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 53 25 FEBRUARY 2013

PAGES 5658 TO 5769

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Marikana Commission of Inquiry

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	Page 5658		Page 5660
1	[PROCEEDINGS ON 25 FEBRUARY 2013]	1	MR MOJAPELO: Okay, was that police
2	[10:09] CHAIRPERSON: The Commission resumes.	2	vehicle or standing?
3	I'm happy to report that, as some of you will have	3	MR PHATSHA: It was standing.
4	discovered, the toilets are functional; the water system is	4	MR MOJAPELO: The police vehicle was
5	flushing, and as you can see, the electricity is working as	5	standing and you were also standing and singing?
6	well. So it's not necessary for us at this stage to change	6	MR PHATSHA: Yes.
7	venue, so we can continue here in Rustenburg. You're still	7	MR MOJAPELO: Okay, and then what
8	under oath, Sir.	8	happened next?
9	SIPETE PHATSHA (CONTD.): Thanks.	9	MR PHATSHA: Nothing happened.
10	CHAIRPERSON: And Mr Mojapelo, you're	10	MR MOJAPELO: Okay, as you were singing
11	still cross-examining.	11	there, when you reached next to the Nyala, did you go
12	CROSS-EXAMINATION BY MR MOJAPELO (CONTD.):	12	forward or did you go back to the koppie?
13	Yes, Mr Chair. Good morning, Mr Phatsha.	13	MR PHATSHA: We went back.
14	5	14	MR MOJAPELO: Back to the koppie?
14	MR PHATSHA: Morning. MR MOJAPELO: We were on the 16th, just	14	MR PHATSHA: Yes.
		16	
16	after Mathunjwa has left the koppie. You still remember		<u> </u>
17	where we were?	17	to the koppie, what did the police vehicle, the Nyala do?
18	MR PHATSHA: Yes, Sir.	18	MR PHATSHA: It started closing up with
19	MR MOJAPELO: In paragraph 10 of your	19	the wire.
20	statement you say that you were part of the front group,	20	MR MOJAPELO: Okay, and then?
21	trying to leave the koppie when the police deployed the	21	MR PHATSHA: That one was pulling the
22	barbed wire.	22	wire, and another one thereafter, we then realised we were
23	MR PHATSHA: No, I was at the back.	23	now being boxed up. We then proceeded along the road that
24	MR MOJAPELO: Okay, in paragraph 10 of	24	leads to the settlement.
25	your statement, if I can read it back to you, it says,	25	MR MOJAPELO: Okay, the road – so you
	Page 5659		Page 5661
1	Page 5659 "Together with many other workers we ran towards the path	1	Page 5661 went back to the koppie and then the Nyala continued
1 2	•	1 2	•
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1	Page 5662 MR MOJAPELO: Okay, can we go a little	1	Page 5664 MR MOJAPELO: You can pause there. Do
2	bit back, before we go around the kraal. I want to know	2	you see this group?
3	whether at the time that you said you came back and you	3	MR PHATSHA: Yes.
4	found that the road was closed, what were the police doing	4	MR MOJAPELO: Yes, this is the group that
5	at the time? Were they shooting or not?	5	is in your own words, generally in the front.
6	MR PHATSHA: They were shooting.	6	MR PHATSHA: It is so.
7	MR MOJAPELO: Okay, and then now you	7	MR MOJAPELO: You were part of this
8	decided to come around the kraal?	8	group, isn't it?
9	MR PHATSHA: Yes.	9	MR PHATSHA: Yes, at the back.
10		9 10	
11	MR MOJAPELO: Can I just show you pictures L206 and L207? Let's start with L206.	10	MR MOJAPELO: Okay, you can roll it forward.
12	CHAIRPERSON: Up to now we've been	12	[VIDEO RECORDING PLAYED]
	·	12	
13 14	referring to them as slides. MR MOJAPELO: Are you able to see		MR MOJAPELO: Okay, when that shooting where there's a large number of bullets that we've just
	5	14	
15	yourself at slide 206?	15	heard, I take it that you were part of the front group? MR PHATSHA: I heard the sound of
16	MR PHATSHA: I'm not appearing there.	16	
17	MR MOJAPELO: Okay, but can we accept	17	bullets, yes.
18	that you were part of that group?	18	MR MOJAPELO: Okay, where were you?
19	MR PHATSHA: But at the back.	19	MR PHATSHA: I think at that stage it's
20	MR MOJAPELO: Okay, the next slide is	20	when I realised that the others had fallen in front of me.
21	L207. Are you able to see yourself there?	21	I jumped over them and went into the kraal. At that stage
22	MR PHATSHA: I am not visible there.	22	I had also been injured.
23	MR MOJAPELO: Okay, but we can accept	23	MR MOJAPELO: If we just go back just
24	that you are part of this group?	24	before you turn around the kraal, was it visible, was it
25	MR PHATSHA: But at the back, yes.	25	clearly visible to you that the police were shooting at
	Page 5663		Page 5665
1	MR MOJAPELO: Okay, I want to show you	1	that time?
2			
~	now a picture, a video, a video that was after picture 207,	2	CHAIRPERSON: Visible or audible?
3	now a picture, a video, a video that was after picture 207, I think it's AAA7.		
		2	CHAIRPERSON: Visible or audible?
3	I think it's AAA7.	23	CHAIRPERSON:Visible or audible?MR MOJAPELO:Visible. Maybe we can just
3 4	I think it's AAA7. MS LEWIS: Mr Chair, I'm sorry, before	2 3 4	CHAIRPERSON: Visible or audible? MR MOJAPELO: Visible. Maybe we can just use visible and audible.
3 4 5	I think it's AAA7. MS LEWIS: Mr Chair, I'm sorry, before the video is played, can I just ask whether the shooting or	2 3 4 5	CHAIRPERSON: Visible or audible? MR MOJAPELO: Visible. Maybe we can just use visible and audible. MR PHATSHA: When there's sound of
3 4 5 6	I think it's AAA7. MS LEWIS: Mr Chair, I'm sorry, before the video is played, can I just ask whether the shooting or any of the deceased's bodies will be visible on the video?	2 3 4 5 6	CHAIRPERSON:Visible or audible?MR MOJAPELO:Visible. Maybe we can justuse visible and audible.MR PHATSHA:MR PHATSHA:When there's sound ofbullets, when the sound of Firearms being discharged, the
3 4 5 6 7	I think it's AAA7. MS LEWIS: Mr Chair, I'm sorry, before the video is played, can I just ask whether the shooting or any of the deceased's bodies will be visible on the video? MR MOJAPELO: No, this one is a side	2 3 4 5 6 7	CHAIRPERSON: Visible or audible? MR MOJAPELO: Visible. Maybe we can just use visible and audible. MR PHATSHA: When there's sound of bullets, when the sound of firearms being discharged, the police are shooting.
3 4 5 6 7 8	I think it's AAA7. MS LEWIS: Mr Chair, I'm sorry, before the video is played, can I just ask whether the shooting or any of the deceased's bodies will be visible on the video? MR MOJAPELO: No, this one is a side angle. It will not show the deceased, but the usual	2 3 4 5 6 7 8	CHAIRPERSON:Visible or audible?MR MOJAPELO:Visible. Maybe we can justuse visible and audible.MR PHATSHA:MR PHATSHA:When there's sound ofbullets, when the sound of Firearms being discharged, the police are shooting.MR MOJAPELO:Okay, what I wanted to know
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1	Page 5666 MR PHATSHA: I'm saying, Sir, we have now	1	Page 5668 MR PHATSHA: We made a cross the other
2	reached a point here where I have to ask you a question.	2	day here, an X mark on the picture where I indicated the
3	MR MOJAPELO: Okay, you –	3	entrance to the kraal. I don't see it on this slide.
4	CHAIRPERSON: Go ahead and ask the	4	MR MOJAPELO: No, no, we'll go to the
5	question.	5	entrance of the kraal. I'm talking the period just before
6	[10:29] MR PHATSHA: When the police are shooting	6	you went around the kraal. Isn't it before you went around
7	at people and people are falling, how can those people that	7	the kraal, you just told us that the police were busy
8	are fallen go back?	8	shooting?
9	MR MOJAPELO: Okay, I don't understand	9	MR PHATSHA: It is so.
10	your question.	10	MR MOJAPELO: Yes, and these police were
11	MR PHATSHA: Should I repeat myself?	11	shooting in the vicinity of the small kraal?
12	CHAIRPERSON: Would you like him to	12	MR PHATSHA: It is so.
13	repeat it?	13	MR MOJAPELO: Yes, what I want to know is
14	MR PHATSHA: I say people had been shot	14	why do you choose to go to where the police are shooting in
15	at, Mr Chairperson, they have fallen onto the ground. How	15	the vicinity of the small kraal, and not go away from the
16	can those people stand up and run backwards?	16	shooting and run towards the big kraal?
17	MR MOJAPELO: Okay, I don't know whether	17	MR PHATSHA: Just repeat the question
18	your question has got something to do with my question.	18	again.
19	Let me just clarify my question –	19	MR MOJAPELO: Okay, you just told us that
20	CHAIRPERSON: I think you can answer the	20	the police were shooting and they were shooting in the
21	question by saying, at least I assume you would say that	21	vicinity of the small kraal, and this was even before you
22	you wouldn't expect people who'd been shot and fallen down	22	ran around the kraal, the small kraal.
