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 50 20 FEBRUARY 2013

PAGES 5420 TO 5460

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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



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1 [[Page 5420	1	Page 5422 concentrate from then on to lunchtime?
	PROCEEDINGS ON 20 FEBRUARY 2013]	2	
_	11:03] CHAIRPERSON: The Commission resumes. m sorry we couldn't resume at the time we originally	2	MR MPOFU: To lunch, thank you, Chairperson. Good morning, Mr Phatsha.
	5	_	
	itended, but there was a meeting of all the parties which	4 5	MR PHATSHA: Morning.
	e attended and which is now over. Mr Mpofu, I understand	5	MR MPOFU: You will have in front of you
-	ou are going to call the first witness on behalf of your	6	DDD1, which is the statement that you made to your lawyers,
	ients.	7	and we are going to go through it in some detail and the
8	MR MPOFU: Thank you, Chairperson. Yes,	8	reason for that is – or rather let me ask you this, is it
	e are ready to call our third witness, Chairperson. His	9	correct that because of your educational level you have not
	ame is Mr Sipete Phatsha. The statement, the signed	10	been able to read the statement on your own, but you only
	ersion of the statement has been distributed to the bench	11	deal with it when you are assisted, since the statement is
	nd, Chairperson, the other parties will have had the	12	in English?
	tatement since December in an unsigned form.	13	MR PHATSHA: Yes.
14	CHAIRPERSON: Yes.	14	MR MPOFU: But the statement in
15	MR MPOFU: And what we'll do is to try	15	consultation has been relayed back to you in its Xhosa
	nd save some trees, we'll send the signed version to Ms	16	version?
	illay so that she can distribute it for the other parties'	17	MR PHATSHA: Yes.
	ecords, but they do have the statement.	18	MR MPOFU: How far did you go
19	CHAIRPERSON: And Ms Pillay with her	19	educationally?
	ustomary efficiency will tell us what exhibit letters and	20	MR PHATSHA: I did sub B.
	umbers I must put on it.	21	MR MPOFU: Sub B, that means only one
22	MS PILLAY: Chair, it will be CCC1.	22	year of schooling?
23	CHAIRPERSON: CCC1. Okay, I have so	23	CHAIRPERSON: Yes, sub B is grade 2, I
	narked it. I see he comes from the Eastern Cape, so he's	24	think.
25 g	oing to give evidence in isiXhosa?	25	MR MPOFU: He said up to sub B. He
	Page 5421		Page 5423
1	MR MPOFU: In isiXhosa, yes, Chairperson.	1	didn't finish.
2	MS PILLAY: Chair, I must just indicate,	2	CHAIRPERSON: Didn't you finish sub B?
3 it	's actually DDD1. I apologise for that.	3	MR PHATSHA: No, I did not.
4	MR MPOFU: DDD1?	4	CHAIRPERSON: So you were right, he only
5	MS PILLAY: DDD1.	5	did only one year.
6	CHAIRPERSON: - customary efficiency are	6	MR MPOFU: Thank you. But through some
7 te	emporarily withdrawn. Are you prepared, Mr Phatsha, are	7	self-help you are able at least to write your name. Is
8 y	ou prepared to take an oath or do you wish to affirm?	8	that correct?
9	MR PHATSHA: No objection against taking	9	MR PHATSHA: That is correct.
10 a	n oath, Sir.	10	MR MPOFU: According to the statement you
11	CHAIRPERSON: No objection. Do you swear	11	are 48 years old and you're born in Naledi in the Eastern
12 th	nat the evidence you will give before this Commission will	12	Cape. Is that so?
	e the truth, the whole truth, and nothing but the truth?	13	MR PHATSHA: It is so.
	lease raise your right hand and say, "I swear, so help me	14	MR MPOFU: Paragraph 2 of your statement
	od."	15	says that you've worked at various mines. What I will also
16	SIPETE PHATSHA: Sworn in.	16	do, Mr Phatsha, is to expand on some of the issues in your
17	MR MPOFU: Thank you, Chairperson. Can I	17	statement and also extract from you some information which
18 m	nake a request, there is, it looks like one document which	18	has since been gained from you, which might be relevant.
	e are going to need, but maybe after the tea break we can	19	So on some of the sections I'll ask you to give a little
	ave it, in other words not to hold the Commission.	20	bit more detail.
21	CHAIRPERSON: We haven't had a tea break,	21	MR PHATSHA: I understand.
22 it	's already five past 11, but we'll take the tea break at	22	MR MPOFU: You've been an RDO for the
	A A A A A A A A A A A A A A A A A A A	23	past 30 years.
23 q	uarter to 12, shall we?	23	
23 q 24	uarter to 12, shall we? MR MPOFU: Yes.	23 24	MR PHATSHA: It is so.

