibility that
 11 the 15th will be used?
 12 MR CHASKALSON: There certainly is, the
 13 other parties, there are videos that other parties may wish
 14 to show, so there is for instance of Mr Mathunjwa
 15 addressing the crowd from within an Nyala.
 16 CHAIRPERSON: Okay, it sounds sensible for
 17 us to keep BB then for the 15th and CC will be the 16th, is
 18 that in order?
 19 MR CHASKALSON: It is, Mr Chairperson, and
 20 before we start with the videos, if I might explain, when I
 21 introduce a video I will give an indication of who the
 22 camera person is who took the video and also the
 23 approximate time of day at which the video was taken. In
 24 due course, if any of these details are, or we will try to
 25 get these details admitted by the parties but if needs be

1 is certainly not all the video evidence that we've
 2 received, that video evidence probably runs to several days
 3 of playing time. We have selected materials which we
 4 regard as sufficiently important to be played in the
 5 commission. We made available all of the evidence, the
 6 video evidence that we've received to other parties and we
 7 certainly don't suggest that this is the only relevant
 8 video evidence, but in respect of the other video evidence
 9 if parties want to refer to it in cross-examination of the
 10 witness, or even as evidence in its own right, we certainly
 11 wouldn't stand in their way if they sought to do so. What
 12 I will do in relation to contextualising the clips that we
 13 are showing today is, when we show a clip we will give you
 14 the directory address where that clip is to be found, in
 15 either the SAPS hard drive or the Lonmin drive that was
 16 made available for distribution yesterday, and we will also
 17 give an indication of, to give an example. The first clip
 18 that we're playing on the 9th is a file that's called
 19 Quadruple 9.MTS. It is the ninth file in a series of short
 20 clips that were taken on the 9th of August.
 21 We will certainly indicate when the clip that we
 22 show is one of many clips of the same event. We chosen
 23 just to show one or two because it becomes very repetitive
 24 to show them all and very time consuming, but we don't for
 25 a minute suggest that other parties should be precluded

1 affidavits can be put up confirming them from all of the
 2 individual –
 3 CHAIRPERSON: I think you should also try
 4 to find out and give to us where the cameraman was, in
 5 other words at what spot the camera was located when the
 6 pictures were taken, that may have a relevance as well.
 7 MR CHASKALSON: We will attempt to do so.
 8 If we can then start with the first video on the 9th of
 9 August –
 10 CHAIRPERSON: Mr Chaskalson, I think Mr
 11 Ntsebeza raised his hand and turned on his microphone, so
 12 let's find out what he wants.
 13 MR NTSEBEZA SC: Thank you, Mr Chairman,
 14 actually through you, Mr Chairman, I just wanted to
 15 establish whether the video material that is being
 16 presented to us is all the video material that the evidence
 17 leaders have from wherever they get them from, or whether
 18 there are edited versions or whether they know whether they
 19 are the full material or not, so that we should even before
 20 we see them, anticipate that it may be edited versions or
 21 it may be the full material or ja, I just want to know
 22 that.
 23 CHAIRPERSON: Mr Chaskalson, you've heard
 24 the interrogatory, are you able to answer it?
 25 MR CHASKALSON: I am, Mr Chairperson. It

1 from showing other clips, referring to other clips.
 2 MR NTSEBEZA SC: Chair, I am comforted by
 3 the assurance that the full versions are available to the
 4 parties.
 5 CHAIRPERSON: I understood they had already
 6 been made available, I don't know whether your side, the
 7 parties for whom you appear have been given them but if
 8 they haven't been, I am sure that's an omission which shall
 9 be rectified as soon as possible.
 10 MR NTSEBEZA SC: No, we'll sort it out, I
 11 am sure, ja, we'll sort it out. Mr Chairman, I also
 12 proceed on the basis that - assurance that there isn't
 13 material that may be of such a nature that the families
 14 need to be accommodated elsewhere?
 15 CHAIRPERSON: Mr Chaskalson is very well
 16 aware –
 17 MR NTSEBEZA SC: No, we spoke to –
 18 CHAIRPERSON: - of that aspect and when any
 19 material of that kind is to be shown a warning will be
 20 given, because we've seen in the past what's happened and
 21 people have unexpectedly seen material relating to their
 22 loved ones that's causing great deal of emotional distress
 23 and we wouldn't want a repetition of that.
 24 MR CHASKALSON: Mr Chairperson, then to
 25 introduce the first two videos from the 9th of August, these

1 are videos of a crowd of striking mine workers. The videos
 2 were taken by a Lonmin security officer, Mr Botha. The
 3 date stamp on the two videos that we will be playing which
 4 are called 0009 and, well, Quadruple 09 and 00010, are
 5 10:35am and 11:40am respectively. Before we show those
 6 videos, if I can give the directory address, it is on the
 7 Lonmin hard drive, the directory is \video
 8 recordings\pwbotha\quadruple 9.MTS and 00010.MTS. That
 9 directory is a directory in which videos taken by Mr Botha
 10 over the full period relevant to the commission, are
 11 included sequentially or chronologically. Each file has
 12 properties which record the approximate date and time on
 13 which the video was taken.

14 The files relating to the 9th of August start at
 15 Quadruple 07 and run to 00010. We will be showing 9 and 10
 16 and we show them merely because they describe, well, they
 17 show, they depict a gathering of striking mineworkers
 18 before any of the particular incidence of conflict had
 19 broken out and the, well, - this crowd looks slightly
 20 different to the manner in which the crowd appears on 14th,
 21 15th and the 16th.

22 CHAIRPERSON: I take it the lights will be
 23 turned out when the video is shown because sitting where we
 24 are, we find it difficult to see the screen clearly if the
 25 lights above us are on because of the glare.

1 MR CHASKALSON: I think someone is
 2 attending to that now, Mr Chairperson. Mr Chairperson, it
 3 is apparently taking longer than we anticipated. The 10th,
 4 we are going to show material of the march of mineworkers
 5 to the Lonmin offices. We'll be showing some material that
 6 was taken by Lonmin security officers. We will also be
 7 showing the full unedited footage taken by the SAPS, part
 8 of which was shown in slide 15 of the SAPS presentation and
 9 we'll show a footage of the marchers leaving the Lonmin
 10 offices as well. If I might, assistance is on its way in
 11 relation to the lights, I am told, but possibly if I might
 12 give directory addresses for the videos that will be shown
 13 on the 10th while we wait for them.

14 The first video is again from the Lonmin drive.
 15 It is \video recordings\2012-08-10-
 16 march\pwbotha\AMCU2012077.MTS, 2012077, and maybe if I can
 17 restate the file number, it is actually AMCU2012077, it is
 18 the same sequence in numbers, but it is 2012077 and that
 19 directory runs from 2012067 to 2012079. We'll just be
 20 showing the 077 file from that directory. The full range
 21 in that directory runs from approximately 07:25am to
 22 09:07am, 07:25 to 09:07, and the video clip which we will
 23 be showing is 43 seconds at approximately 08:41am.

24 The next video of the 10th is on the Lonmin drive,
 25 \video recordings\2012-08-10-march\callie\0001. That is a

1 video taken by a Lonmin security officer, Mr Callie Miles,
 2 M-I-L-E-S, at approximately 09:58am. The directory of Mr
 3 Miles' videos of the day runs from Quadruple 0, or it runs
 4 from 1 to 12, there are 12, - I apologise, 1 to 15, and the
 5 video at 15 is taken at approximately 12:53pm, and Mr Miles
 6 has 15 clips of the march of the workers from before they
 7 arrive at the Lonmin offices, at the Lonmin offices and
 8 then departing from the Lonmin offices.