23	to get up and run away, but he did run forward. He wasn't	23	MR PHATSHA: It is so.
24	lying on the ground. So your question is, why did he not	24	MR MOJAPELO: So why are you running
25	try to run away. I take it that's your question. Is that	25	towards the police at the small kraal, instead of running
	Page 5667		Page 5669
1	Page 5667 right?	1	Page 5669 away from the police towards the direction of the big
2	right? MR MOJAPELO: Yes.	2	away from the police towards the direction of the big kraal?
	right? MR MOJAPELO: Yes. CHAIRPERSON: Alright.		away from the police towards the direction of the big kraal? MR PHATSHA: If you'd repeat the
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2 3	right? MR MOJAPELO: Yes. CHAIRPERSON: Alright. MR PHATSHA: I think I will repeat the question again. How could I have gone back to the place	2 3	away from the police towards the direction of the big kraal? MR PHATSHA: If you'd repeat the question, I'm not clear what you're saying. MR MOJAPELO: Okay, do you see the big
2 3 4	right? MR MOJAPELO: Yes. CHAIRPERSON: Alright. MR PHATSHA: I think I will repeat the question again. How could I have gone back to the place where the bandage was applied on my foot, if I had not gone	2 3 4	away from the police towards the direction of the big kraal? MR PHATSHA: If you'd repeat the question, I'm not clear what you're saying. MR MOJAPELO: Okay, do you see the big kraal there?
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		1	
1	Page 5670 MR PHATSHA: Yes, Sir.	1	Page 5672 MR MPOFU: No, no, no, Chairperson, with
2	CHAIRPERSON: So you had to run towards	2	the greatest respect, the basis has to be laid. If my
3	the police, past the police, to get to the settlement?	3	learned friend knows the direction of these people in the
4	MR PHATSHA: We were not running	4	still picture, then he must tell us how he knows it.
5	necessarily towards the police, Mr Chairperson. We were	5	MR MOJAPELO: The direction?
6	running to save our own lives.	6	MR MPOFU: Which way they were running.
7	CHAIRPERSON: No, I understand that, but	7	MR MOJAPELO: Whatever the direction,
, 8	if the police were between you and the settlement, you had	8	it's away from the small kraal and the police.
9	to run towards the police and past the police to get to the	9	MR MPOFU: How do you know that? You
, 10	settlement, didn't you? You've admitted that already.	10	have to know where they were coming from to know whether
11	MR PHATSHA: It is so, yes.	11	it's away or towards. It's a still photo, Mr Mojapelo.
12		12	
13	bush knife in one hand and your sharpened iron rod in the	13	so that there won't be any need for a ruling. Mr Phatsha,
14	other?	14	do you see on the, if you're looking at the picture, on the
15	MR PHATSHA: That's mine, yes, Sir.	15	bottom part of the picture there's an open veld.
16	CHAIRPERSON: Thank you. Mr Mojapelo,	16	MR PHATSHA: I don't see. I only see
17	please proceed.	17	some lot of confusion there.
18	MR MOJAPELO: So you chose to run towards	18	MR MOJAPELO: Okay, why didn't you run
19	the direction of the police with your weapons in your	19	towards that confusion?
20	hands?	20	MR PHATSHA: I don't understand you, Sir.
21	MR PHATSHA: When I was shot at, I had my	21	MR MOJAPELO: My question is, why didn't
22	arms, yes.	22	you run away from the small kraal into that area which you
23	MR MOJAPELO: We've just seen from the	23	describe as a confusion?
24	videos there, as your group was approaching the police were	24	MR PHATSHA: I had already said a person
25	shooting. Do you believe that there was anything that was	25	runs towards a place where he feels he would be safe.
	Page 5671		Page 5673
1	going to save you from the bullets of the police?	1	MR MOJAPELO: Okay, let's continue. Can
2	MR PHATSHA: I was running away. I had	2	you go to slide L209? There are white cars there, and then
3	no belief whatsoever.	3	there is a kraal there.
4	MR MOJAPELO: When you were at the	4	MR PHATSHA: Yes.
5	mountain, you heard about "intelezi," isn't it?	5	MR MOJAPELO: And there is a pathway that
6	MR PHATSHA: I heard nothing about	6	passes between, more or less between the cars and the
7	"intelezi."	7	kraal.
8	MR MOJAPELO: You didn't hear that some	8	MR PHATSHA: I see it.
9	people at the mountain believed that "intelezi" will	9	MR MOJAPELO: Is this the pathway to
	handline of the state of the st	,	1 5
10	protect them against the bullets of the police?	10	Nkaneng?
10 11			
	protect them against the bullets of the police?	10	Nkaneng?
11	protect them against the bullets of the police? MR PHATSHA: That I did not hear.	10 11	Nkaneng? MR PHATSHA: Yes, that's the road.
11 12	protect them against the bullets of the police? MR PHATSHA: That I did not hear. MR MOJAPELO: Mr Phatsha, I put it to you	10 11 12	Nkaneng? MR PHATSHA: Yes, that's the road. MR MOJAPELO: Okay, on this picture,
11 12 13	MR PHATSHA: That I did not hear. MR MOJAPELO: Mr Phatsha, I put it to you that the only reason you could run towards the shooting	10 11 12 13	Nkaneng? MR PHATSHA: Yes, that's the road. MR MOJAPELO: Okay, on this picture, Nkaneng, is it on the right or on the left, in the
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		1	······································
	Page 5674		Page 5676
1	that we travel on daily.	1	the kraal, that is the entrance to the kraal, you turned,
2	CHAIRPERSON: That's the kind of answer	2	you had to turn to the right.
3	you get when you ask that kind of question.	3	MR PHATSHA: As you are saying it, yes.
4	MR MOJAPELO: Okay, you said – can you	4	MR MOJAPELO: Okay, let's talk about
5	tell the difference between left and right?	5	after you were shot and then you are in the kraal. How did
6	MR PHATSHA: Just repeat the question,	6	you get out of the kraal?
7	Sir.	7	MR PHATSHA: I had to climb over the
8	CHAIRPERSON: A question like that is a	8	thorns there and I fell outside the kraal and then turned
9	bit insulting, the way you phrase it. It might be better	9	and ran towards the mountain.
10	to say, I take it you can tell the difference between left	10	MR MOJAPELO: Okay, when you left the
11	and right. You know, it's like if I were to ask you, can	11	kraal towards the mountain, I take it now you're talking
12	you read, you'd be very offended, wouldn't you? So don't	12	about the small koppie?
13	ask questions that give rise to that kind of response.	13	MR PHATSHA: I turned towards the big
14	MR PHATSHA: I get a bit confused, Mr	14	koppie because at that time I had a difficulty in running.
15	Chairperson, because I am not a learned person and indeed,	15	Some piece of flesh was still hanging, the bone was
16	Chair, I don't know what is the meaning of left or right.	16	damaged, and there was a hippo right in front which I could
17	MR MOJAPELO: Okay, I'm sorry, I'll try	17	see causing a lot of damage right in front of me, so I was
18	to help you, Mr Phatsha. Can you put that picture in front	18	scared of being run over by that hippo. I turned towards
19	of you?	19	the rocks there, sat on the rocks, first had to get rid of
20	MR MAHLANGU: Slide 209?	20	the piece of flesh that was hindering my running before I
21	MR MOJAPELO: Slide 209.	21	could run further. I then could run and reach the small
22	MR MPOFU: Sorry, Mr Chairperson, really,	22	koppie. That is where the real shooting took place and
23	I'm sorry, the witness has said that Nkaneng is on the	23	where people died. People were raising their hands; even
24	lower side of the picture. All my learned friend has to	24	if their hands were risen, they were shot at. Because of
25	establish is which side is it, the one away from the page	25	the pain that I was feeling and the loss of blood, I could
	Page 5675		Page 5677
1	or the one next to the margin, or which one is the lower	1	feel that blood was running out of my system, I picked up a
2	side. I don't understand this.	2	piece of apron, tighten my foot in order to stop the
3	CHAIRPERSON: It doesn't sound like a	3	bleeding, and only then did I feel better. Should I
4	objection, but it sounds like a helpful hint. I suggest	4	proceed further, Mr Chairperson?
5	you take it.	5	MR MOJAPELO: Yes, we'd like to know more
6	[10:49] MR MOJAPELO: I'm still confused. I	6	of what you saw in that small koppie. You said people were
7	don't know which one is the lower, that is why I wanted to	7	being shot. Do you know anyone who was shot?
8	see from his body language.	8	MR PHATSHA: I did not know the people
9	MR MAHLANGU: The witness indicates if	9	who were there. These are black men and we were all
10	you travel from the right-hand side, that is Marikana,	10	sleeping very painfully on our stomachs.
11	towards in a northerly direction, as he indicates, Nkaneng	11	MR MPOFU: I'm sorry, Chairperson, if I
12	would be in that area.	12	may help. That "ihlongwini" is a very deep Xhosa word, so
13	MR MOJAPELO: Okay, so after you have	13	I don't blame the interpreter, but if I may be of help, it
14	come across the, around the kraal, after you came around	14	means when the grass has been burned the black, the black
15	the kraal, in order to go to Nkaneng, would you agree with	15	grass, as it were, and that's the part that was not
16	me that you will have to turn left?	16	interpreted.