	Dave 5404		Dama E42/
1	Page 5424 as an RDO, and where?	1	Page 5426 MR PHATSHA: Yes, I have a shack at
2	MR PHATSHA: That was in the year 1982.	2	Wonderkop.
3	MR MPOFU: Yes, and where was that?	3	MR MPOFU: Thank you.
4	Which mine was that?	4	MS HEMRAJ SC: Mr Mpofu, the R5 000, is
5	MR PHATSHA: I was at St Helena.	5	that a gross salary or a net salary?
6	MR MPOFU: Right, and then until which	6	MR MPOFU: I think it is net, Chairperson
7	year?	7	and Commissioners, yes. I think it's net, but I'll verify
8	MR PHATSHA: I arrived in St Helena in	8	that during the tea break. In fact, what I propose to do
9	1982. I was there for 10 years.	9	with either this one or one of the next witnesses is just
10	MR MPOFU: Yes, after that – okay, I'll	10	simply to put a payslip so that we have a sample of one of
11	take you through this quickly. Is it correct that after	11	them. Thank you. Now I don't think we're going to find
12	that you then went to work at a place called Venlab, which	12	anyone else who has been an RDO for as long as you have
13	is in Sasol, or Sasolburg, for another seven years?	13	been, so maybe before I get into the sequence of events,
14	MR PHATSHA: It is so.	14	could you just tell the Commission about the nature of the
15	MR MPOFU: And then after that you went	15	job that you have to do as an RDO?
16	to work at Western Deep Levels for another seven years from	16	MR PHATSHA: This is inside the mine. We
17	about 2000.	17	work with machines there, we push the machines inside and
18	MR MAHLANGU: What is the last place,	18	we'll pull it out and then we also have, there is what he
19	Sir?	19	refers to as ropes, which we put inside into the Milford
20	MR MPOFU: Western Deep Levels.	20	These are pipes, Mr Chairperson, to remove the dust, to
21	MR PHATSHA: It is so.	21	blow the dust out, and also ropes, pipes that contain
22	MR MPOFU: And at Lonmin, as it says in	22	water.
23	your statement, you started in 2007 until now, so about six	23	MR MPOFU: And is the work in one of the
24	years.	24	footages that we're going to play where you speak, you
25	MR PHATSHA: That is so.	25	describe the work as painful. Is that –
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	Page 5425		Page 5427
1	Page 5425 MR MPOFU: And currently your earnings,	1	Page 5427 MR PHATSHA: It is so, yes.
1 2	6	1 2	
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2	MR MPOFU: And currently your earnings, or at least as at the time of August last year, your	2	MR PHATSHA: It is so, yes. MR MPOFU: Can you then explain to the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR MPOFU: And currently your earnings, or at least as at the time of August last year, your earnings were over, just over R4 000, and you also had a sleep-out allowance of more than R1 000, but the combined effect of those was still less than R6 000. Is that correct? MR PHATSHA: It reached the amount of R5 000, that is including the amount for sleeping out. MR MPOFU: Yes. Now in your statement you also say that you heard about the action taken by the workers and you joined on the 10th. Is that so? CHAIRPERSON: May I ask you, which shaft did you work at? MR MPOFU: Yes. MR PHATSHA: 3 Shaft, known as Bob. MR MPOFU: Yes. MR PHATSHA: That is also known as Eastern Platinum. CHAIRPERSON: And you had a living-out allowance. Where do you live? MR PHATSHA: I was staying at Wonderkop.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR PHATSHA: It is so, yes. MR MPOFU: Can you then explain to the Commission what is so hard and painful about this job? MR PHATSHA: Firstly the machine that we use for tracking, for burrowing into the rock, it's a heavy machine. One has got to pick that machine up. One puts the jumper inside this machine and then pick it up. It is heavy. In using this kind of a machine one has got nobody to assist him. You do this all by yourselves, whereas in other shafts people doing this job have got assistants. MR MPOFU: And is it so that for the, all the years you worked as an RDO, except now at the Eastern Shaft, you have worked without an assistant? MR PHATSHA: All the mines that I mentioned from St Helena to Deep Levels to a place called Winkelhaak, I was doing this job alone with nobody assisting me. MR MPOFU: Yes, and can you tell the Commission anything about the safety issues or the dangers of doing this type of work? MR PHATSHA: The danger, Sir, involved there is you switch this machine off and you hit against

		1	
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1	observed, associated with this work?	1	MR MPOFU: If there was, Chairperson, it
2	MR PHATSHA: Many workers have died, Mr	2	would be next to Stop Nonsense. Okay, now these workers
3	Chairperson, whilst holding this machine, grinding against	3	that you say were coming back, they were coming back from
4	the rock, what he refers to as the table. This is now the	4	where and what - were they walking, were they running?
5	ceiling above the hole, then sinks in and falls onto them,	5	MR PHATSHA: They were coming back from
6	that is the rock.	6	the NUM offices.
7	MR MPOFU: Sorry, he said something about	7	MR MPOFU: Okay, and what did you observe
8	others being crushed and breaking limbs.	8	about them and what did you hear as something that had
9	MR PHATSHA: That is the table, that is	9	happened there?
10	the roof, falls onto this person. Either he dies or he	10	MR PHATSHA: As I was proceeding towards
11	gets a fractured, gets broken.	11	them, I heard the sound of a gun and people started
12	MR MPOFU: Thank you very much. Now on	12	running, coming back.
13	the 10th, we were talking about the 10th. We know, the	13	MR MPOFU: Yes, and according to your
14	Commission knows that –	14	statement you say that you heard that two strikers had been
15	CHAIRPERSON: 10th of August 2012?	15	shot dead. Is that correct?
16	MR MPOFU: 10th of August 2012. Thank	16	MR PHATSHA: It is correct, yes.
17	you, Chairperson. The Commission already knows that there	17	MR MPOFU: In your statement it says that
18	was a march to the LPD offices. At what stage did you join	18	you thereafter went home.