9 We will show two of the clips of the workers on
 10 route to the Lonmin offices, those are files 1 and 2. We
 11 will then show the SAPS footage which was taken by Warrant
 12 Officer Masenya, if I can get Warrant Officer Masenya's
 13 description in advance of showing his clip. So if we can
 14 then start with the two clips of the 9th of August of the
 15 crowd of mine workers on the 9th August.

16 [11:18] [VIDEO SHOWN]

17 If we can move straight on to the second clip
 18 from the 9th of August?

19 [VIDEO SHOWN]

20 Mr Chairperson, we showed those two clips simply
 21 to show the crowd on the 9th of September and the
 22 observations which we would make are firstly, that there
 23 are no traditional weapons at all, not even sticks, and
 24 secondly, even Mr Botha, the Lonmin's security officer, saw
 25 nothing sufficient to attract his attention in relation to

1 illegal activity or anything that demanded his response.
 2 It is voice-over that we hear on that tape.

3 If we move then to 10th of August. As mentioned
 4 earlier, the first clip that we will show is a clip taken
 5 by Mr Botha at approximately 8:41 am of the march of mine
 6 workers towards the Lonmin offices.

7 [VIDEO SHOWN]

8 MR CHASKALSON: Our next clip is at
 9 approximately 9:58 and is taken by Mr Miles.

10 [VIDEO SHOWN]

11 MR CHASKALSON: Mr Chairperson, that clip
 12 is quadruple 01 in the sequence of Mr Miles at \Video
 13 Recordings\2012-08-10-March\Callie. When I said it was
 14 taken at approximately 9:58, that is what the file records.
 15 From the sequence we infer that that is a picture of the
 16 march stopped at certain point between forming up and
 17 arriving at the Lonmin offices.

18 If we move to the next clip which is in the same
 19 directory, and is the next file in that directory, file
 20 quadruple 02, it is Mr Mile's clip, taken, according to his
 21 camera, at 11:07:40, and by this stage the march has got up
 22 again and moved on again in the direction of the Lonmin
 23 offices. They are shortly to arrive at the Lonmin offices.

24 [VIDEO SHOWN]

25 Mr Chairperson, the next video which we will be

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1 showing is the video taken of the gathering at Lonmin
2 offices by Warrant Officer Masenya. It picks up shortly
3 after the end of the video that we have just seen. Warrant
4 Officer Masenya's videos of the 10th and 13th of August,
5 which we'll be showing, have no time records, because they
6 were taken on an analogue camera, an analogue video camera,
7 but from comparing his video footage with the video footage
8 that we've just seen and the video footage that we will see
9 from Mr Miles at the end of the sequence, we can locate his
10 video at roughly 11:15 or sometime between eight minutes
11 past 11 and half past 11 on the morning of the 10th of
12 August.

13 Just to repeat that parts of this footage was
14 shown as slide 15 of the SAPS presentation. What we are
15 showing is the full unedited footage that we have received
16 from Warrant Officer Masenya.

17 [VIDEO SHOWN]

18 [11:38] CHAIRPERSON: The conversation between what
19 looked like a police officer and some of the miners, which
20 was recorded in the soundtrack, but it was too soft for us
21 to hear clearly what was said, could that perhaps be
22 repeated with the volume slightly higher?

23 MR CHASKALSON: Mr Chairperson, it is in
24 fact a conversation between a Lonmin representative and
25 SAPS people present. I don't think it's going to harm to

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1 hear it. So it's very simple to rewind it so that we can
2 hear it again.

3 [VIDEO SHOWN]

4 MR CHASKALSON: Mr Chairperson, would you
5 like us to replay that again, or was that good enough?

6 MR MAHLANGU: The only thing I could hear
7 from was the mention of the name, General Mpembe, and then
8 the response by one of the workers was we are not in
9 agreement with that.

10 MR BIZOS SC: Do I see ammunition around
11 someone's waste? If so, who is he and which side is he on?

12 CHAIRPERSON: Mr Chaskalson, the difficulty
13 I've got is that I take it you can give Mr Bizos the
14 information he wants, but we can't carry on with this. We
15 can't cross-examine the video. If people want to make
16 notes as to information they require, they can ask it of
17 the relevant witnesses when they are called, but in
18 deference to Mr Bizos' seniority, I think we should give
19 him the information he now seeks.

20 MR CHASKALSON: I'm in the embarrassing
21 situation of not being able to give Mr Bizos the
22 information he seeks. What I can say is that they are
23 rubber bullets, and that the, you will hear on the video,
24 they are described as being rubber bullets, only rubber, at
25 a certain point, one of the police officers, I think says.

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1 I don't want to say that they are police officers as
2 opposed to Lonmin security; there were both police officers
3 and Lonmin security present at the time.

4 CHAIRPERSON: We can accept, with a fair
5 degree of certainty, that it wasn't one of the miners who
6 had those.

7 MR CHASKALSON: But if I can possibly be of
8 assistance to Mr Bizos, there is a much better audio in
9 relation to the ammunition in the sequence of clips.

10 MR BIZOS SC: We'll try and work it out on
11 a one to one basis with Mr Chaskalson.

12 [VIDEO SHOWN]

13 MR MAHLANGU: Here he was saying, "We are
14 not in agreement with what you are saying to us."

15 [VIDEO SHOWN]

16 MR CHASKALSON: Mr Chairman of Warrant
17 Officer Masenya's footage of the 13th. If I might explain,
18 or first give a directory address, which I haven't given
19 yet, it's on the SAPS hard drive, \Videos\2012-08-13 - not
20 10, dash 13, - \ch223_0814_1124.mpg.

21 And if I might briefly explain, that file is all
22 of the analogue footage that Warrant Officer Masenya took
23 between the – well, on the 10th and on the 13th. Because he
24 was working off an analogue camera, it wasn't broken up
25 into digital clips like the other files are, so the file

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1 includes footage from the 10th and the 13th. What we just
2 rolled into was the start of the footage of the 13th.

3 The last clip that we would show from the 10th is
4 Mr Miles' clip taken at approximately 12:07 of the workers
5 leaving Lonmin. It is 00012.mts in the directory, \Callie,
6 that we - to which we've already referred.

7 [VIDEO SHOWN]

8 And before leaving the 10th, we would merely
9 repeat that in that directory on the Lonmin drive, the
10 \Callie directory, there is fairly cool sequence of clips
11 of this march from before it arrives at the Lonmin until
12 after it has left. We haven't shown them all, because they
13 duplicate a lot of what is on Warrant Officer Masenya's
14 video, and we prefer to show Warrant Officer Masenya's
15 video in full because that is part – it has already been
16 shown as part of the SAPS presentation and we thought we
17 would elevate into evidence at this point.