17	MR PHATSHA: The reason I turned around	17	MR MAHLANGU: I didn't get you, Sir. You
	the kraal, Mr Chairperson, was to get to the road, the road	18	said the kind of grass?
18			MR MPOFU: No, when you burn grass, and
19	that comes from Marikana and leading to the shack	19	
19 20	that comes from Marikana and leading to the shack settlement.	20	then long after that it becomes black. That place is
19 20 21	that comes from Marikana and leading to the shack settlement. MR MOJAPELO: Yes, so the road that is	20 21	then long after that it becomes black. That place is called "ihlongwini," which is the black grass. That's what
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 19 20 21 22 23 24 25 	that comes from Marikana and leading to the shack settlement. MR MOJAPELO: Yes, so the road that is leading to the shack settlement, you have to turn to the left.	20 21 22 23	then long after that it becomes black. That place is called "ihlongwini," which is the black grass. That's what he said there. Maybe the witness can confirm. CHAIRPERSON: Mr Tokota confirms that

1	Page 5678 grass had been burned. That is what we refer to it in	1	Page 5680 MR PHATSHA: Just repeat the question,
	5	1	
2	Xhosa, Mr Chairperson, a place where grass had been burned,	2	Sir.
3	we refer to this as "ihlongo."	3	MR MOJAPELO: Okay, ja I think I put it
4	MR MAHLANGU: I did not know this, I must	4	in a clumsy way. The people that you saw being shot, do
5	admit.	5	you know whether they are dead or whether they were taken
6	MR MOJAPELO: Okay, this was between the	6	to hospital, whether they survived?
7	rocks in small koppie?	7	MR PHATSHA: I was suffering pains and at
8	MR PHATSHA: That is correct.	8	that time I was experiencing terrible pain. Whether there
9	MR MOJAPELO: Mr Phatsha, you say people	9	was people amongst them there are those who died or
10	were shot that you saw with your own eyes.	10	survived, I would not be able to say.
11	MR PHATSHA: My own eyes, yes Sir.	11	MR MOJAPELO: Okay, and how did you get
12	MR MOJAPELO: Do you know any of those	12	to be, to get into an ambulance? How did you – can you
13	people that were shot next to you, I mean that you saw?	13	explain how you got from your hiding place and to get to an
14	MR PHATSHA: I did not know them then.	14	ambulance?
15	We only came to know each other at the hospital when we	15	MR PHATSHA: What happened is I left the
16	were asking what is your name, from which area do you come	16	rocks where I was hiding, went to lie amongst the people
17	from, and so on.	17	that were being made to lie there; this is the people who
18	MR MOJAPELO: Okay, if I show you a	18	were being arrested and put into Nyalas. I was assisted by
19	photo, that is slide L235, this is the photo of the small	19	a policeman who realised that I was amongst the seriously
20	koppie -	20	injured. He said those should come one side so that they
21	MR MAHLANGU: 235?	21	could be taken to hospital.
22	MR MOJAPELO: 235. Are you able to point	22	MR MOJAPELO: Okay, one last question.
23	at that photo where you were during that time when the	23	You say in paragraph 14 when you described your shooting,
24	shooting was taking place?	24	I'm going to read the last sentence, you say, "I thought I
25	MR PHATSHA: I am unable to show you,	25	must have been shot from one of the helicopters." Why –
	Page 5679	_	Page 5681
1	Sir, because this is not very clear.	1	okay, explain.
2	Sir, because this is not very clear. MR MOJAPELO: Okay, and when you were in	2	okay, explain. MR PHATSHA: Looking at the injury,
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	Page 5682		Page 5684
1	yes, no I don't have any objection. On the contrary, I	1	MR PHATSHA: Thank you, Mr Chairperson,
2	would support it, Chairperson. I found that the victims	2	for allowing to see the injury.
3	that I've consulted with really do have, feel a need to	3	MS PILLAY: Chair, for the purposes of
4	show the Commission some of their injuries, so if there's	4	the record we should mark that photograph as DDD5, I think
5	no objection then I'm indebted to my colleagues. I would	5	then.
6	request the Commission to indulge the witness.	6	CHAIRPERSON: I thought that at least
7	CHAIRPERSON: In the case of the previous	7	three pictures were taken, so it will be DDD5.1, 2 and 3.
8	witness he showed us his injury in chambers. We have	8	MS PILLAY: That's correct, Chair.
9	extended the same courtesy to him and during the tea	9	CHAIRPERSON: We describe them as
10	adjournment, which we'll be taking in 10 minutes' time, he	10	photographs of the witness's injury. Thank you. Are you
11	can come to chambers, accompanied by you, and he can show	11	now able to commence your cross-examination, Mr Semenya?
12	us the injury.	12	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
13	MR MPOFU: Okay, Chairperson. Ja, but I	13	I am, Chair, thank you. Mr Phatsha, the last time we spoke
14	need to register that they want to show it here.	14	there were pictures of naked men on the koppie. Remember
15	CHAIRPERSON: Alright, if you insist, Mr	15	that?
16	Mpofu.	16	MR PHATSHA: I remember that, yes Sir.
17	MR MPOFU: I do, Sir.	17	MR SEMENYA SC: Who you said were washing
18	CHAIRPERSON: I had thought that there	18	on the koppie.
19	were elements of personal dignity and prudency and so on	19	MR PHATSHA: I said so, yes.
20	which operated in the case of the previous witness, but if	20	MR SEMENYA SC: At 4 o'clock in the
21	he wants to show it –	21	afternoon?
22	MR MPOFU: Yes Chair, I can confirm that	22	MR PHATSHA: If a person wants to wash,
23	he –	23	he decides when, what time he wants to wash.
24	CHAIRPERSON: - as you assure us that he	24	MR SEMENYA SC: And these ones decided at
25	-	25	the same time, a group of 50-odd men, naked at 4 o'clock,
		┼───	
_	Page 5683		Page 5685
1	MR MPOFU: He would waive –	1	washing on the koppie?
2	MR MPOFU: He would waive – CHAIRPERSON: Then he may do so.	2	washing on the koppie? MR PHATSHA: I would not know. People
2 3	MR MPOFU: He would waive – CHAIRPERSON: Then he may do so. MR MPOFU: Thank you, Chair.	2 3	washing on the koppie? MR PHATSHA: I would not know. People don't have the same kind of hearts.
2 3 4	MR MPOFU:He would waive –CHAIRPERSON:Then he may do so.MR MPOFU:Thank you, Chair.CHAIRPERSON:If someone has a camera,	2 3 4	washing on the koppie? MR PHATSHA: I would not know. People don't have the same kind of hearts. MR SEMENYA SC: Okay, let's leave the
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		1	
2	Page 5686		Page 5688
	MR SEMENYA SC: Do you know why people	1	MR PHATSHA: If a person does that kind
	were sleeping on the mountain?	2	of cutting for the ritual, only that person would know why
3	MR PHATSHA: I don't know why they slept	3	he is doing it.
	there.	4	CHAIRPERSON: That's not the question.
5	MR SEMENYA SC: Did they sleep with their	5	The question is, do you – the question doesn't concern the
	weapons on the mountain?	6	reason why those marks were there. The question is, do you
7	MR PHATSHA: It can be so because I'm	7	recognise the marks you see on the photograph as ritual
	unable to say, I wasn't amongst them as they were sleeping	8	incisions? Is that correct, Mr Semenya?
	there.	9	MR SEMENYA SC: Correct.
10	MR SEMENYA SC: And they were sleeping on	10	CHAIRPERSON: That's the question.
11	the small koppie, right?	11	Please answer that question.
12	MR PHATSHA: There are two koppies there.	12	MR PHATSHA: Yes, I do.
13	I wouldn't be able to say which one they really used for	13	MR SEMENYA SC: So too on DDD6.2, the
14	sleeping because when I arrived there the people had been	14	second photograph?
15	awake already.	15	MR PHATSHA: I can see it.
16	MR SEMENYA SC: I want to show you post	16	MR SEMENYA SC: So too the following one,
17	mortem photographs of Mambush.	17	DDD6.3, correct?
18	CHAIRPERSON: I don't know if any of Mr	18	MR PHATSHA: I can see it.
19	Noki's relatives or loved ones are present. If they are, I	19	MR SEMENYA SC: They are the same type of
20	would suggest that they leave the auditorium. I'm going to	20	ritual incision we are talking about, correct?
21	take the tea adjournment now anyway. When we resume, the	21	MR PHATSHA: I can see it, yes.
22	post mortem photographs of Mr Noki will be shown and if	22	MR SEMENYA SC: I know you can see it.
23	there are relatives or loved ones of him, they may find	23	Do you accept those are ritual incisions?
24	looking at these photographs very distressing and a hurtful	24	MR PHATSHA: Where exactly, Sir?
25	experience, and I would suggest that they do not return to	25	MR SEMENYA SC: On the photograph.
	Page 5687		Page 5689
1	the auditorium until after those photographs have been	1	MR PHATSHA: I see.
	shown. We will now take the tea adjournment.	2	MR SEMENYA SC: Do you accept it as
3	[COMMISSION ADJOURNS COMMISSION RESUMES]	3	ritual incisions?