19	that march, if at all?	19	MR PHATSHA: Thereafter yes, I went home.
20	MR PHATSHA: I arrived late at the LPD.	20	MR MPOFU: Sorry, Chairperson. Sorry,
21	MR MPOFU: Okay, at that stage, what were	21	this technology –
22	the workers doing?	22	CHAIRPERSON: - eject people whose cell
23	MR PHATSHA: When I arrived, Mr	23	phones went off, but if I eject you then who will lead the
24	Chairperson, this was at the time that the workers were on	24	witness?
25	their way back, returning.	25	MR MPOFU: Yes, that will be a bigger
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1	[11:23] MR MPOFU: Okay, there's also undisputed	1	problem. I'm sorry, I'm very sorry, Chairperson. Sorry,
2	evidence that after that there was a decision to have a	2	Mr Phatsha, for that rude interruption. Yes, now I was
3	meeting on the 11th of August near the stadium, which	3	saying in your statement it says you went home. In actual
4	according to your statement you, or rather after which	4	fact before you went home, did you go to the koppie?
5	there was a march, which according to your statement you	5	MR PHATSHA: Yes, we went and arrived at
6	were part of. Can you then explain to the Commission as to	6	the koppie.
7	at what stage did you join the meeting of the 11th, or the	7	MR MPOFU: Right, and you did not stay
8	march?	8	long and you went home.
9	MR PHATSHA: Again on the 11th I was late.	9	MR PHATSHA: I wasn't long on the koppie.
10	I met the employees on their return from – sorry, the	10	I then proceeded homewards.
11	workers weren't there and it was on their way back that I	11	MR MPOFU: Right, then it says that you
12	came across them.	12	did not – this was Sunday, is that correct?
13	CHAIRPERSON: Did you say "I met the	13	MR PHATSHA: Yes.
14	workers on their return from Sorry," or is that just a word	14	CHAIRPERSON: The 11th was the Saturday.
15	you, Mr Interpreter, that you inserted to apologise for the	15	MR MPOFU: Was a Saturday, that's
16	fact that you're interrupting, or did he talk about a place	16	correct, Chair.
17	called Sorry?	17	MR PHATSHA: The 11th, yes, was Saturday.
18	MR MAHLANGU: It was used by him. He	18	MR MPOFU: Thank you, Chair. That was my
19	said the sentence, and then said sorry. I interpreted it,	19	mistake. And then you say that for the next three days, in
20	and then he continued that "I met the workers on their way	20	other words that would be now Sunday, Monday, Tuesday, you
21	back."	21	did not, you were going in and out but did not observe
22	CHAIRPERSON: I see, so there isn't a	22	anything of significance, and you were going there to check
23	place called Sorry. I thought it might have been like Stop	23	if there was any progress with the workers' action. How
24	Nonsense.	24	long, on average how long would you spend on those days
OF	MR PHATSHA: No, I was apologising.	25	when you were going in and out, without staying for long?
25	in the second seco	20	

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e there for a very	1	When you saw this Nyala closing you in, where did you want
	2	to go to?
5	3	MR PHATSHA: We left immediately and the
	4	idea was to get out there and proceed to the shack
	5	settlement.
	6	MR MPOFU: Yes, is that shack settlement
	7	the one nearby in front of the big koppie, called Nkaneng?
-		MR PHATSHA: We were running toward
		Nkaneng settlement, yes.
		MR MPOFU: Alright, you also say that
		there were a number of people in front of you, but
		generally speaking you were one of the people in the front
		group.
		MR PHATSHA: It is so.
		MR MPOFU: Okay, now I would like you to
		put this in your own words again. You've said that you
		wanted to go to Nkaneng. Which path or road did you intend to use an your way to the squatter samp?
		to use on your way to the squatter camp?
		MR PHATSHA: When we were towards the
		kraal, the Nyala had already closed that opening with the
-		barbed wire. We turned around the kraal in order to get a way toward Nkaneng. We found that the police had closed
		our way in front of us.
		-
		MR MPOFU: Chair, if you could just bear with me. Maybe to make this part easy, I refer you to
	23	with the waybe to make this part easy, including out to
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orkers, he pleaded us	1	exhibit L. Go to slide, let's take 194. You said that you
ecause the situation	2	were, when you were in front of the, or close to the kraal,
d he does not think	3	it had been closed off. You'll see there that there are at
on.	4	least about three roads or footpaths that are depicted
ate that he, in	5	there. Can you indicate to the Commission which of the
own on his knees, but	6	paths that you were following on your way to the - which of
the workers. What was	7	the paths depicted there, that you were following on your
of returning to work?	8	way to the squatter camp?
	9	MR MAHLANGU: The witness indicates, Mr
	10	Chairperson, the one going parallel to the yellow arrow
,		towards the, which passes the kraal on the right-hand side.
		MR PHATSHA: And we found that it was
•		closed. We then turned left towards the red arrow and ran
		in that direction.
		MR MPOFU: Right, can you indicate on
		which side the entrance of the kraal is?