18 Moving then to 11th of August, the first footage
19 that we propose to show is footage taken from a fixed
20 camera in the Wonderkop compound at Lonmin. It's camera
21 218 of Lonmin's fixed CCTV cameras, and this will be
22 footage of the march of striking workers to the NUM offices
23 before the incident on the 11th of August. Unfortunately
24 the CCTV camera cannot reach to film the NUM offices,
25 themselves, but what you do see is the crowd going down in

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1 the direction of the NUM offices.
 2 The time on the CCTV camera is 9:34 am. We've
 3 been informed by Lonmin that this particular CCTV camera is
 4 approximately 5 minutes slow, so that real time would have
 5 been approximately 9:39 am.
 6 In order to play this file in the Commission we
 7 have had to save an ABI file from the original Lonmin
 8 footage. The original Lonmin footage has a time stamp
 9 running through it. That footage can be found at SAPS hard
 10 drive \Videos\2012-08-11\11-08-2012Camera218.
 11 If we can play the video at this point?
 12 [11:58] [VIDEO SHOWN]
 13 That is the footage that we have. We are going
 14 to be showing a few clips from Lonmin CCTV cameras and if I
 15 might, at this point simply indicate that those cameras are
 16 movement activated but they can also be controlled. So
 17 sometimes when one sees interruptions in the sequence that
 18 may be because the camera is only reactivating again
 19 because of movement. When one looks at the file in the –
 20 the original file, there is a continuous time running
 21 through the camera. So where there are interruptions, one
 22 can estimate the length of those interruptions from the
 23 timestamp running on that file.
 24 [VIDEO SHOWN]
 25 The next file of the 11th is a file taken by Mr

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1 Botha – a video taken by Mr Botha of Lonmin. It appears to
 2 be a video taken shortly after the incident at the NUM
 3 offices. It is time stamped 10:10 am and its directory
 4 address is on the Lonmin hard drive \videos\2012-08-11-
 5 RDOs(AMCU)/00026MTS. It is one of two videos that Mr Botha
 6 took at the time, it's 26 and 27. We will only show 26.
 7 [VIDEO SHOWN]
 8 Mr Chairperson, if I can possibly correct the
 9 time that I gave. I said it was 10:10 am, Mr Botha
 10 timestamps at 11:08 himself on his video as everyone heard.
 11 10:10 is the time that the video recorded at the time on
 12 the properties of the video file but because these video
 13 cameras are notoriously inaccurate, I would be inclined to
 14 go with Mr Botha's statement of the time himself. The next
 15 three videos or four videos are videos taken by Mr Botha
 16 later that afternoon which he describes as videos of a
 17 group of NUM members at Wonderkop. They run sequentially
 18 and so I think it might make sense just to watch them one
 19 after another. They are to be found on the Lonmin hard
 20 drive \videorecording\2012-08-11-NUMgroup\00028 to 00031.
 21 [VIDEO SHOWN]
 22 If we can move straight to the next one.
 23 [VIDEO SHOWN]
 24 Sorry, if we can run through to the 6th video.
 25 [VIDEO SHOWN]

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1 Mr Chair, those are all of our videos for the 11th
 2 of August. If we can move then to the 12th of August and
 3 the first footage that we will be showing is footage from
 4 the same fixed Lonmin CCTV camera, 218. This is footage
 5 shortly after the confrontation between striking mine
 6 workers and Lonmin security in which the two Lonmin
 7 security guards, Mr Fundi and Mabelane were killed. We do
 8 not see direct footage of that incident but there may
 9 nevertheless be some footage which is of a distressing
 10 nature to relatives of Mr Fundi and Mabelane.
 11 CHAIRPERSON: Okay, we'll give them a
 12 minute to leave the auditorium if they're in the auditorium
 13 and wish to leave.
 14 MR CHASKALSON: In the meantime, if I might
 15 describe the source directory of this file. The original
 16 footage is on the SAPS hard drive
 17 \Lonminstrike\CCTVfootages\21-08-2012\camera218. For
 18 technical reasons we've had to break up that whole file
 19 into four consecutive sub-files to be able to play it on
 20 the system here, but the source file is continuous and what
 21 we have attempted to do is to ensure that all of the
 22 footage on the source file is covered in the clips that we
 23 will be playing shortly. There are points in this video
 24 where smoke will blow across which we infer to be smoke
 25 from the burning of the cars in which Mr Mabelane and Fundi

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1 were killed. There is also footage which we may have to
 2 point out at a certain point of one of the striking or one
 3 of the protestors attempting to – well showing a shotgun
 4 which appears to be the shotgun that was taken from the
 5 security officers. If we can then start the video.
 6 [VIDEO SHOWN]
 7 We can replay it if that would be convenient.
 8 The man just to the left of the telegraph pole has a
 9 shotgun in his hand pointed down to the ground. It's been
 10 pointed out with the mouse at the moment.
 11 MR NTSEBEZA SC: Is that a shotgun?
 12 MR CHASKALSON: We're fairly confident that
 13 it is. There's an attempt to load it later on.
 14 [VIDEO SHOWN]
 15 [12:18] Mr Chairperson, that is the only footage we have
 16 relating to the first incident on the 12th which is the
 17 confrontation between the striking mine workers and Lonmin
 18 security. There was a second incident late on the night of
 19 the 12th when Mr Mabebe was killed at the parking lot at the
 20 Karee Shaft. We have some footage after that event, it
 21 doesn't include any images of Mr Mabebe but it may
 22 nevertheless be distressing to Mr Mabebe's family and
 23 friends.
 24 CHAIRPERSON: Well we'll wait a minute to
 25 give them an opportunity to leave if they wish to do so.

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1 MR CHASKALSON: This footage is to be found
 2 on the SAPS hard drive in the \videos\2012-08-12\K4
 3 directory. There are two files in that directory M2U00358
 4 and 359. We will be showing 358 which is date stamped
 5 21:05 pm.
 6 [VIDEO SHOWN]
 7 [12:38] Mr Chairperson, that concludes our footage of the
 8 12th. If we move now to the 13th, the first footage that we
 9 will be showing is footage taken by Warrant Officer
 10 Masenya. Part of this footage was included in the SAPS
 11 presentation – I've lost my note but I stand under
 12 correction, I think it's slide 50. I'll come back with the
 13 confirmed reference. It's footage which was taken from the
 14 same file of Warrant Officer Masenya's footage which we saw
 15 on the 10th \videos\2012-08-13\CH223-0814-1124 and this is
 16 footage of the group of striking mine workers on the
 17 railway line being addressed by General Mpembe in a request
 18 to have them put down their weapons and disperse and then
 19 moving into the field at Donkerhoek where there were
 20 subsequently two policeman and three mine workers killed.
 21 The footage which we propose to show at this stage will
 22 include footage of the body of Mr Jokanisi and footage –
 23 ja, no. Just at this stage it was just the body of Mr
 24 Jokanisi. So if Mr Jokanisi's family would want not to see
 25 this footage, they should leave the auditorium now.

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1 [VIDEO SHOWN]
 2 MR MAHLANGU: If they could just replay it
 3 again, it wasn't very clear.
 4 [VIDEO SHOWN]
 5 It's actually not clear.
 6 [VIDEO SHOWN]
 7 Again, if this could be repeated just for me to
 8 get all completely.
 9 [VIDEO SHOWN]
 10 What we are requesting to do is that you
 11 accompany us, that you go with us.
 12 [VIDEO SHOWN]
 13 That is all we are asking from you.
 14 [VIDEO SHOWN]
 15 Again, I'm going to request that this be
 16 repeated. It's not very clear because of the flight of the
 17 –
 18 [VIDEO SHOWN]
 19 That is all we are asking. From the place that
 20 we come from we have been told –
 21 [VIDEO SHOWN]
 22 I'm sorry, Chair.
 23 [VIDEO SHOWN]
 24 That is the only thing that we are requesting
 25 from you. As you can see from where we come from, we have

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1 not damaged anything. We are still insisting that we want
 2 to go to where we are going to.
 3 [VIDEO SHOWN]
 4 I'm sorry. If I could ask a repetition again
 5 from the last one, just before the general spoke. I didn't
 6 have these earphones correctly.
 7 [VIDEO SHOWN]
 8 Could you bring it nearer? Could I just come
 9 here? I'm going to request that it be turned a bit back to
 10 where this man is speaking.
 11 [VIDEO SHOWN]
 12 We are asking for one thing. We are asking your
 13 permission to proceed to where we are staying.
 14 [VIDEO SHOWN]
 15 Even where we come from, we have not caused any
 16 damage. We are only asking for permission to be allowed to
 17 proceed to where we stay.
 18 [VIDEO SHOWN]
 19 That is all we are asking from you.
 20 [VIDEO SHOWN]
 21 We, the police, have come here to come to try to
 22 solve your problem.
 23 [VIDEO SHOWN]
 24 I have to explain one thing that we have not come
 25 here to arrest you.