4	[11:39] CHAIRPERSON: The Commission will resume.	4	MR PHATSHA: It is so.
5	You're still under oath, Mr Phatsha. Mr Semenya?	5	MR SEMENYA SC: There will also be
6	SIPETE PHATSHA (CONTD.): Yes.	6	evidence of such similar incisions on the post mortem
7	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):	7	findings of at least 17 others who passed on.
8	Thank you, Chair. Mr Phatsha, I have placed before you	8	MR PHATSHA: I would not know because I
	photographs, three of them, which I have – four of them,	9	don't do this.
	rather – which I think our most competent Ms Pillay will	10	MR SEMENYA SC: You're sure?
	call it DDD6.1 to 4.	11	MR PHATSHA: I am certain I don't do
1	CHAIRPERSON: What are they, Mr Semenya?	12	this.
12	MR SEMENYA SC: They are post mortem	13	MR SEMENYA SC: My information is that
	· · · · · · · · · · · · · · · · · · ·		you have those incisions on your chest. Do you want to
13	photographs of Mr Noki, four. Do you see the body cuttings	14	jest state there include on your onost. Do you want to
13 14	photographs of Mr Noki, four. Do you see the body cuttings that appear on those photographs?	14 15	show your chest to the Commissioners?
13 14 15	that appear on those photographs?	15	show your chest to the Commissioners? MR PHATSHA: I do that "kapula." this
13 14	that appear on those photographs? MR PHATSHA: I see on the very first one.	15 16	MR PHATSHA: I do that "kapula," this
13 14 15 16 17	that appear on those photographs? MR PHATSHA: I see on the very first one. MR SEMENYA SC: Do you recognise that to	15 16 17	MR PHATSHA: I do that "kapula," this cutting, only if I have some problem, my body aching,
13 14 15 16 17 18	that appear on those photographs? MR PHATSHA: I see on the very first one. MR SEMENYA SC: Do you recognise that to be a ritual incision?	15 16 17 18	MR PHATSHA: I do that "kapula," this cutting, only if I have some problem, my body aching, itching, and so on. I do that.
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 13 14 15 16 17 18 19 20 21 22 23 24 	that appear on those photographs? MR PHATSHA: I see on the very first one. MR SEMENYA SC: Do you recognise that to be a ritual incision? MR PHATSHA: I know that, yes. MR SEMENYA SC: Do you recognise it as that? MR PHATSHA: I can see it, yes.	 15 16 17 18 19 20 21 22 	MR PHATSHA: I do that "kapula," this cutting, only if I have some problem, my body aching, itching, and so on. I do that. MR SEMENYA SC: Do you take this Commission seriously? CHAIRPERSON: No, before you ask that

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1 my body being done, but only because my body is itching.	1 you were telling us that you do these things when you war
2 MR MPOFU: Sorry, he said something about	2 to take blood out, when you're feeling unwell?
3 blood.	3 MR PHATSHA: Not now that I'm a member of
4 MR PHATSHA: That I take blood out.	4 the church.
5 MR SEMENYA SC: Mr Phatsha, do you take	5 MR SEMENYA SC: Do you recall you have
6 this Commission seriously?	6 just told us now when you're not feeling well and you want
7 MR PHATSHA: Very important, because I'm	7 to take blood out, that's what you do?
8 here, yes.	8 MR PHATSHA: But since I became a member
9 MR SEMENYA SC: And you recall you were	9 of the church, that does not happen anymore.
10 asked to speak, you're under oath and you must tell us the	10 MR SEMENYA SC: Do you recall that
11 truth?	11 answer?
12 MR PHATSHA: It is the truth that I'm	12 MR PHATSHA: Who gave me that answer?
13 speaking as of now.	13MR SEMENYA SC:Do you recall you gave us
14 MR SEMENYA SC: So what were you telling	14 that answer, Mr Phatsha?
15 us that you don't do these things because you're a	15 MR PHATSHA: What was my answer again,
16 Christian?	16 Sir?
17 MR PHATSHA: I did them that time before	17 CHAIRPERSON: You said "I take blood
18 I got involved in church activities, in Christianity.	18 out." You didn't say "I used to take blood out." You said
19 MR SEMENYA SC: Why did you tell us you	19 "I take blood out," using the present tense. That's what
20 don't do this these things because you're a Christian, Mr	20 counsel says.
21 Phatsha?	21 MR PHATSHA: That was the question coming
22 CHAIRPERSON: No, he says he did this	22 from counsel that was confusing, that is why I gave that
23 before he became a Christian. That's how I understand his	23 answer.
24 argument. So I take it what he means is now that he's a	24 MR SEMENYA SC: How was my question
25 Christian he doesn't do it, but he may well have done	25 confusing you?
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1 things in the past before he was a Christian. So I don't	1 MR PHATSHA: I said when my body itches I
2 think the question you're asking is a fair elaboration on	2 do the "kapula" ritual.
3 the answer he gave. Perhaps you can reformulate it and	3 MR SEMENYA SC: Yes, and you are
4 avoid that difficulty.	4 repeating that, correct?
5 MR SEMENYA SC: Mr Phatsha, when did you	5 MR PHATSHA: I say, but I have left those
6 become a Christian?	6 things now because I am now a member of the church.
7 MR PHATSHA: I confirm that.	7 MR SEMENYA SC: So your body no longer
8 MR SEMENYA SC: Mr Phatsha, when did you	8 itches?
9 become a Christian?	9 MR PHATSHA: Because I'm now a Christian.
10 MR PHATSHA: It's not so long ago that	10 MR SEMENYA SC: Your body no longer
11 I've been into the church, but when I went to church I had	11 itches?
12 already stopped doing those rituals.	12 MR PHATSHA: No, not now.
13 MR SEMENYA SC: What do you mean by not	13 MR SEMENYA SC: Not in the past 10 years?
14 very long ago? Are you talking, was it after the shooting	14 MR PHATSHA: I haven't had.
15 at Marikana that you became a Christian?	15 MR SEMENYA SC: So why do you tell us you
16 MR PHATSHA: At the time of the shooting	16 do it when your body itches?
17 I wasn't doing those things anymore.	17 MR PHATSHA: When a person is being asked
18 MR SEMENYA SC: When more or less did you	18 questions and under pressure, the answers, the tongue [he
19 become a Christian, Mr Phatsha?	19 says] becomes short instead of being quite long.
20 MR PHATSHA: The months, I would not be	20 MR SEMENYA SC: Just repeat that for me.
21 able to say that, because you're going to ask me about	21 MR PHATSHA: I say the tongue becomes
22 months and I'll get confused.	22 short when one is under cross-examination and is being
23 MR SEMENYA SC: 10 years ago?	23 asked questions, and not given a chance to expatiate.
24 MR PHATSHA: Yes, very much.	24 MR SEMENYA SC: So when the tongue is
	24 MR SEMENYA SC: So when the tongue is 25 short you tell us things that are incorrect?

1	Page 5694	1	Page 5696
1	MR PHATSHA: The truth I am telling you,	1	reputable university, doctor, will be able to do that. You
2	Sir, is the following, that my body does not give that	2	may not agree. That's what he's putting.
3	problem of itching since I became a member of the church.	3	MR MPOFU: Ja well, and that's what I'm
4 5	MR SEMENYA SC: Well, I'm going to argue	4	questioning, is that a fact?
5	at the end that you're not truthful in that departure.	5	MR SEMENYA SC: It's a scientific fact, Chair.
6	MR PHATSHA: I don't know what it is that	6	
7	you will be saying, but the truth of the matter is it is	7	MR MPOFU: Is that what his expert is
8	true that my body does not itch since I went into church.	8	going to say?
9	MR SEMENYA SC: Your body has not been	9	CHAIRPERSON: Would you have any – in
10	itching more than 10 years now?	10	view of the fact that you've shown us the injury you
11	MR PHATSHA: Even now, yes.	11	sustained on the 16th of August, would you have any
12	MR SEMENYA SC: So you never had to take	12	objection if Mr Semenya were to ask you to submit to an
13	blood out.	13	examination by a doctor nominated by him, to look at these
14	MR MAHLANGU: Sorry?	14	marks on your chest to tell us whether they are 10 years
15	MR SEMENYA SC: You have never had reason	15	old or were sustained far more recently?
16	to take blood out?	16	MR MPOFU: Chairperson, I'm going to –
17	MR PHATSHA: No.	17	I'll stop the witness from answering that question. He can
18	MR SEMENYA SC: You know that medically	18	only answer that once he has been advised. I don't think
19	we can tell the age of a wound, Mr Phatsha?	19	it's fair to ask a witness directly on a matter where he
20	MR PHATSHA: Just repeat the question,	20	might need legal advice.
21	Sir.	21	CHAIRPERSON: What does he need legal
22	MR SEMENYA SC: You know that	22	advice about? It's not a legal question. It's whether
23	scientifically we are able to date a scar?	23	he's prepared –
24	MR PHATSHA: Where does that expert come	24	MR MPOFU: Well, it is.
25	from?	25	CHAIRPERSON: - to allow that. He –
	Page 5695		Page 5697
1	Page 5695 MR SEMENYA SC: And it would be possible	1	Page 5697 MR MPOFU: Well, if he's going to waive
1 2	0	1 2	
	0		MR MPOFU: Well, if he's going to waive
2	MR SEMENYA SC: And it would be possible	2	MR MPOFU: Well, if he's going to waive his privacy, that's a very legal question.