-		MR MAHLANGU: He indicates the - I think
1		the best would be for me to indicate, to show the
I.	19	Chairperson exactly where he has marked. Where there is an
,		
saw one of the Nyalas 2	20	X mark, that would be the entrance to the kraal.
saw one of the Nyalas 2 to close you - not you 2	20 21	MR MPOFU: Okay, thank you. Now you also
saw one of the Nyalas 2 to close you - not you 2 se you in. 2	20 21 22	MR MPOFU: Okay, thank you. Now you also state in your statement that once you realised that that
saw one of the Nyalas 2 to close you - not you 2 se you in. 2 o. 2	20 21 22 23	MR MPOFU: Okay, thank you. Now you also state in your statement that once you realised that that gap was closed, that you ran behind the kraal to access the
saw one of the Nyalas 2 to close you - not you 2 se you in. 2 o. 2 ay that you made 2	20 21 22	MR MPOFU: Okay, thank you. Now you also state in your statement that once you realised that that
	Page 5432 e there for a very any event on the pie. Is that correct? s there for the ain evidence has nat you did observe visits on the 15th in the ue. I saw them. kers had asked Mr was already getting llowing day. Can you ct. the that on that the koppie at about 2. Mathunjwa visited, Can you just or less what he said Mathunjwa came for Page 5433 orkers, he pleaded us ecause the situation d he does not think on. ate that he, in own on his knees, but the workers. What was of returning to work? cers insisted they nted to hear from the y to them as his an you explain to vanted from the y in the amount of R12	e there for a very 1 any event on the 3 pie. Is that correct? 4 s there for the 5 ain evidence has 7 nat you did observe 8 visits on the 15th in the 9 ue. I saw them. 11 kers had asked Mr 12 was already getting 13 llowing day. Can you 14 us a lready getting 13 llowing day. Can you 14 the koppie at about 2. 18 ct. 16 ate that on that 17 the koppie at about 2. 18 cor less what he said 23 or kers, he pleaded us 25 or kers, he pleaded us 3 or kers, he pleaded us 3 or kers, he pleaded us 3 or kers, he pleaded us 4 ecause the situation 2 d he does not think 3 on. 4 ate that he, in 5 own on his knees, but 6 the workers. What was 7 of returning to work? 8 cers insisted they 9 nted to hear from the 10 y to them as his 11 vanted the employer to 13 vanted the employer to 14 y in the amount of R12 us you explain to 13 vanted from the 16 y in the amount of R12 be a bab bab bab bab bab bab bab bab bab

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1	earlier you intended to take?	1	access to working toilets. So we'll carry on now until
2	MR PHATSHA: That is correct.	2	lunchtime and then review the situation thereafter. You're
3	MR MPOFU: You also say that while all	3	still under oath, Sir, and you're still leading your
4	this was happening, the group was being fired on with	4	witness in chief.
5	teargas and water canon spray. Is that correct?	5	MR MPOFU: Thank you, Chairperson. In
6	MR PHATSHA: It is correct, yes.	6	respect of the remarks about the plumbing situation, Chair,
7	MR MPOFU: Now once the front group	7	I might indicate that Mr Mathibedi had approached me during
8	emerged from behind the kraal, as you have described, what	8	the break to ask that SAPS would defer their cross-
9	then happened?	9	examination till tomorrow, I think when Mr Semenya is here,
10	[11:43] MR PHATSHA: Immediately they emerged	10	so that might be half of the answer, but we will finish the
11	from the kraal, the bullets started ringing, fired live	11	evidence-in-chief and then, as you say, maybe review it at
12	ammunition and the people were falling down.	12	that stage.
13	MR MPOFU: You indicate that you jumped	13	CHAIRPERSON: And it may be that we'll
14	over the bodies of the injured or dead colleagues and you	14	have to consider starting earlier tomorrow –
15	ran into the kraal. Where did you enter the kraal?	15	MR MPOFU: Yes.
16	MR PHATSHA: I jumped over people that	16	CHAIRPERSON: - to try to make up some of
17	had fallen there who I thought had died, some were injured.	17	the lost time.
18	I went inside the kraal and went out on the other side.	18	MR MPOFU: And a shorter break, ja.
19	MR MPOFU: Right, did you enter at the	19	CHAIRPERSON: And take a short lunch
20	entrance of the kraal?	20	adjournment.
21	MR PHATSHA: That is correct, Mr	21	MR MPOFU: Thank you.
22	Chairperson, but at that time I started feeling a pain in	22	CHAIRPERSON: And possibly sit a bit
23	my foot.	23	later in the afternoon. Well, it doesn't help to sit too
24	MR MPOFU: And how did you exit the	24	long because people get tired and it's not fair to the
25	kraal?	25	witness to expect the witness to be testifying for a long
	Page 5437		Page 5439
1	Page 5437 MR PHATSHA: I went through the enclosure	1	Page 5439 period. But anyway, we'll bear those facts in mind.
1 2	<u> </u>	1 2	
	MR PHATSHA: I went through the enclosure		period. But anyway, we'll bear those facts in mind.
2	MR PHATSHA: I went through the enclosure which is made of some sharp-edged sticks, over them, over	2	period. But anyway, we'll bear those facts in mind. MR MPOFU: Thank you, Chair.
2	MR PHATSHA: I went through the enclosure which is made of some sharp-edged sticks, over them, over the thorns, and jumped on the other side. Yes, over the	2	period. But anyway, we'll bear those facts in mind. MR MPOFU: Thank you, Chair. CHAIRPERSON: We'll do what we can to
2 3 4	MR PHATSHA: I went through the enclosure which is made of some sharp-edged sticks, over them, over the thorns, and jumped on the other side. Yes, over the thorns and jumped through.	2 3 4	period. But anyway, we'll bear those facts in mind. MR MPOFU: Thank you, Chair. CHAIRPERSON: We'll do what we can to make up the lost time, if time is in fact lost. But please
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OR JUSTICE

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	Page 5440		Page 5442
	IR PHATSHA: I sat down, cut off that	1	MR PHATSHA: That is so.