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1 [VIDEO SHOWN]
 2 But we have a problem. Our problem is those
 3 things that you are in possession of –
 4 [VIDEO SHOWN]
 5 - they are illegal.
 6 [VIDEO SHOWN]
 7 And if you want to proceed, my request is going
 8 to be to you that individually –
 9 [VIDEO SHOWN]
 10 - that you individually hand those things over.
 11 [VIDEO SHOWN]
 12 Listen, please.
 13 [VIDEO SHOWN]
 14 The last thing was in Sotho, it's not very clear
 15 what has been said.
 16 [VIDEO SHOWN]
 17 I'm indicating that – if this could be repeated
 18 again.
 19 [VIDEO SHOWN]
 20 These things that you have are not allowed by
 21 law.
 22 [VIDEO SHOWN]
 23 From here I'm going to proceed to those on the
 24 mountain.
 25 [VIDEO SHOWN]

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1 And you are not supposed to be seated in this
 2 manner and not supposed to gather together as you are
 3 seated now.
 4 [VIDEO SHOWN]
 5 Before gathering like this, you have got to get
 6 permission to have such a gathering and be addressed by
 7 your leaders.
 8 [VIDEO SHOWN]
 9 You are not supposed to be gathering in this
 10 manner.
 11 [VIDEO SHOWN]
 12 Because the gathering as you are gathered now is
 13 against the law.
 14 [VIDEO SHOWN]
 15 We are here to come and explain to you that this
 16 should not happen again.
 17 [VIDEO SHOWN]
 18 To gather in this fashion.
 19 [VIDEO SHOWN]
 20 The sentence is not complete. If you just
 21 repeat.
 22 [VIDEO SHOWN]
 23 We again request then – the last sentence, it
 24 wasn't complete and when you –
 25 [VIDEO SHOWN]

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1 He get to a point where he says – we have come
 2 here to explain to you that in future you should not be
 3 gathering in this manner.
 4 [VIDEO SHOWN]
 5 If you again meet in this manner, the police will
 6 then tell you to disperse.
 7 [VIDEO SHOWN]
 8 From here we're proceeding to those on the
 9 mountain.
 10 [VIDEO SHOWN]
 11 To go and to explain to them that they are not
 12 supposed to gather on the mountain there.
 13 [VIDEO SHOWN]
 14 And not gather in this manner.
 15 [VIDEO SHOWN]
 16 And you are not supposed to be carrying and then
 17 says – carrying somebody in the background says dangerous
 18 weapon and then the general says, the assegais you are
 19 carrying.
 20 [VIDEO SHOWN]
 21 Because the spears that you have are illegal.
 22 [VIDEO SHOWN]
 23 That is what we want to tell you. Those are the
 24 ends of the general's word. If it could just be repeated
 25 for this one who is saying something in Fanagalo, from the

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1 beginning.
 2 [VIDEO SHOWN]
 3 We are here where we are gathered now.
 4 [VIDEO SHOWN]
 5 We are gathered here peacefully. We are not here
 6 to commit any violence. If you believe we are violent, you
 7 can accompany us up to the place where we're staying.
 8 [VIDEO SHOWN]
 9 We do have these things that we are carrying,
 10 referring to the things that he has in his hands, but we
 11 are not fighting. We want to prove to you that we are not
 12 fighting by accompanying us to our place where we stay.
 13 [VIDEO SHOWN]
 14 The first thing, yes, sir, my father, you are
 15 police. You are state policeman – if you just slide back a
 16 bit.
 17 [VIDEO SHOWN]
 18 We want to show you we are not fighting.
 19 [VIDEO SHOWN]
 20 Yes, Sir. My father.
 21 [VIDEO SHOWN]
 22 [We are in Lonmin.
 23 [VIDEO SHOWN]
 24 We are trying to fix our salaries at Lonmin. We
 25 worked in the ground, under the ground, we are not

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1 fighting.
 2 [12:58] [VIDEO SHOWN]
 3 We went out and we came across mine securities
 4 who told us, this thing that we are talking about is there.
 5 May I again request just slightly backwards?
 6 [VIDEO SHOWN]
 7 There is nothing, this thing that we are talking
 8 about is just not there, the best is for us to go back.
 9 [VIDEO SHOWN]
 10 He tried to shoot at us.
 11 [VIDEO SHOWN]
 12 I am sorry, I didn't get this one, if you could
 13 just return back to where he said -
 14 [VIDEO SHOWN]
 15 He said that he would give us the reply, that was
 16 after he said he had tried to shoot at us and then he said
 17 he will try to bring us a reply.
 18 [VIDEO SHOWN]
 19 We are not fighting anybody whatsoever, we are
 20 only asking for -
 21 [VIDEO SHOWN]
 22 You are government people, the only thing we want
 23 is our money, money that belongs to us.
 24 [VIDEO SHOWN]
 25 We have mentioned that we are not fighting, we

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1 are asking for your permission, we're asking you to
 2 accompany us instead.
 3 [VIDEO SHOWN]
 4 - that you accompany us, we are not fighting at
 5 all.
 6 [VIDEO SHOWN]
 7 Where are you going to hand over those things to
 8 us, is it at the mountain?
 9 [VIDEO SHOWN]
 10 We had been asked by the workers at the mountain
 11 to go, we are now taking the response, the reply back to
 12 them, that's why we want you to accompany us to go and tell
 13 them what the reply is.
 14 [VIDEO SHOWN]
 15 We will be prepared to hand over the things that
 16 you have, if you people would go there and get the manager
 17 to come and give us the reply that we want.
 18 [VIDEO SHOWN]
 19 That is all we want, we are not fighting anybody.
 20 [VIDEO SHOWN]
 21 We did not fight anybody, that person is the one
 22 who fought with us.
 23 [VIDEO SHOWN]
 24 We have not caused any trouble and we're only
 25 saying one thing, we are not going to talk again.