2 3	MR SEMENYA SC: And it would be possible - CHAIRPERSON: He's asked you a question.	2 3	MR MPOFU: Well, if he's going to waive his privacy, that's a very legal question. CHAIRPERSON: He's already waived his
2 3 4	MR SEMENYA SC: And it would be possible - CHAIRPERSON: He's asked you a question. He says where does that expert come from. You can't just	2 3 4	MR MPOFU: Well, if he's going to waive his privacy, that's a very legal question. CHAIRPERSON: He's already waived his privacy in respect of his foot.
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	Page 5698		Page 5700
1	validate that you're a truthful witness on this point?	1	recognise them.
2	MR PHATSHA: Just repeat the question,	2	MR SEMENYA SC: Just refresh my memory;
3	Sir.	3	what was the group going to do, your Mambush group going to
4	MR SEMENYA SC: You are unwilling to have	4	do at the NUM office –
5	yourself examined, even if only to validate that you're a	5	MR MPOFU: I'm sorry, Chairperson, has it
6	truthful witness on this point, so that when you tell us	6	even been established that Mambush was there? How can it
7	you saw police shoot people, we can begin to believe you?	7	be called the Mambush group on the 11th when no basis has –
8	MR PHATSHA: As it is the police did	8	CHAIRPERSON: - same point –
9	shoot people, do you believe that they shot these people?	9	MR MPOFU: Thank you, Chair.
10	MR SEMENYA SC: I want to believe you,	10	CHAIRPERSON: Perhaps Mr Semenya can
11	but you're not giving me the opportunity, and I will	11	reformulate the question -
12	believe you that you are truthful on this point if you	12	MR MPOFU: Thank you, Chair.
13	submit to a medical examination.	13	CHAIRPERSON: - and deal with that.
14	MR PHATSHA: I will not allow to go to a	14	MR SEMENYA SC: Chair, I don't know
15	doctor because I don't go to a doctor before I do things.	15	whether Mr Mpofu appreciates that this is the evidence of a
16	The only time I go to a doctor is when I am ill.	16	witness –
17	MR SEMENYA SC: And I'm going to argue	17	CHAIRPERSON: No, I understand. No,
18	that your refusal is simply because you are afraid you will	18	you're perfectly entitled to say Mr X says that Mambush
19 20	be shown to be a liar on this point. MR PHATSHA: The reason I'm refusing to	19 20	went with the group or was part of the group, but I
20 21	MR PHATSHA: The reason I'm refusing to go to a doctor is that a doctor's permission was not sought	20 21	understand you then to put a question, which was more a statement of fact, to the witness, you were a member, you
21	before they shoot us. They didn't go to a doctor to say	22	were part of the Mambush group, or words to that effect.
22	now we are going to shoot people.	22	That's why I suggested you reformulate the question. No
23 24	MR SEMENYA SC: I can't see the	23	problem with your putting what you were putting as part of
25	connection there, Mr Phatsha.	25	what Mr X says, but sometimes if you say something which
20		20	
	Page 5699		Page 5701
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2	MR MAHLANGU: The question is, Sir? MR SEMENYA SC: I can't see the	2	looks as if you're departing from what Mr X said and just putting statements of fact to the witness, then Mr Mpofu
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Page 5702 1 said the witness will say, then you can say so, but you	Page 5704 1 with the cross-examination and he may continue.
2 don't have to ask at this stage what the witness's name is	2 MR PHATSHA: I have not changed from what
3 in order to answer whether what the witness says is true or	3 I said before.
-	
4 untrue.	5 5.
5 MR PHATSHA: The interpreter would repeat	5 was the group going to do at the NUM offices?
6 this again? [Interpreter repeats question]	6 MR PHATSHA: The question was going to be
7 MR MPOFU: Chairperson, as much as you	7 put to NUM why is it that they did not allow the employer
8 don't want me to object, I also don't want to object, but –	8 to come to us with a response to our demand of R12 500.
9 CHAIRPERSON: I don't want you to have	9 MR SEMENYA SC: And Mr X will tell us the
10 reason to object.	10 reason for going there was completely different; it was to
11 MR MPOFU: Yes, yes, thank you,	11 go and close the NUM offices.
12 Chairperson. I also don't want to even have reason to	12 MR PHATSHA: There was nothing like that.
13 object, but Chairperson, on the statement of Mr X, at least	13 MR SEMENYA SC: But do you accept that
14 the version that we have, there is no mention of Mambush as	14 the people at the NUM offices were told that this crowd you
15 being –	15 were part of was coming to burn the NUM offices? That's
16 CHAIRPERSON: No, I understand that. I'm	16 what the security of Lonmin told them.
17 not sure if that's the basis of an objection. Mr Semenya	17 MR PHATSHA: That officer, security
18 presumably will explain to us where he gets his information	18 officer, he's the person who knows that, but the reason we
19 from –	19 went there is, was to go and inquiry as to why the employer
20 MR MPOFU: Okay, that maybe from a	20 was told not to come and meet us because of the demand that
21 consultation outside the statement, yes.	21 we had made, why he was not coming back with a response for
22 CHAIRPERSON: I would think that.	22 the money.
23 Anyway, let's proceed.	23 MR SEMENYA SC: And if all you were there
24 MR SEMENYA SC: You can accept that the	24 about was as peaceful as you say, there would have been no
25 evidence will be that Mambush was one of the committee	25 reason for the security to warn the NUM personnel that were
Page 5703	Page 5705
1 members appointed to lead this group. So I'm talking about	1 in the offices.
2 that group to which you were a member. Now just refresh my	2 CHAIRPERSON: I don't think he actually
3 memory. What was this group going to do at the NUM	3 know about that; that evidence hasn't been led yet, though
4 offices?	4 you can put it as a fact that that is so, or that those are
5 MS LEWIS: Chair, I'm sorry to interrupt	5 your instructions, and then ask him about that further, but
6 my learned friend but –	6 I don't think you could put it as something that's already
7 CHAIRPERSON: - benefit, but carry on.	7 common cause or a proven fact. I think you must
8 MS LEWIS: But I do have to object at	8 reformulate that question.
9 this point. From the statement it appears as if that	9 MR SEMENYA SC: Chair, that's already
10 committee was elected after the march that Mr Semenya is	10 evidence that the security of Lonmin went to tell the NUM
11 referring to.	11 officials, "There's a crowd coming here with deadly
12 CHAIRPERSON: But as Mr Mpofu said, it	12 intentions; you must go."
13 does appear as if Mr Semenya has also consulted with the	13 CHAIRPERSON: No, no, but the witness
14 witness and got extra information. I'm not sure that, or	14 doesn't know that, I don't think. So you're putting it to
15 say extra instructions. I'm not sure that's the basis for	15 him as a fact something that he has no knowledge about and
16 an objection, so I'm not going to allow that objection.	16 I thought that, we're going to have all sorts of questions
17 Carry on, Mr Semenya. When Mr X testifies – none of these	17 from him and so on if you put the question as formed, so I
18 points can be traversed, but I don't think you can traverse	18 suggest you – I'm not saying there's anything wrong with
19 them at this stage. You will recall, Ms Lewis, that this	19 the question as you're ultimately going to ask it, but I
20 question relates to what the group was going to do. He	20 think the way you're putting it now isn't going to take the
21 already told us previously in his evidence the purpose of	21 process forward very much because he's just going to ask
22 going to the NUM office and so Mr Semenya is just seeking	22 you where you get that from, and so on. So I suggest you
23 to get him to repeat that, or possibly give a different	23 reformulate the question, putting the point that you want
24 answer - we will see - so he can then proceed with his	to put, then we can perhaps get an answer from him.
 answer - we will see - so he can then proceed with his cross-examination. I don't think there's anything wrong 	24to put, then we can perhaps get an answer from him.25MR SEMENYA SC:If your movement towards

	Page 5706		Page 5708
1	the NUM offices was friendly, do you accept that there	1	there was a decision of collecting R20 so that the sangoma
2	would be no reason for the security officers to warn the	2	could be fetched?
3	NUM personnel in the offices that there was danger coming?	3	MR MADLANGA SC: Mr Chair, I don't think
4	MR PHATSHA: The security person is the	4	the translation was quite accurate. The response was I
5	only one to know. I don't know anything about it.	5	think that decision must have been taken whilst I had gone
6	MR SEMENYA SC: And after the skirmishes	6	home. He did not state it as a fact that it was taken.
7	of that afternoon, there was a decision now to go and hold	7	CHAIRPERSON: As I heard the answer and
8	meetings at the koppie. Am I right?	, 8	wrote it down, the interpreter said, "Possibly that
9	[12:19] CHAIRPERSON: I think the skirmishes took	9	decision was taken after I left," which is the same meaning
10	place in the morning, according to the evidence, isn't it?	9 10	as what you've put, that he doesn't know about that, but it
	The incident at the NUM office was I think on the 11th, was	11	
11		12	could have happened after he left. So I don't think the
12	in the morning, so –		question, as positively framed as it was, is –
13	MR SEMENYA SC: I stand corrected, Chair.	13	MR MADLANGA SC: My apologies to Mr
14	CHAIRPERSON: There's going to be more	14	Mahlangu. My most sincere apologies.
15	confusion if it's –	15	MR MAHLANGU: Accepted.