-	nd I was then able to run after that.	2	MR MPOFU: And can you also now tell the
	IR MPOFU: And what happened to the toe,	3	Commission in your own words what you observed in respect
	e that you had cut off?	4	of people who were being shot, as you state in the
	IR PHATSHA: I left it there at that	5	statement, while coming out of their hiding places in the
6 place.		6	rocks?
	IR MPOFU: Right, in any event, you then	7	MR PHATSHA: What happened is at the time
-	ed towards what is now known as scene 2, the smaller Is that correct?	8 9	people were raising their hands and asking forgiveness,
	IR PHATSHA: That is so.	9 10	they were being shot at. MR MPOFU: And you yourself were taken
	IR MPOFU: Alright, before we go to scene	10	and you joined the group of people who were being arrested
	bing to play you some footage, which I hope is	12	and ordered to lie facing down on the ground. Is that so?
	ist regarding the events at scene 1 and I'll ask	13	MR PHATSHA: Yes, we were made to lie
	or two questions. Chairperson, this is the, just	14	down.
-	arise everyone, it's the part where they collected	15	MR MPOFU: And how did it come about that
	ptages from separate news agencies and it might be	16	you were then separated out from the group?
	ate to give the customary warning to the families	17	MR PHATSHA: Then a certain police
	is it might show the actual shooting.	18	officer came forward; he stood aside and pointed at, at
	HAIRPERSON: Yes, we are now going to be	19	least, I think it was three of us, and said, "You, and you,
	ome video clips of the shooting and the clips will	20	and you, stand aside. You must go and have your wounds
	number of people who were killed in the shooting,	21	dressed and bandaged, because you are seriously injured."
22 and if th	eir relatives are present they may find watching	22	MR MPOFU: Right, then you were then
23 the vide	o a particular painful and unpleasant experience.	23	taken to the side of the people who were injured, as
24 So those	people in the auditorium whose relatives were	24	opposed to those who were being arrested. Is that so?
25 killed at	scene 1 will be given an opportunity to leave the	25	MR PHATSHA: That is so.
1 auditori	Page 5441 Im, if they should so wish. I ask the operators	1	Page 5443 MR MPOFU: Can we now, I'm now going to
2 not to s	now the videos until a minute has elapsed, so	2	show you a very short clip which shows you during the
3 anyone	who wishes to leave the auditorium may do so. We've	3	period that we are talking about. This is the Captain
4 had this	experience in the past where family members saw	4	Ryland videos, clip. Thank you.
5 the dea	I bodies of their loved ones and found that	5	CHAIRPERSON: Has it already been seen,
6 extreme	ly painful to behold, and so I give you an	6	or must it be given an exhibit number?
7 opportu	hity, if you're likely to be affected by that, to	7	MR MPOFU: It has not been seen. That
8 leave.		8	particular clip has not been seen, but it is –
	IR MPOFU: Chairperson, I'm sorry, Mr		
		9	CHAIRPERSON: So it will be DDD2.
10 Interpre	ter. As it happens, it looks like that particular	10	CHAIRPERSON: So it will be DDD2. MR MPOFU: We'll call it DDD2, yes, thank
10 Interpre 11 footage	ter. As it happens, it looks like that particular is not ready, so can we deal with that matter when	10 11	CHAIRPERSON: So it will be DDD2. MR MPOFU: We'll call it DDD2, yes, thank you, Chair, or Ms Pillay, with her customary efficiency –
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10Interpresentation11footage12it does of13stage.140	ter. As it happens, it looks like that particular is not ready, so can we deal with that matter when ome. It's actually not even essential for this HAIRPERSON: The warning I gave will	10 11 12 13 14	CHAIRPERSON:So it will be DDD2.MR MPOFU:We'll call it DDD2, yes, thankyou, Chair, or Ms Pillay, with her customary efficiency –CHAIRPERSON:Alright, Ms Pillay is –MR MPOFU:DDD5.CHAIRPERSON:- is gesticulating that I
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	Page 5444		Dago 5446
1	MR PHATSHA: Yes.	1	Page 5446 MR MPOFU: And then later on you were
2	[VIDEO RECORDING PLAYED]	2	transferred to Ferncrest. Is that correct?
3	MR MPOFU: - when Mr Phatsha is on the	3	CHAIRPERSON: Ferncrest Hospital.
4	frame, thanks.	4	MR PHATSHA: That is so.
5	CHAIRPERSON: Well, they know where Mr	5	MR MPOFU: Now before that happened, you
6	Phatsha is on –	6	were present during a visit to Andrew Saffy Hospital by the
7	[VIDEO RECORDING PLAYED]	7	President of South Africa, President Zuma. Is that
8	CHAIRPERSON: Perhaps he can wait –	8	correct?
9	[VIDEO RECORDING PLAYED]	9	[12:24] MR PHATSHA: I was present.
10	MR PHATSHA: Yes, that's me. What I'm	10	MR MPOFU: And did you interact with the
11	wearing on my right foot in fact is a sock.	11	President and explain your situation?