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1 [VIDEO SHOWN]
 2 Our request is that we want all these men to
 3 proceed with us to the place where we are.
 4 [VIDEO SHOWN]
 5 If the last would be repeated once more, thank
 6 you.
 7 [VIDEO SHOWN]
 8 We are saying we want this man to accompany us to
 9 the place where we have been.
 10 [VIDEO SHOWN]
 11 And thereafter -
 12 [VIDEO SHOWN]
 13 - then you can go and get the employer to come
 14 back to us, we do not want the money, we want a reply to
 15 what our request has been. Just very slightly to the back,
 16 yes.
 17 [VIDEO SHOWN]
 18 If you then can go to our management and if you
 19 want our leaders, we have our leaders amongst ourselves
 20 here.
 21 [VIDEO SHOWN]
 22 I am sorry, if that could be repeated?
 23 [VIDEO SHOWN]
 24 If you say you want to talk to our leaders right
 25 now, we do not have the leaders here amongst ourselves as

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1 we are.
 2 [VIDEO SHOWN]
 3 If you are not fighting us, please accompany us
 4 to where we presently are.
 5 [VIDEO SHOWN]
 6 CHAIRPERSON: I don't know how much longer
 7 this particular clip goes on for, it is already one
 8 o'clock, I can see that the interpreter, it is already
 9 beyond one o'clock. The interpreter is obviously getting
 10 very tired and if it is convenient and appropriate we could
 11 either adjourn now or perhaps a little bit further down
 12 into the clip, if it is near the end, but one's ability to
 13 exhorb this material does tend to weaken as time goes on
 14 and I am not only referring to myself.
 15 MR CHASKALSON: Mr Chairperson, it may be
 16 convenient to adjourn at this point because this clip does
 17 run for a little while longer.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [14:17] CHAIRPERSON: Commission resumes. Are we
 20 going to be expected to see the rest of the video in broad
 21 daylight or the equivalent, the artificial equivalent
 22 thereof?
 23 [VIDEO SHOWN]
 24 MR MAHLANGU: We did not waste time, we
 25 spoke once. We are asking these gentlemen to please go.

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1 What we are requesting is that all these men should
 2 accompany us to the place where we have been and thereafter
 3 you people should then go to the employer, come back with
 4 the employer. We don't want money, we want the reply that
 5 we expect from him. We will then thereafter give you all
 6 these items that we have, that you are demanding from us.
 7 All this time from when this thing started, we never fought
 8 anybody. The only thing that we are asking is that you go
 9 to our management. Since you want our leaders, I must tell
 10 you we don't have our leaders amongst us here. These are
 11 the people that are working inside the mine. We will then
 12 give you all these things with our open hearts, so that you
 13 come back with the person that employs us, our employer and
 14 we talk to him. He brings us the reply. After the
 15 employer has come here and told us when he is going to give
 16 us what we are demanding, we will not keep on sitting on
 17 the mountains. We will go back to our residences. Since
 18 you people came to us here, you have seen that we are
 19 fighting nobody. You have seen that we are not fighting
 20 but the problem is our employer does not want to come to us
 21 to give us the response that we are demanding from him. He
 22 does not come himself instead he sends somebody else. If
 23 he brings us that response, we are not going to fight, we
 24 will then go back to our residences. On Saturday, we were
 25 going back to our residences when the security police came

1 and shot at us. They killed two of our people and that is
2 the reason we are angry.

3 MR MMUSI: Mr Chairman, I'm sorry to
4 interrupt but that is not what the person was saying. What
5 I understood him to be saying is that they killed our two
6 people, that is why we are carrying the things we are
7 carrying. So perhaps they can play the tape so that Mr
8 Interpreter can -

9 MR MAHLANGU: On Saturday we went back to
10 the places where we stay and the people, the security
11 police together with the people from NUM attacked and
12 killed two of our people and that is the reason we are
13 carrying these things, (he indicates the things that we are
14 carrying), we are not fighting anybody. We are only making
15 this request. Our request is that you will accompany us to
16 where we stay. We will give these instruments at the place
17 where we stay. I will give you these things at the place
18 where you are asking you to take us to, at the place where
19 we stay. We will go there together with you. One thing
20 that hurts me in my heart is that I see faces that are
21 similar to mine. If I see you I see a face that looks like
22 mine, that is what hurts me, that's what makes my heart
23 very sore and then there are voices which says please
24 listen, please listen.

25 We understand what you request is, Sir but we are

1 you to listen to me, let me just talk and finish. My
2 father's please listen to me, we asked the mine police and
3 they allowed us to go with our things to over there, the
4 place where we have been. They also know that we are not
5 fighting anybody, what we are actually asking is that you
6 bring our management. Even the people from Marikana West
7 knows that there are people who are fighting us.

8 [14:37] We had been told that there are police who have
9 already arrived that side, they are waiting for us.

10 [VIDEO SHOWN]

11 What we are requesting from you is to guard us,
12 accompany us, we are not causing any damage, we are not
13 eating anything that does not belong to us.

14 [VIDEO SHOWN]

15 What we are asking is, as soon as we arrived on
16 that hill you will then come and these things that we have
17 ...

18 [VIDEO SHOWN]

19 As soon as we arrive over there, the things that
20 we have here, we will come to you, Tata, and then there is
21 an -

22 [VIDEO SHOWN]

23 And te voice says, Tata, and then quiet.

24 [VIDEO SHOWN]

25 Tata, I said I've got no problem with you.

1 still pleading, we are pleading that you accompany us. We
2 go along with you. We are not refusing to hand over these
3 things. Go along with us, we will then give you these
4 things there. Nobody should go ahead and nobody should
5 come behind, we will all go together. Once you have taken
6 us to where we stay then you come together with our
7 employers you will then get these things that you want. At
8 the place where we are, and the question is asked where we
9 are at the mountain. We are at the mountain but if you
10 want to talk to us we will come to the place where you
11 request us to come to. We will come there to listen to
12 what our employer says about what our demands are and why
13 he did not come to us on Friday. We did not fight, even
14 the mine police, even from the mine police we did not
15 fight. We told them we are proceeding towards, we said to
16 the mine police that we are not fighting we are going to
17 the place where we have been.

18 Something about NUM, NUM people shot and killed
19 two of our people and that is why we are carrying things
20 such as this, he indicates we are not fighting those
21 people. We are going to sing our song, we plead with you.

22 There is a voice that says they are not
23 cooperative and any action that is going to be taken is
24 because they are not cooperative. We want to take these
25 weapons. I am counting, I am counting. I am please asking

1 [VIDEO SHOWN]

2 If I may just interpret, the request from the
3 speaker who is appearing, he is saying, please, I beg you
4 to listen to me, and then there is a voice that says, Tata,
5 listen.

6 [VIDEO SHOWN]

7 I've said to you I have no problems with you, I
8 only want the spears.

9 [VIDEO SHOWN]

10 That was all, I only want the spears.

11 [VIDEO SHOWN]

12 I want the spears.

13 [VIDEO SHOWN]

14 If I don't get the spears I am not going to allow
15 you to go past.

16 [VIDEO SHOWN]

17 MR CHASKALSON: Mr Chairperson, just to
18 explain at this point, the video is not continuous, Warrant
19 Officer Masenya is now taking a later shot, we're not sure
20 what the gap between the two shots are, but he had to,
21 well, the crowd has subsequently marched off the railway
22 line towards the field and he's had to come around to be at
23 their front as their, or to be in front of them as they
24 come on to the field to take the shot. On the file it
25 looks continuous because the file is where this analogue

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1 tape was converted into digital format.
 2 [VIDEO SHOWN]
 3 Sorry, it just occurred to me, Mr Chairperson,
 4 the footage in relation to Mr Jokanisi is about to take
 5 place now and I am not sure if his family are present, but
 6 if they are and they do not want to be present –
 7 CHAIRPERSON: I am glad you mention that,
 8 anyone here who is a member of the family or a friend of Mr
 9 Jokanisi, I am going to give you a minute to leave, because
 10 the pictures of him are being shown.
 11 MR MOTHIBEDI SC: Sorry, Mr Chairman, I
 12 just would like to make sure because this is a scene where
 13 also two members of the police were attacked, so I just
 14 want to make sure that the scene does not depict those
 15 bodies?
 16 MR CHASKALSON: Our intention, Mr
 17 Chairperson, was to stop at the end of the footage of Mr
 18 Jokanisi and not to run forward where there are some fairly
 19 gruesome shots of policemen which have already been shown
 20 in the police presentation, so we're not, or I am hoping
 21 that we stop before those shots come up.
 22 CHAIRPERSON: The one occasion where, I
 23 think when Mr Budlender was presenting videos, by mistake
 24 something, the video went on and something was seen that
 25 people hasn't been warned about. It is better to give a