16	MR SEMENYA SC: The skirmishes of that	16	MR MADLANGA SC: Thank you.
17	day, Mr Phatsha, resulted in your group deciding to hold	17	CHAIRPERSON: It sounds as if your
18	future meetings at the koppie as opposed to the stadium.	18	apology is accepted. Anyway, Mr Semenya I'm sure can
19	Am I right?	19	rephrase his question in a manner which doesn't arise
20	MR PHATSHA: It is so.	20	objection either from you, me, or anybody, or even Mr
21	MR SEMENYA SC: Mr X would be right then?	21	Mpofu.
22	MR PHATSHA: That we would now meet at	22	MR SEMENYA SC: Were you told about that,
23	the koppie?	23	Mr Phatsha?
24	MR SEMENYA SC: Correct.	24	MR PHATSHA: Repeat the question.
25	MR PHATSHA: It is so, we did in fact	25	MR SEMENYA SC: Were you told about the
	Page 5707		Dage 5700
1	Page 5707 meet there.	1	Page 5709 collection of R20, were you told that story?
	meet there.	1 2	Page 5709 collection of R20, were you told that story? MR PHATSHA: I was not told of such a
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9 MR SEMENYA SC: Is that consistent with 9 in fact, Chairperson, to be fair, in terms of the evidence 10 your information or knowledge? 10 11 Mink Semenya is putting is the more correct. 11 were provided to by the sangoma were to be chosen 11 12 the kopple and that's what he said when Mr Mojapelo ask 15 there. Do you know that to be correct, or don't you? 16 MR PHATSHA: No idea, sir. 16 MR PHATSHA: No idea, sir. 16 MR SEMENYA SC: More more the objectionat 10 base work the purpose for this "muti" thing was so that 18 Were you going home. How can that ever be objectionat 10 batcked by the security or the police. 10 WR PHATSHA: 1 have not heard this 21 baffer. I'm hearing it for the first time. 23 MR PHATSHA: 1 don't understand, Sir. 12 security and the police. And the volunteers are 24 back and sat down there. 25 MR PHATSHA: 1 don't understand, Sir. Page 5711 1 that question now, Mr Phatsha? Page 5 1 MR SEMENYA SC:				
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10something, Mr Phatsha. If we go to exhibit L, slide 198 –10now. When you were part of that group there, as we look11MR MAHLANGU:Slide number, Sir?11slide 198, were you going home?12MR SEMENYA SC:198.12MR PHATSHA:Not at this stage, I wasn't13CHAIRPERSON:Can we be shown that slide,13going home at that stage.1414please?14MR SEMENYA SC:Okay, now we know you15MR SEMENYA SC:We have established that15moved from the koppie; you were going towards that car,16you were part of the group, correct?16mean that Nyala. Where are you going?17MR PHATSHA:It is so.17MR PHATSHA:It is so.18MR SEMENYA SC:And you have told us you18back and sat.19were going home.19MR SEMENYA SC:Before you went back and20MR PHATSHA:I said I was in the middle20sat, Mr Phatsha, you moved from the koppie towards thos21of this group.11sata. Am I correct?11	8	my head.	8	me.
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13CHAIRPERSON: please?Can we be shown that slide, please?13going home at that stage.14MR SEMENYA SC: you were part of the group, correct?14MR SEMENYA SC: moved from the koppie; you were going towards that car, 1616you were part of the group, correct?16mean that Nyala. MR PHATSHA:Where are you going?17MR PHATSHA: MR SEMENYA SC: were going home.It is so.17MR PHATSHA: MR SEMENYA SC: Maddit was in the middle1820MR PHATSHA: MR PHATSHA:I said I was in the middle19MR SEMENYA SC: MR Phatsha, you moved from the koppie towards thos 2121of this group.13going home at that stage.14				
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21 of this group. 21 Nyalas. Am I correct?				-
200 30 B		of this group		
22 MR SEMENYA SC: Going home. 22 MR PHATSHA: That is so.		(36 B) (1 B)		-
22MR THATSHA:Just repeat the question.23MR SEMENYA SC:And we know you're not		h h printing h h		
24 MR SEMENYA SC: You were in the middle of 24 going home at that stage.				-
25 that group, going home. 25 MR PHATSHA:				

	Page 5714		Page 5716
1	question was?	1	MR PHATSHA: I don't remember so well
2	MR SEMENYA SC: You told us that as you	2	now. This happened some time ago.
3	are approaching that Nyala, you are not going home.	3	MR SEMENYA SC: Do you remember turning
4	MR PHATSHA: I wasn't going home, yes.	4	from that frame, going back to the koppie?
5	MR SEMENYA SC: Next question. Where are	5	MR PHATSHA: Yes.
6	you going?	6	MR SEMENYA SC: Do you remember going
7	MR PHATSHA: We were just singing around	7	back to the Nyala again from the koppie?
8	and jumping around there, going back. We were still	8	MR PHATSHA: I don't remember well, Mr
9	waiting for the employer.	9	Chairperson, because there was also the call of nature, at
10	MR SEMENYA SC: You were going around	10	one time I had to go and relieve myself.
11	there, singing, waiting for the employer. That's why	11	CHAIRPERSON: I don't think it's helpful
12	you're approaching the Nyala?	12	to have a lot of laughter while people are talking. It
13	MR PHATSHA: We were not going directly	13	distracts the witness and it distracts counsel. I would
14	to the Nyala, but we went past it, turning around, singing.	14	appeal to the people in the auditorium to restrain their
15	MR SEMENYA SC: Because you're waiting	15	mirth and keep quiet while they listen to the evidence. If
16	for the employer?	16	they don't keep quiet, I will have to order them to leave
17	MR PHATSHA: As it is, yes.	17	the chambers, and I don't think they want that.
18	CHAIRPERSON: Mr Semenya, it might be	18	MR SEMENYA SC: So after you answered the
19	helpful to go back to slide 194 and then take it together	19	call of nature, you joined the group?
20	with 197 where what is depicted is there were three	20	MR PHATSHA: It is correct, yes.
21	separate attempts where the protesters approached the	21	MR SEMENYA SC: So that you can sing and
22	police line. Now I take it that what you are busy with on	22	wait for the employer for the second time?
23	slide 198 is the first attempt.	23	MR PHATSHA: We were waiting for the
24 25	MR SEMENYA SC: It's the first incident.	24	employer very much to give us an answer.
25	CHAIRPERSON: So if you take him back to	25	MR SEMENYA SC: Okay, let's go to slide
	Page 5715		Page 5717
1	- to be fair to him, I'm not sure he quite understands the	1	194. You will see behind the yellow half circle that
2	point you're putting, and if you go back to 194 and take	2	frame, properly zoomed, shows people who are moving away
3	him through 197, he might then understand and be able to	3	from the back of that half circle.
4	give an answer that does justice to his case.	4	MR PHATSHA: Yes, I see.
5	MR SEMENYA SC: Mr Phatsha, let's start.	5	MR SEMENYA SC: You did not want to take
6	When you were part of that frame, you were not going home.	6	that direction, not so?
7	Are you saying you were going around singing, whilst	7	MR PHATSHA: I did not make the decision
8	waiting for the employer?	8	of running backwards. I ran in the direction of the
9	MR PHATSHA: That is so, yes.	9	settlement, the shack settlement.
10	MR SEMENYA SC: Okay, being led by Mr	10	MR SEMENYA SC: No, remember we are still
11	Noki, Mambush?	11	just going to the Nyala so that we are waiting for the
4.0			
12	MR PHATSHA: I see the blanket. I don't	12	employer. We haven't decided to go home yet.
13	know his face well.	13	MR PHATSHA: I had not left at that time.
13 14	know his face well. MR SEMENYA SC: You don't know?	13 14	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were
13 14 15	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well.	13 14 15	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time
13 14 15 16	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by	13 14 15 16	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing?
13 14 15 16 17	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not?	13 14 15 16 17	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there
13 14 15 16 17 18	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket,	13 14 15 16 17 18	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer.
 13 14 15 16 17 18 19 	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket, yes.	 13 14 15 16 17 18 19 	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer. MR SEMENYA SC: Anyway, the evidence will
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 13 14 15 16 17 18 19 20 21 	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket, yes. MR SEMENYA SC: And you're saying you approached that Nyala because you are waiting for the	 13 14 15 16 17 18 19 20 21 	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer. MR SEMENYA SC: Anyway, the evidence will be that Mr Noki does not live in that direction at all. Mambush does not live there. He lives in Karee.
 13 14 15 16 17 18 19 20 21 22 	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket, yes. MR SEMENYA SC: And you're saying you approached that Nyala because you are waiting for the employer?	 13 14 15 16 17 18 19 20 21 22 	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer. MR SEMENYA SC: Anyway, the evidence will be that Mr Noki does not live in that direction at all. Mambush does not live there. He lives in Karee. MR PHATSHA: That I would not know.