12	MR MPOFU: And on your left foot, which	12	MR PHATSHA: Yes, I did explain to the
13	according to the evidence was the injured foot, what can we	13	President about my injuries.
14	see there?	14	MR MPOFU: And were you present within
15	MR PHATSHA: It's that apron.	15	hearing and visibility range when two other patients,
16	CHAIRPERSON: Which foot was injured?	16	fellow patients, or fellow workers, also gave explanations
17	Your left foot or your right foot?	17	to the President?
18	MR PHATSHA: It was my left foot.	18	MR PHATSHA: Yes, I was close to them and
19	CHAIRPERSON: I see, and on the video	19	further I am agreeing with them.
20	clip we can see what looks like an apron, red and green and	20	MR MPOFU: Yes, Chairperson, at this
21	yellow, I think. Is that what you're referring to? Is	21	stage we have obtained the relevant footage. Unfortunately
22	that what you used to bind up the wound?	22	it was obtained belatedly. We have discussed it with the
23	MR PHATSHA: That's a blanket that was	23	evidence leaders, at least with Ms Pillay. It doesn't
24	lying on my side next to me.	24	really affect anybody else, so unless if there's an
25	MR MPOFU: I think what the Chairperson	25	objection, and despite the fact that we have not discovered
1 2	Page 5445 wants to know, on your left foot on that frame that we can see there, you can see that there is, that your foot is	1 2	Page 5447 this footage, with your leave, Chairperson, we'd like to play it. It's not long.
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2	wants to know, on your left foot on that frame that we can see there, you can see that there is, that your foot is	2	this footage, with your leave, Chairperson, we'd like to play it. It's not long.
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	Page 5448		Page 5450
1	CHAIRPERSON: Yes, the video we're now	1	them. I just wanted to make sure that I got that
2	going to see and the transcript?	2	correctly.
3	MS PILLAY: The video will be DDD2 and	3	MR PHATSHA: Yes.
4	the transcript will be DDD3.	4	MR MPOFU: Okay, now I'm going to read
5	MR MPOFU: Chairperson, I might add also	5	for the record the English translations of what was said,
6	that the translation, I can own to doing the translation.	6	starting with yourself. You said, "We work painfully," and
7	If any of the parties want to contest the translation, we	7	I put that "painfully hard," which is the context. "We
8	can deal with it at that stage, but I'm -	8	work painfully here in the mine. We are dying, but now
9	CHAIRPERSON: You've given, I see you've	9	when we want money it is not given to us. The employer
10	given the, as you said –	10	does not want to give us money. We are beaten up, or
11	MR MPOFU: The Xhosa –	11	attacked, for wanting money here at Lonmin." Does that
12	CHAIRPERSON: The original isiXhosa	12	capture what you said?
13	version –	13	MR PHATSHA: That is so.
14	MR MPOFU: Yes.	14	MR MPOFU: And the next person said that,
15	CHAIRPERSON: - as well as an English	15	Mr Mayisana, "What the police did is we saw a lot of them
16	translation.	16	gathering. After that we decided to look for an exit.
17	MR MPOFU: The English translation, ja.	17	They then blocked us by means of razor wire. As they were
18	CHAIRPERSON: And if anyone wishes to	18	blocking us with this razor wire, what they did is that
19	object to the translation or amplify it or correct it in	19	when we wanted to exit on the side, they were" -
20	any way, that can be done later.	20	MR MATHIBEDI SC: Sorry, Mr Mpofu.
21	MR MPOFU: Thank you, Chairperson. Thank	21	MR MPOFU: Yes, sorry, Mr Mathibedi.
22	you, alright. Thank you, Operator, if –	22	MR MATHIBEDI SC: Mr Chairman, we'd like
23	CHAIRPERSON: - ask, was this footage	23	to know whether the persons are going to testify or not.
24	ever broadcast by the SABC, or is –	24	If they're not going to testify we'll never have an
25	MR MPOFU: Yes, actually that's where it	25	opportunity of cross-examining them.
1	Page 5449 was spotted, Chairperson, fortuitously –	1	Page 5451 MR MPOFU: If I may answer, Chair, if the
2	CHAIRPERSON: I see.	2	people are required to testify we'll obviously call them,
3	MR MPOFU: - on a program. I see it when	3	but obviously what I'm doing is to circumvent exactly that
4	it was being played.	4	because we just don't want to prolong –
5	[VIDEO RECORDING PLAYED]	5	CHAIRPERSON: I understand your case is
6	MR MPOFU: Chairperson, I had satisfied	6	that this particular TV broadcast was seen by his family.
7	myself that although there is some shooting scenes, there	7	MR MPOFU: Absolutely.
8	is no identifiable victims, and that's all there is, is	8	CHAIRPERSON: And they then reacted to
9	this part that has been shown.	9	it.
10	[VIDEO RECORDING PLAYED]	10	MR MPOFU: They reacted to it, ja.
11	MR MPOFU: Sorry, I just wanted to	11	CHAIRPERSON: If there's anything in what
12	identify, Mr Phatsha, is that you on the video at this	12	the other two people say which the police don't agree with,
13	stage?	13	and if they want to cross-examine them then we can arrange
14	MR PHATSHA: Yes, that's me.	14	for them to be subpoenaed, if necessary, if you don't
15	MR MPOFU: Okay, and you can play it from	15	arrange –
16	the part where you can see the President, thank you.	16	MR MPOFU: I don't propose to do –
17	[VIDEO RECORDING PLAYED]	17	CHAIRPERSON: And they can then be cross-
18	MR MPOFU: Just show some of this bit and	18	examined. In other words you can make it possible for the
19	then to the next bit.	19	police to cross-examine them if they wish.