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1 warning which is not necessary than not give a warning and
 2 have the video to go on in circumstances where distress is
 3 caused.
 4 MR CHASKALSON: I appreciate that, Mr
 5 Chairperson, and then any family members of the two police
 6 officers who were killed on the day, it is, I think it is
 7 Warrant Officer Monene and Warrant Officer Lepaaku.
 8 [VIDEO SHOWN]
 9 Mr Chairperson, our next video from the 13th is a
 10 Lonmin fixed camera video from the central workshops at the
 11 Karee Mine. The full footage is to be found on the SAPS
 12 hard drive in the directory \videos\2012-08-
 13 13\13082012camera426. We are showing a clip of
 14 approximately five minutes which on the timeline of that
 15 CCTV camera runs from 2:25:24 to 2:30:11 and the clip
 16 starts, to contextualise it in relation to the footage that
 17 we've just seen from Warrant Officer Masenya, it starts at
 18 the point that the crowd of mine workers is moving from the
 19 railway line on to the field. So what one first sees on
 20 the clip is the police vehicles that were behind that crowd
 21 reversing and in due course we will see that crowd coming
 22 on to the field.
 23 This clip and the next clip provide a very good,
 24 well, a very good footage of how the incident on the 13th
 25 broke out. There are two separate Lonmin CCTV cameras from

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1 different angles that capture the outbreak of conflict on
 2 the 13th. Mr Chairperson, there is no close-up footage of a
 3 distressing nature and it is not possible to identify any
 4 individuals from the footage, but this is the scene in
 5 which five people lost their lives and if the family
 6 members of the five would prefer not to see this footage,
 7 we would like to draw that to their attention. It is the
 8 two police officers, Monene and Lepaaku, Mr Jokanisi to
 9 whom we've already referred, Mr Mati and Mr Sokanyile.
 10 [VIDEO SHOWN]
 11 Mr Chairperson, that is the first teargas
 12 canister or stone grenade that is fired by the police. We
 13 have it at approximately two minutes 3 seconds into this
 14 clip.
 15 [VIDEO SHOWN]
 16 And if I could stop the clip at this stage, if I
 17 could ask you, Mr Commissioner and the Commissioners, just
 18 to mark a line on the, what looks like lights of sort
 19 facing in either direction, that pole with lights at the
 20 top, that the cloud of teargas is essentially on the line.
 21 Why it is of significance is at the end of this clip we see
 22 where one of the policemen was killed and it is in fact on
 23 that line.
 24 [VIDEO SHOWN]
 25 If the video could just be rewound a little, what

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1 we think we see in the footage of the police officers
 2 running across the screen from about this point is, one or
 3 two policemen with their hands extended shooting at the
 4 protestors.
 5 [VIDEO SHOWN]
 6 MR MOTHIBEDI SC: Sorry, Mr Chairman, I
 7 think there are a lot of people to which my colleague is
 8 referring to, the police officer.
 9 MR CHASKALSON: Maybe the best way of
 10 dealing with this is for us to produce a still shot where
 11 we circle the person to whom we are referring and we can
 12 distribute that later. We want it identified now at this
 13 point on the video, people can then make their submissions
 14 in relation to our observations on this.
 15 [VIDEO SHOWN]
 16 We can use the mouse but I would need to be in
 17 the control room for the mouse unless Mr Wesley is able to
 18 do that.
 19 [VIDEO SHOWN]
 20 I take that to be an indication that Mr Wesley
 21 can identify the man with the mouse whom we say is
 22 shooting.
 23 [VIDEO SHOWN]
 24 [14:57] MR MOTHIBEDI SC: Sorry, Mr Chairman, the
 25 other aspect that we would like to have clarity on is this

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1 presentation going to be backed up by evidence from the
 2 evidence leader's side?
 3 MR CHASKALSON: The only evidence that we
 4 propose tendering in relation to this video, should it be
 5 disputed, is where it was, the point from which it was
 6 taken and the time at which it was taken. We are only make
 7 observations in relation to what we see on the video and
 8 matters to which we would like the attention of the parties
 9 drawn.
 10 MR MOTHIBEDI SC: I think, Mr Chairman, we
 11 have got a problem with that kind of approach. Because
 12 here we are being told that you know -
 13 CHAIRPERSON: If necessary some of the
 14 people who are pictured on the video can be called. You
 15 can call them, if you don't call them the evidence leaders
 16 can subpoena them. They can give evidence. The video can
 17 be shown so they can explain it. I don't think we need to
 18 waste time about it now. It will be ultimately a question
 19 of argument as to what one can see, whether one's
 20 observations are correct and we will have to obviously rule
 21 on, decide whether such arguments are correct or not. But
 22 it's not necessary to stop the video show at the moment for
 23 that purpose.
 24 MR CHASKALSON: Mr Chairman, this is the
 25 shot to which I alluded earlier. If one looks again on the

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1 line of those lights, those policemen are clustered around
 2 a fallen colleague. If we can move to the next video,
 3 which is the same scene taken from a slightly different
 4 angle, which is camera 482, CCTV camera 482 of Lonmin which
 5 is a fixed camera at the capital offices. It's in the same
 6 directory, the file is 1308/2012, camera 482. Sorry, it's
 7 not in the same directory. The equivalent of 1308/2012
 8 camera 426 is the 1308/2012 camera 482, that is the
 9 directory from which this footage is taken. We are going
 10 to show a clip which on the timeline of the Lonmin CCTV
 11 camera runs from 2:34:34, sorry 2:23:34 to 2:30.
 12 [VIDEO SHOWN]
 13 The times are not necessarily accurate but they
 14 give a broad indication of when this was taking place.
 15 Thank you, Mr Chairman, those are our videos of the 13th of
 16 August. On the 14th of August, or in respect of the 14th of
 17 August we have only one video which we would like to show,
 18 which is a video which comes from a series of the discovery
 19 of the body of Mr Twala. So if Mr Twala's family would not
 20 want to see this footage, we would notify them now that it
 21 is going to be fairly graphic footage. Before we get to
 22 this video, we should also say that on the SAPS
 23 presentation slide 90 had video clips which were taken from
 24 a composite file which is called rituals1.mp4. That
 25 composite file is to be found on the SAPS hard driver that

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1 is in the director\videos\2012-08-14.
 2 The footage in that composite file can be found
 3 in its original form in various clips that are taken from
 4 some of the files between 029.mts and 043.mts on the SAPS
 5 hard drive in the directory/videos/2012-08-14. We don't
 6 propose to show those files again but if the SAPS are to
 7 show them, we would invite them to show the original files
 8 which we can be found somewhere between 029 and 043 in that
 9 directory. If we can now proceed to the footage of the
 10 discovery of the body of Mr Twala. This footage is, we are
 11 just taking one clip, there is a whole series of clips that
 12 charts the arrival of the police on the scene and the
 13 identification of Mr Twala's body. They ought to be found
 14 in that same directory/videos/2012-08-14.
 15 [VIDEO SHOWN]
 16 Mr Chairperson, that takes us to the previously
 17 vacant Exhibit BB which is reserved for the 15th of August
 18 between when I spoke to you last and now, we have decided
 19 to show some video footage which is the video footage of
 20 the arrival of Mr Zokwana and Mr Mathunjwa to the scene of
 21 the striking mineworkers at koppie 1, on the evening of the
 22 15th of August and the speech made by Mr Mathunjwa from
 23 inside a Nyala on that evening. These videos are taken
 24 from the SAPS hard drive in the \videos\2012-08-15
 25 directory and they were taken by Warrant-Officer Ndlovu and