 13 14 15 16 17 18 19 20 21 22 23 	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket, yes. MR SEMENYA SC: And you're saying you approached that Nyala because you are waiting for the employer? [12:39] MR PHATSHA: We did not go to the Nyala.	 13 14 15 16 17 18 19 20 21 22 23 	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer. MR SEMENYA SC: Anyway, the evidence will be that Mr Noki does not live in that direction at all. Mambush does not live there. He lives in Karee. MR PHATSHA: That I would not know. MR SEMENYA SC: Ja, but if that evidence
 13 14 15 16 17 18 19 20 21 22 23 24 	know his face well. MR SEMENYA SC: You don't know? MR PHATSHA: I don't know his face well. MR SEMENYA SC: No, but you were led by Mambush, were you not? MR PHATSHA: According to the blanket, yes. MR SEMENYA SC: And you're saying you approached that Nyala because you are waiting for the employer?	 13 14 15 16 17 18 19 20 21 22 	MR PHATSHA: I had not left at that time. MR SEMENYA SC: I know. I'm saying, were you still going to approach the Nyala for the second time so that you wait for the employer, while singing? MR PHATSHA: We have been waiting there patiently for the employer to come and give us an answer. MR SEMENYA SC: Anyway, the evidence will be that Mr Noki does not live in that direction at all. Mambush does not live there. He lives in Karee. MR PHATSHA: That I would not know.

Page 5718		Page 5720
1 MR PHATSHA: A person who is in front is	1	MR SEMENYA SC: And then you went to
2 not necessarily a leader.	2	relieve yourself.
3 MR SEMENYA SC: He could not be in front	3	MR PHATSHA: That is correct, yes.
4 of a group that is going home because his home was in	4	MR SEMENYA SC: Now I want us to look at
5 Karee.	5	slide 89 of exhibit L. To orientate ourselves, you will
6 MR PHATSHA: I don't even know his home.	6	see there are three kraals there.
7 MR SEMENYA SC: So do you accept that he	7	MR PHATSHA: I can see.
8 could not have been leading you on his way home?	8	MR SEMENYA SC: There is the small kraal
9 CHAIRPERSON: But he says he doesn't know	9	where the shooting happened. Do you see that?
10 that. He says he doesn't know where he lives, or lived.	10	MR PHATSHA: These kraals are near each
11 What's being put to you is that –	11	other. They're in the same vicinity. I wouldn't be able
12 MR PHATSHA: I was seeing him for the	12	to say which one is the big one and which is the small one,
13 very first time there, Mr Chairperson. I didn't even know	13	but this is, the one we ran to was the first kraal which is
14 where he works, this Mambush.	14	nearer to the road.
15 CHAIRPERSON: Yes, what is being put to	15	MR SEMENYA SC: Ja, and that's the one I
16 you by counsel is if it is correct that Mr Noki lived at	16	prefer to call the small one. Do you see it though?
17 Karee, he was then not moving towards his home when he	17	MR PHATSHA: I see it, yes.
18 moved forward to the police at the front of the group.	18	MR SEMENYA SC: Then there is the one on
19 That's what you're being asked to comment on.	19	the edge of that frame, touching the edge of the frame. It
20 MR PHATSHA: Whether he was moving home	20	looks like the picture cut the second kraal. Do you see
21 or running away –	21	that? To the left of the -
22 CHAIRPERSON: Do I understand you to say	22	MR PHATSHA: I see it, yes.
that you saw Mr Noki for the first time on the 16th, or did	23	MR SEMENYA SC: You see that from the
24 I misunderstand you?	24	koppie you can go towards that kraal with ease. Am I
25 MR PHATSHA: The position is if I'd seen	25	correct? If you chose to do that.
Page 5719		Page 5721
1 somebody today, Mr Chairperson, I would not be able to	1	MR PHATSHA: How? How could one walk
2 recognise that person tomorrow, and even now if he was to	2	there freely?
3 get rid of the blanket, I wouldn't even be able to	3	MR SEMENYA SC: If you elected to walk
4 recognise him.	4	towards that, you could have done that with ease. Is that
5 MR SEMENYA SC: Mr Phatsha, let's go to –	5	a fair statement or not?
6 CHAIRPERSON: What does that mean? Does	6	MR PHATSHA: Which is the road from
7 that mean that you did see him for the first time on the	6 7	MR PHATSHA: Which is the road from Marikana there?
		MR PHATSHA: Which is the road from Marikana there? MR SEMENYA SC: You told us it's the one
7 that mean that you did see him for the first time on the	7	MR PHATSHA: Which is the road from Marikana there?
 7 that mean that you did see him for the first time on the 8 16th or you may have seen him earlier, but you don't know, 9 or what exactly are you trying to say? 10 MR PHATSHA: The position, Mr 	7 8	MR PHATSHA: Which is the road from Marikana there? MR SEMENYA SC: You told us it's the one that's closer to the small kraal. I'm not talking about that one. I'm talking about –
 7 that mean that you did see him for the first time on the 8 16th or you may have seen him earlier, but you don't know, 9 or what exactly are you trying to say? 10 MR PHATSHA: The position, Mr 11 Chairperson, is a person that one sees from quite some 	7 8 9 10 11	MR PHATSHA: Which is the road from Marikana there? MR SEMENYA SC: You told us it's the one that's closer to the small kraal. I'm not talking about that one. I'm talking about – MR PHATSHA: I can see on the photo that
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1	disturbing them.	1	said those of us who were seriously injured should come one
2	MR SEMENYA SC: And you group of Mambush	2	side so that we could be attended to and be bandaged. This
3	could equally have walked away from the small kraal to	3	is where I appear on the TV, seated, waiting for my foot to
4	Nkaneng through that route. Am I correct?	4	be bandaged.
5	MR PHATSHA: How did we move then? How	5	MR SEMENYA SC: And the argument will be
6	did we -	6	you went to the small koppie because that's where your,
7	CHAIRPERSON: What counsel is putting to	7	that was the forte for Mambush group where the rituals were
8	you, that it was possible for you to do that, you could	8	performed.
9	have done that.	9	MR PHATSHA: No, there is no such thing.
10	MR PHATSHA: We did not think so.	10	The small koppie, that is where we were being killed and
11	MR SEMENYA SC: Because you wanted to	11	there were many bodies of dead people that were found
12	confront the police. That's why.	12	there.
13	MR PHATSHA: No, there's nothing like	13	MR SEMENYA SC: Would this be a
14	that.	14	convenient stage, Chair, for the lunch adjournment?
15	MR SEMENYA SC: Just before the lunch	15	CHAIRPERSON: The Commission will adjourn
16	adjournment, when do you get rid of your bush knife?	16	till half past 1. I may as well announce now that this
17	MR PHATSHA: The bush got lost in the	17	week we'll be taking a short lunch adjournment from 1 until
18	small mountain.	18	1:30 because we cannot sit on Friday afternoon. So we
19	MR SEMENYA SC: So despite being fired at	19	adjourn until half past 1.
20	by the police, you are having your bush knife, you're	20	[COMMISSION ADJOURNS COMMISSION RESUMES]
21	running with it to the small koppie?	21	[13:35] CHAIRPERSON: The Commission continues.
22	MR PHATSHA: I had it, yes.	22	Mr Phatsha, you're still under oath.
23	MR SEMENYA SC: And you've got your	23	SIPETE PHATSHA (CONTD.):
24 25	"incula" as well?	24 25	CHAIRPERSON: Mr Semenya, I take it you
25	MR PHATSHA: I had the "incula" as well	25	want to proceed with your cross-examination.
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1	because it's mine, Sir. The bush knife is the one that I	1	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
2	used to cut off that hanging toe.	2	Thank you, Chair. Can I ask the video operator to play us
3	MR SEMENYA SC: And it doesn't occur to	3	frame 112 – not frame 112, a video. I have requested it to
4	you just to drop those weapons and go home?	4	be played and then I'll identify it, Chair.
5	MR PHATSHA: How could I have gone home	5	CHAIRPERSON: Now is any kind of warning
6	when I was being shot at?	6	required before it's played?
7	MR SEMENYA SC: Even on your logic, why	7	MR SEMENYA SC: No.
8	don't you just leave those arms there and walk yourself	8	CHAIRPERSON: No. Is the video operator
9	home?	9	ready to show the clip that you've asked for? Yes,
10	MR PHATSHA: It's a thing in me that says	10	apparently the answer is yes. Please proceed.
11	how could I throw away my weapons, because I did not know	11	[VIDEO RECORDING PLAYED]
12	where I was going to and what I was going to be confronted	12	MR SEMENYA SC: Just hold it. Hold it
13	with. We could not go anywhere because that whole place	13	there. Did you observe, Mr Phatsha, the young gentleman
14	were boxed up by the police, they had closed up, we	14	there in a red T-shirt, busy spraying the crowd? Do you
15	couldn't go anywhere. When you look this side of the	15	see that?
16	mountain, you would see the police there and there was	16 17	MR PHATSHA: I can see. I'm watching.
17	shooting going on, and look on the other side, the same	17 19	MR SEMENYA SC: And the evidence will be
18	thing, and the birds were singing over our heads.	18	that is one of the sons of the sangoma who's busy spraying
19 20	MR SEMENYA SC: Was that not a good	19 20	them like that. Do you know differently? MR PHATSHA: I don't know anything about
20 21	moment to put your arms down? [12:59] MR PHATSHA: I did put my weapons down.	20 21	this issue of sangoma.