20	[VIDEO RECORDING PLAYED]	20	MR MPOFU: That's correct.
21	MR MPOFU: Okay, we've missed something	21	CHAIRPERSON: Then they may well after
22	that is not directly relevant, Chairperson, to what we're	22	they've considered what was said, that it doesn't take
1.5	I allow the second of the second seco	23	things much further and there's no point in cross-
23	dealing with now. Thank you very much. Mr Phatsha, you		
23 24	have already said that not only were you able to hear what	24	examining, but that's a decision they must make at the
24 25			-

		1	
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1	the moment. Carry on, and we will deal with that matter in	1	MR MPOFU: Right, we've already
2	a way which will be simply fair to the police at a	2	established that after the President's visit, at some stage
3	subsequent stage, if it should be required.	3	you were transferred to another hospital, and that where
4	MR MPOFU: Thank you, Chairperson. Ja,	4	your toe was, or rather, you continued treatment on the
5	and also the reason why I asked this witness that this was	5	place where your toe used to be. Is that so?
6	done in his presence, was exactly to, not only in his	6	MR PHATSHA: Yes.
7	presence, but within earshot –	7	MR MPOFU: Now before that, a policeman
8	CHAIRPERSON: Yes.	8	came to the hospital and asked you about the events of the
9	MR MPOFU: - was the basis that he saw it	9	16th. Is that correct?
10	happening.	10	MR PHATSHA: At the hospital.
11	CHAIRPERSON: I understand he's	11	MR MPOFU: Yes. Chairperson, this
12	expressing his concurrence with what was said, but the two	12	statement is already in the IPID documents. For the
13	people who are on the video, Simphiwe Mayisana and Zola	13	reference of the other parties, it's page 00068 of the IPID
14	Mkhambe, are they both available as far as you're aware?	14	documents, but insofar as –
15	MR MPOFU: Yes, hold on, Chair. Yes, I	15	CHAIRPERSON: Triple zero –
16	know Mayisana is. Yes, we would be able to get them should	16	MR MPOFU: No, actually it's quadruple
17	that eventually –	17	zero, 000068.
18	CHAIRPERSON: Okay.	18	[12:44] CHAIRPERSON: So just so –
19	MR MPOFU: Thank you, Chair. Yes,	19	MR MPOFU: But we can call it DDD4.
20	alright, so I'll just read that one again. "What the	20	That's correct, Chair. Thank you. Chair, it's DDD4 – is
21	police did is, we saw a lot of them gathering. After that	21	it 4, Kameshni?
22	we decided to look for an exit. They then blocked us by	22	MS PILLAY: It's 4, yes. DDD4.
23	means of razor wire. As they were blocking us with razor	23	MR MPOFU: Thank you.
24	wire, what they did is that when we wanted to exit on the	24	ARBITRATOR: DDD4.
25	side they were upon us and shooting at us." That's the	25	MR MPOFU: 4, yes, thank you,
	Page 5453		Page 5455
1	English version of what we saw. Did you hear that being	1	Chairperson. This statement has also been read back to you
2	said in your presence?	2	in isiXhosa by myself. Is that correct?
3	MR PHATSHA: Yes, he said that.	3	MR PHATSHA: Yes.
4	MR MPOFU: Right, and then the third one	4	MR MPOFU: And you've indicated that you
5	is Mr Mkhambe, said, "We were blocked off with razor wire.	5	substantially agree with the statement, but there's one or
6	I don't know whether we are baboons or," and then he said	6	two details which you wanted to deal with. On page 2 of
7	something which I found inaudible. He says, "baboons or	7	the statement, or 00069, it says that, "I was hit by a
8	'tswenes'" which I'm told is a synonym for baboons in	8	bullet on my left leg." Did you tell someone that you were
9	another language, but for now we'll say it's inaudible, and	9	shot on your leg?
10			shot on your leg:
1	then he says, "In other words, we are not regarded as	10	MR PHATSHA: The mistake in fact that was
11	then he says, "In other words, we are not regarded as employees here at Lonmin. We were surrounded by means of	10 11	
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11	employees here at Lonmin. We were surrounded by means of	11	MR PHATSHA: The mistake in fact that was made was that the one who was reducing the statement in
11 12	employees here at Lonmin. We were surrounded by means of razor wire. As we were being surrounded with that razor	11 12	MR PHATSHA: The mistake in fact that was made was that the one who was reducing the statement in writing wrote an incorrect version.
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1	or rather not evidence as such, the version of the police	1	CHAIRPERSON: So he had a bush knife –
2	is that people like you, or the other people that you	2	MR MPOFU: Ja, stroke panga, stroke –
3	observed there, were shot at in the, while they were	3	CHAIRPERSON: Ja, stroke –
4	attacking the police. What can you say about that?	4	MR MPOFU: That's the one weapon.
5	MR PHATSHA: That was not like that.	5	CHAIRPERSON: Ja, and then the other,
6	MR MPOFU: And did you attack any person	6	then he also said he had another weapon as well.
7	on the 16th of August, on which you were shot?	7	MR MPOFU: Yes.