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1 they have relatively accurate date and time stamps on them,
 2 save for the fact that they are a month out, that the
 3 calendar was set for the wrong month. So they have dates
 4 in September which should be dates in August, but in other
 5 respects the times are broadly accurate. The first clip
 6 that we will show very briefly is the arrival of Mr Zokwana
 7 and that is according, that is at 5:46 according to the
 8 camera of Mr Ndlovu and it is slide 124 in the SAPS
 9 presentation.
 10 [VIDEO SHOWN]
 11 We show that merely to put a time on Mr Zokwana's
 12 presence at the scene. The next three are, I would ask be
 13 shown consecutively are files 036, 037 and 038 which record
 14 the arrival of Mr Mathunjwa on the scene and negotiations
 15 between Mr Mathunjwa and some of the SAPS members on how Mr
 16 Mathunjwa was going to be able to address the mineworkers.
 17 The first of these clips 036 was slide 127 in the SAPS
 18 presentation.
 19 [15:17] ADV CHASKALSON: [VIDEO SHOWN]
 20 Mr Chairperson, the upshot of that negotiation
 21 was that Mr Mathunjwa ended up addressing the miners from
 22 within Nyala and that is what the next two videos depict.
 23 And just to give a time, the first clip that we will see
 24 starts at 6:09 on the 15th or approximately 6:09. It's PM.
 25 [VIDEO SHOWN]

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1 MR MAHLANGU: The very first person counted
 2 amandla meaning power and then he said comrades I'm going
 3 to ask you to listen to me.
 4 [VIDEO SHOWN]
 5 He gives his name as Tsebe Borman, I'm working at
 6 Karee.
 7 [VIDEO SHOWN]
 8 I am a chairman of AMCU.
 9 [VIDEO SHOWN]
 10 The situation is such that we are not allowed to
 11 come of this vehicle.
 12 [VIDEO SHOWN]
 13 We are told to speak from within this vehicle.
 14 We can't come out.
 15 [VIDEO SHOWN]
 16 As I said, Comrades, I'm going to ask you to give
 17 me a hearing.
 18 [VIDEO SHOWN]
 19 As you know, Comrades, Comrade Steve is not here
 20 today. You know what the position is.
 21 [VIDEO SHOWN]
 22 As you know, Comrades, Comrade Steve is a wanted
 23 person by the man in whose vehicle we are.
 24 [VIDEO SHOWN]
 25 I'm going to ask Comrade to explain fully what it

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1 is that we have come to say at this place.
 2 [VIDEO SHOWN]
 3 I ask you to listen, Comrades.
 4 [VIDEO SHOWN]
 5 He starts by saying viva workers, viva.
 6 [VIDEO SHOWN]
 7 As we have already explained to you, Comrades, it
 8 wasn't the way we wanted to, it wasn't our choice to come
 9 to you in the police vehicle.
 10 [VIDEO SHOWN]
 11 We wanted to come personally to talk to you but
 12 you have now been made by the law – there's I term I didn't
 13 understand.
 14 [VIDEO SHOWN]
 15 We have been turned into what he refers to as
 16 whetu, whetu by the law.
 17 MR GUMBI: It's whetu, whetu, Mr Chairman.
 18 Meaning people who have no backbones.
 19 MR MAHLANGU: Could we repeat it again,
 20 possibly I didn't get it very clear.
 21 [VIDEO SHOWN]
 22 It's true, we are being made whetu, whetu, it's
 23 spineless people.
 24 [VIDEO SHOWN]
 25 The one addressing you is Dumisane.

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1 [VIDEO SHOWN]
 2 It's Dumisane from AMCU. I want to say,
 3 Comrades, we are with you at all times.
 4 [VIDEO SHOWN]
 5 As I said, we wanted to talk to you, Comrades.
 6 We wanted to talk to you about the situation which is
 7 facing us.
 8 [VIDEO SHOWN]
 9 And the difficulties that we are facing, but,
 10 Comrades, we wanted to come and hear from you.
 11 [VIDEO SHOWN]
 12 If the last piece would just be repeated, it's
 13 not very – it didn't come very clear.
 14 [VIDEO SHOWN]
 15 We took it upon ourselves to come to you here so
 16 as to hear from you, Comrades. Amandla.
 17 [VIDEO SHOWN]
 18 He ends up by saying be strong, worker, be
 19 strong.
 20 [VIDEO SHOWN]
 21 Again a repetition of be strong, worker, be
 22 strong.
 23 [VIDEO SHOWN]
 24 As I have already said, Comrades, I'm accompanied
 25 by the honourable, the president of AMCU who would also

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1 like to talk to you.
 2 [VIDEO SHOWN]
 3 As I have already indicated it is not – it was
 4 not our wish to speak to you from inside this vehicle, but
 5 it's because of the law. Power.
 6 [VIDEO SHOWN]
 7 Uttered the word amandla in Xhosa and there was
 8 the reaction from the crown, power and then he says the
 9 same word again in Shangaan, Matimba which also means
 10 power.
 11 [VIDEO SHOWN]
 12 He says he [African language] which means down
 13 with the – I'll use the exact word – the mouse but [African
 14 language] in this respect would mean a person who some sell
 15 out.
 16 [VIDEO SHOWN]
 17 I am now going to ask the president to talk to
 18 you. As you know that we were here on Monday and we were
 19 to talk to the employer.
 20 [VIDEO SHOWN]
 21 I now have before you the president of AMCU who
 22 will first greet you and then give a report to you.
 23 [VIDEO SHOWN]
 24 So that we discuss and see what way forward we
 25 can take. Power.

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1 [VIDEO SHOWN]
 2 He started by saying viva and then say amandla
 3 which is power in Xhosa and Zulu and then he says Matla in
 4 Sotho which is the same word for power.
 5 [VIDEO SHOWN]
 6 Viva to the worker, viva.
 7 [VIDEO SHOWN]
 8 Africa should come back, let it come back.
 9 [VIDEO SHOWN]
 10 Forward with the union of the workers, forward.
 11 [VIDEO SHOWN]
 12 I am so sorry, Comrades, that I'm coming to you
 13 for the very first time to come and talk to you and I'm
 14 talking to you from behind the locks.
 15 [VIDEO SHOWN]
 16 That when you put in your monies into the unions,
 17 we don't get locked up. If that last piece could be
 18 repeated.
 19 [VIDEO SHOWN]
 20 That we – when you give us your money as unions
 21 that we should not – that should not be locked up, power.
 22 [VIDEO SHOWN]
 23 But because we are so committed to South Africa
 24 and that is we have found ourselves in the position in
 25 which we now are.