8	MR PHATSHA: Never.	8	MR HANABE: It's a –
9	MR MPOFU: Okay, now I'm sorry to take	9	CHAIRPERSON: Are you happy with –
10	you back. There's just one detail which I omitted to deal	10	MR MPOFU: It's translated as assegai,
11	with. Actually it's two details. Can you tell the	11	which –
12	Commission, there's been a lot of evidence about unions and	12	CHAIRPERSON: Are you happy –
13	trade unions and trade union involvement in this matter.	13	MR MPOFU: No, I'm not happy with the
14	Can you tell the Commission which union you belonged to on	14	second one.
15	the 16th of August 2012?	15	CHAIRPERSON: You're not happy with that
16	MR PHATSHA: I was a member of NUM.	16	interpretation?
17 10	MR MPOFU: Okay, which union are you a	17	MR MPOFU: Yes, thank you, Chairperson.
18	member of now? MR PHATSHA: I'm a member of AMCU.	18	CHAIRPERSON: I see. What should the
19 20		19	interpretation be?
20 21	MR MPOFU: And how long had you been a member of the NUM for?	20 21	MR MPOFU: It's – CHAIRPERSON: Well, before you say, let
21	MR PHATSHA: Since from 1982 until	21	
22	December.	22	me ask – MR MPOFU: Yes, thank you.
23 24	MR MPOFU: Until December 2012, a period	23 24	MR MPOFU: Yes, thank you. CHAIRPERSON: There is an isiXhosa
25	of about 30 years?	24	linguist on my left. What's the correct word?
20		25	inguist on my ion. What's the concet word:
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1	MR PHATSHA: Yes, that is so.	1	MR TOKOTA SC: Well, I wouldn't know.
2	MR MPOFU: Okay, the other detail which	2	It's a sharpened instrument.
3	we unfortunately did not deal with in the statement is	3	CHAIRPERSON: Alright, he says a
4	there's also been a lot of evidence since we spoke to you	4	sharpened instrument –
5	about weapons and so on. What weapons were you carrying,	5	MR TOKOTA SC: Like an iron -
6	if any, on the 16th?	6	MR MPOFU: Sharpened piece of iron.
7	MR PHATSHA: I had a panga and an	7	MR TOKOTA SC: An iron rod which is
8	assegai.	8	sharpened –
9	MR MPOFU: Sorry, I'm not happy with the	9	CHAIRPERSON: A sharpened iron rod.
10	translation of the second – the "incula" which was	10	MR MPOFU: That's correct, Chairperson.
11	described nicely by Mr Madlanga much earlier, is a	11	CHAIRPERSON: Are you happy with that?
12	different thing to a spear. If that distinction can be	12	MR MPOFU: Which Mr Madlanga on an
13	just made clear. Sorry, Mr Interpreter.	13	earlier date last year had, it's spelt I-N-C-U-L-A –
14	CHAIRPERSON: That is a panga, referred	14	CHAIRPERSON: No, wait a bit. You're
15	to as a panga –	15	going too fast for me. Sharpened iron rod, how it's spelt?
16	MR MPOFU: No, Chairperson, it's – well	16	MR MPOFU: I-N, for Nellie –
17 10	ja, I'm happy, he called it, he actually called it "bush,"	17 10	CHAIRPERSON: Yes?
18	which I suppose means butcher knife, which is the same	18	MR MPOFU: C-U-L-A, and somewhere on the
19 20	thing really, So on that one I'm not quarrelling that	19 20	record we – CHAIRPERSON: "Incula?"
20	much. I think let's rather use the words that the witness		
21	USES, ja.	21	MR MPOFU: "Incula," that's correct, and
22	CHAIRPERSON: So isn't – no, I just want	22	somewhere on the record Mr Madlanga described it, ja.
23	to be clear, the witness said a bush knife, did he? That's	23	CHAIRPERSON: Alright, Mr Interpreter,
24	what he said when he described cutting off his toe.	24 25	you heard this discussion between the learned Commissioner,
25	MR MPOFU: Yes, he said a bush knife.	25	Adv Tokota, and Adv Mpofu, about this word "incula" and
		1	

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1 what it means. They say it's a sharpened iron rod. Would	
2 you go along with that?	
3 MR HANABE: I fully agree, Commissioner.	
4 MR MPOFU: Thank you.	
5 CHAIRPERSON: Alright, so assegai, that	
6 isn't quite right. Is that right? The sharpened iron rod	
7 is the better translation. Is that correct?	
8 MR HANABE: Yes, it is. It is,	
9 Commissioner.	
10 MR MPOFU: Thank you, Mr Hanabe. Now I	
11 just want to ask you this. On the 10th, although you say	
12 you arrived at the march late, and on the 11th you also say	
13 you arrived late and you were at the back, and so on, but	
14 the question I want to ask you is that on those two	
15 occasions, what weapon or weapons were you carrying?	
16 MR PHATSHA: I had no other weapon	
17 besides a stick.18 MR MPOFU: Now can you tell the	
 MR MPOFU: Now can you tell the Commission why the type of weapons that you were carryin 	
20 changed from the 10th and 11th to a stick, from a stick, as	³
21 you explained, to the stage where by the 16th you were	
22 carrying "incula" and a butcher knife?	
23 MR PHATSHA: The reason we carried these	
24 weapons is because –	
25 [POWER OUTAGE]	
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Tel: 011 021 6457 Fax: 011 440 9119

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