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1 [VIDEO SHOWN]
 2 I believe, I hope, Comrades, that you are going
 3 to forgive me for the condition in which I now find myself
 4 in.
 5 [VIDEO SHOWN]
 6 The matter that is now above my control, I had
 7 wished to come and talk to you personally because we are
 8 not animals, we are human beings.
 9 [VIDEO SHOWN]
 10 That you are not animals, you are human being,
 11 children of God, people who are born from the same mother.
 12 [VIDEO SHOWN]
 13 Power.
 14 [VIDEO SHOWN]
 15 As you all know, Comrade, what happened here at
 16 Impala and there's somebody interjecting.
 17 [VIDEO SHOWN]
 18 The person says no, I mean at Lonmin and then
 19 says I apologise, I mean at Lonmin, Comrades.
 20 [VIDEO SHOWN]
 21 What happened is we did talk to your employer now
 22 in the evening.
 23 [VIDEO SHOWN]
 24 Spoke to your employer now in the evening where
 25 we all met together with the leaders of other unions and

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1 the leaders of the other different unions.
 2 [VIDEO SHOWN]
 3 [15:37] We all ended up thinking. Looking at how the
 4 situation we are facing should be resolved.
 5 [VIDEO SHOWN]
 6 We said to the employer the workers that are
 7 presently on strike for demanding their rights.
 8 [VIDEO SHOWN]
 9 We said then the strike that has led up to what
 10 the position is presently, we wanted the employer to give
 11 us a guarantee that –
 12 [VIDEO SHOWN]
 13 - that the union should give us the guarantee
 14 that what worries our members, he would address together
 15 with their union.
 16 [VIDEO SHOWN]
 17 MR GUMBI: Excuse me, Chairman. I think
 18 the interpretation, I think it was - it was the employer
 19 not the union should give guarantee.
 20 MR MAHLANGU: I'm sorry, Chair. Where
 21 union it was actually the employer.
 22 MR NTSEBEZA SC: Yes, no I understand.
 23 MR MAHLANGU: Thank you.
 24 MR NTSEBEZA SC: The record will show
 25 otherwise.

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1 MR MAHLANGU: That the employer should give
 2 the guarantee that he will talk to us as your union and he
 3 said the people that you chose.
 4 [VIDEO SHOWN]
 5 So that you get those things that you are
 6 demanding.
 7 [VIDEO SHOWN]
 8 The employer said he binds himself to agreeing
 9 that if things would go back to normal that the employees
 10 would go back to work. The union that they select, he
 11 would be prepared to talk to.
 12 [VIDEO SHOWN]
 13 One other thing that we spoke about was that
 14 nobody should be – who's services should be terminated,
 15 nobody should be fired from work.
 16 [VIDEO SHOWN]
 17 We also spoke about that, Comrades.
 18 [VIDEO SHOWN]
 19 One other thing that was also raised there was
 20 that we were told that the place where you are now present,
 21 has been declared a security zone by the police.
 22 [VIDEO SHOWN]
 23 Which means that this place is no more under the
 24 control of Lonmin.
 25 [VIDEO SHOWN]

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1 That this place is now under the government, is
 2 being controlled by the police.
 3 [VIDEO SHOWN]
 4 What we succeeded then in doing was that the
 5 police should just persevere, allow us to come and talk to
 6 you, what the interpretation of [African language] you as
 7 African people that we should come and talk to you.
 8 [VIDEO SHOWN]
 9 I'm sorry, if you could just turn back a bit,
 10 there's something I lost.
 11 [VIDEO SHOWN]
 12 We asked the police to persevere to allow us to
 13 come and talk to you so that we go back and talk to the
 14 employer and that if there is a deadlock and then we use
 15 the way to the CCMA.
 16 [VIDEO SHOWN]
 17 So that everything we do thereafter should be
 18 protected.
 19 [VIDEO SHOWN]
 20 Because the situation that we are now approaching
 21 is going to be something that would be beyond our control.
 22 [VIDEO SHOWN]
 23 Because we know, Comrades, that as workers we
 24 still do not have the freedom pertaining to the economy.
 25 [VIDEO SHOWN]

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1 In that 18 years into our democracy, there are
 2 workers who are still getting – is it R400? R4 000.
 3 [VIDEO SHOWN]
 4 R4 000 yes.
 5 [VIDEO SHOWN]
 6 Money that would need you to budget for the whole
 7 year in order to be able to buy a loaf of bread.
 8 [VIDEO SHOWN]
 9 But I want to say to you the children of – he
 10 refers to the Zulu and the Xhosa kingdom – I want to plead
 11 with you.
 12 [VIDEO SHOWN]
 13 I want to plead with you, Comrades, to please
 14 support me.
 15 [VIDEO SHOWN]
 16 To have allowed me to come and speak to you so
 17 that we come to an agreement as to how we can go back to
 18 work without the employer having to fire anyone.
 19 [VIDEO SHOWN]
 20 So that the employer should take – should
 21 recognise the complaints that which worries you into
 22 consideration.
 23 [VIDEO SHOWN]
 24 So that he takes what your complaints are into
 25 consideration and that is the reason I have come to you

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1 today, Comrades.
 2 [VIDEO SHOWN]
 3 I would also appreciate it, Comrades, to hear
 4 from leaders that were chosen from amongst you, Comrades,
 5 who have any opinions that we could listen to.
 6 [VIDEO SHOWN]
 7 We know, Comrades, that the power is yours as
 8 workers. We know that the decisions are yours, but the
 9 situation we are presently facing –
 10 [VIDEO SHOWN]
 11 That is what actually forced me when I realised
 12 that workers were seated at such and such a place, how
 13 would it be possible for me to sleep.
 14 [VIDEO SHOWN]
 15 What would I say to the God in heavens. I want
 16 to plead with you.
 17 [VIDEO SHOWN]
 18 I am pleading with you to trust me, Comrades,
 19 I've never spoken to you, I've never negotiated on your
 20 behalf.
 21 [VIDEO SHOWN]
 22 At this time I'm pleading, I'm going on my knees
 23 to say my brothers, please listen to me.
 24 [VIDEO SHOWN]
 25 Have no doubt about what I am saying with those

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1 words.
 2 [VIDEO SHOWN]
 3 I will at this stage with these words I want to
 4 say I am putting it back to you, Comrades, that after 18
 5 years of our freedom –
 6 [VIDEO SHOWN]
 7 - that put your trust in me so that we look into
 8 whether the problem that is facing you cannot be resolved.
 9 [VIDEO SHOWN]
 10 So that your complaints are listened to and
 11 addressed and he ends up by shouting power.
 12 [VIDEO SHOWN]
 13 The same word in the Tsonga language and
 14 Shangaan.
 15 [VIDEO SHOWN]
 16 The same word in the Sotho language.
 17 [VIDEO SHOWN]
 18 Come back Africa, come back.
 19 [VIDEO SHOWN]
 20 I thank you. I thank you, my brother.
 21 [VIDEO SHOWN]
 22 I will now hand over to the chairman of AMCU to
 23 add onto the words that I spoke to you.
 24 [VIDEO SHOWN]
 25 Comrades, we are here fighting for the rights of

1 the workers as AMCU. Not any other organisation. If that
2 could be just repeated.

3 [VIDEO SHOWN]

4 We want to say not only as AMCU, any other union,
5 but because we know it is workers that are seated here.

6 [VIDEO SHOWN]

7 But that it was necessary to explain to you who
8 is it that is talking to you. Power.

9 [VIDEO SHOWN]

10 We are now going to ask those that are going to
11 be your representatives to move forward so that we can talk
12 personally to them.

13 ADV CHASKALSON: Mr Chairperson, that
14 concludes our video footage from the 15th. There doesn't
15 appear to be any further video footage of consequence in
16 relation to that interaction between Mr Mathunjwa and the
17 AMCU representatives and the crowd of mine workers. That
18 takes us to –

19 CHAIRPERSON: Mr Chaskalson, is the next
20 video footage you wish to show us relates to the 16th, it's
21 nearly 4 o'clock. It seems an appropriate stage for us to
22 take the adjournment until tomorrow morning, 09:30.

23 [COMMISSION ADJOURNED]

24 .
25 .



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