21	After putting my weapons down, I took the apron, that	21	MR SEMENYA SC: Okay, let's proceed with
22	cloth, and bound my injured foot with. I then went on my	22	the video clip.
20		23	[VIDEO RECORDING PLAYED]
24	stomach and started crawling on my stomach on that burnt	74	
24 25	stomach and started crawling on my stomach on that burnt patch of grass. A policeman then came to my rescue, he		
25	stomach and started crawling on my stomach on that burnt patch of grass. A policeman then came to my rescue, he	24 25	MR SEMENYA SC: Stop it. You will see

1	Page 5726 this is a distinct group of people who are crouching there.	1	Page 5728 I'm trying to find a distinction that won't confuse us.
		-	5 0
2	Do you see that?	2	I'm talking about the group at the front, not the one at
3	MR PHATSHA: I can see it.	3	the back. Can we play it and see if you can see yourself
4	MR SEMENYA SC: And you are part of that	4	there?
5	group. Am I right?	5	CHAIRPERSON: If we can see him there we
6	MR PHATSHA: I could be among those	6	can then decide how one describes his posture at the time.
7	people.	7	[VIDEO RECORDING PLAYED]
8	MR SEMENYA SC: Yes, can you play on?	8	MR SEMENYA SC: Shall we roll this
9	[VIDEO RECORDING PLAYED]	9	slowly? Can I ask Mr Mojapelo up there to show us the
10	MR SEMENYA SC: Can you on those clips	10	frame that I'm looking for? Can you get closer there and
11	show us the one marked 112? Yes.	11	see whether you can recognise yourself, Mr Phatsha?
12	[VIDEO RECORDING PLAYED]	12	CHAIRPERSON: Is it possible to zoom in
13	MR SEMENYA SC: Stop. You will see in	13	on the person who is being circled by the arrow at the
14	this group of people there are a whole host of them without	14	moment?
15	arms. Do you see that?	15	[VIDEO RECORDING PLAYED]
16	MR PHATSHA: I'm watching.	16	MR SEMENYA SC: I think on that video it
17	MR SEMENYA SC: Can you roll on the video	17	would be against the 1:58. 1:48, sorry.
18	clip?	18	[VIDEO RECORDING PLAYED]
19	[VIDEO RECORDING PLAYED]	19	MR SEMENYA SC: Maybe I should proceed,
20	MR SEMENYA SC: Stop. You will see	20	Chair.
21	that's now a very different distinct group on the corner	21	CHAIRPERSON: Yes, I think you'd better.
22	bottom of that frame, as we are watching.	22	When this clip is found, perhaps after the tea adjournment
23	MR PHATSHA: Yes, I'm watching.	23	this afternoon, you can revert to this matter if the clip's
24	MR SEMENYA SC: Those were the warriors.	24	been found by then.
25	Am I right?	25	MR SEMENYA SC: Thank you, Chair. But
	· · · · · · · · · · · · · · · · · · ·	20	init of infinite of the init o
	Page 5727		Page 5729
1	Page 5727 MR PHATSHA: That I could not know.	1	Page 5729 I'm correct, Mr Phatsha, that day you had a blanket on.
1 2		1 2	•
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2 3	MR PHATSHA: That I could not know. MR SEMENYA SC: But you see they are crouching very distinctly away from the large other group	2 3	I'm correct, Mr Phatsha, that day you had a blanket on. You had a blanket with you. Am I right? MR PHATSHA: I was not wearing a blanket,
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1	MR MPOFU: No, Chairperson, there's no	1	place something on the record. It's not an objection. I
2	such evidence.	2	agree with the summary that the Chairperson has just given
3	MR PHATSHA: That I could not know. I	3	but I feel that I have to place this on the record, that
4	wouldn't know.	4	due to certain assurances which I was given by Mr Semenya
5	MR SEMENYA SC: My recollection, Chair,	5	regarding whether or not this witness and the next one were
6	is the bishop said they wanted food and they wanted water,	6	implicated in the whole Mr X business, this particular
7	it was hot.	7	witness has not been consulted or prepared in relation to
8	CHAIRPERSON: That part I remember.	8	that and I accept that what Mr Semenya is saying is not
9	Whether it was hot is something I can't remember, but again	9	that, he's not saying Mr X said about you and so on; he's
10	it's a matter that can be checked in the transcript. We	10	simply putting the version. But I just want to put that on
11	don't have to spend time on it at the moment.	11	the record, Chair.
12	MR SEMENYA SC: But for your part, Mr	12	CHAIRPERSON: Alright, it's on the
13	Phatsha, you remember you had the towel because it was	13	record.
14	cold?	14	MR SEMENYA SC: Chair, if I may, I'm told
15	MR PHATSHA: That's what I'm saying.	15	that the clip can now be shown. It's critical that we
16	CHAIRPERSON: Can you now remember that	16	locate the witness.
17	it was a cold day?	17	CHAIRPERSON: Will we be able to locate
18	MR PHATSHA: It was cold on that day.	18	the witness if the clip is shown again?
19	CHAIRPERSON: A few minutes ago you said	19	MR SEMENYA SC: Yes, Chair.
20	you couldn't remember if it was a hot day. Has your memory	20	CHAIRPERSON: Alright, would you please
21	suddenly improved?	21	show the clip again?
22	MR PHATSHA: I remember because if you	22 23	[VIDEO RECORDING PLAYED]
23	feel it in yourself and not feeling it for another person,		MR SEMENYA SC: Mr Phatsha, can you just
24 25	that when it is hot or cold, you yourself will then put on something so that you can cover yourself. But one can put	24 25	get closer to the screen? MR PHATSHA: To do what?
25	sometning so that you can cover yourself. But one can put	25	
	Page 5731		Page 5733
1	on something warm even if it is hot.	1	MR SEMENYA SC: To go and see, you'll see
2	[13:55] MR SEMENYA SC: Okay, let's go back to	2	there will be an arrow there, whether you recognise that
3	the koppie with the sangoma's son on the koppie. Mr X will	3	person to be yourself.
4	say there was a requirement for each person to pay R500 so	4	MR PHATSHA: I can see myself.
5	that they can apply "muti" on him who elects to pay that	5	MR SEMENYA SC: Yes. So you were part of
6	money. Did you hear that?	6	what I call the Mambush group, not those who are sitting at
7	MR PHATSHA: I'm asking you please to	7	the back without arms. Am I right?
8	give me a break when it comes to this X, because he's the	8	MR PHATSHA: I don't know Mambush group.
9	one in fact who's deviating my statement. X must come here	9	CHAIRPERSON: Perhaps we should see more
10	and answer for himself just as much as I'm doind which	10	
11	and answer for himself, just as much as I'm doing, which		of the group to see whether the allegation that that's the
11	means answering.	11	Mambush group can be verified from the clip.
12	means answering. CHAIRPERSON: You know, I don't think	11 12	Mambush group can be verified from the clip. MR PHATSHA: There were no groups there.
12 13	means answering. CHAIRPERSON: You know, I don't think your request can be acceded to. Mr X will in due course	11 12 13	Mambush group can be verified from the clip.MR PHATSHA:There were no groups there.It was only employees who were working at Lonmin, and
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12 13 14 15 16 17 18 19 20 21 21 22 23	means answering. CHAIRPERSON: You know, I don't think your request can be acceded to. Mr X will in due course come, as I'm informed, and will give evidence and answer questions put to him by various counsel, including your counsel. But Mr Semenya must as a matter of fairness put to you what X is going to say according to his instructions, to give you an opportunity to give your side of the story and to say whether anything that Mr X says is correct and, if so, what parts of what is being put to you are correct. So your request cannot, as I said, be acceded to. Mr Semenya is perfectly entitled, and indeed obliged to put to you what Mr X is going to say insofar as it	 11 12 13 14 15 16 17 18 19 20 21 22 23 	Mambush group can be verified from the clip. MR PHATSHA: There were no groups there. It was only employees who were working at Lonmin, and further it's people who were demanding money from the employer. CHAIRPERSON: But what one can see from the clip, there's a clear space between the group of people who are on the left side of the screen and people sitting further back. There's a clear space between them, so to that extent Mr Semenya is correct in describing the people we can see immediately in front of us on the screen as being a group apart from the others. My fellow Commissioner Adv Tokota says the gentleman in the front o
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Page 5734	Page 573
1 his left shoulder. Can you confirm whether that is	1 is not counting me in that "all of us."
2 correct?	2 CHAIRPERSON: Your reservation has been
3 MR PHATSHA: I can see him.	3 noted.
4 MR SEMENYA SC: You'd also be having your	4 MR MPOFU: Yes, I'm not part of that –
5 bush knife and your spear as you were seated there?	5 CHAIRPERSON: Your reservation has been
6 CHAIRPERSON: He didn't have a spear; he	6 noted. Everyone else, except Mr Mpofu and a few others,
7 had a sharpened iron rod.	7 thinks that, but he doesn't. Anyway, Mr Semenya, carry or
8 MR SEMENYA SC: "Incula." Sorry, a	8 Ignore that objection.
9 "incula."	9 MR PHATSHA: I know nothing about groups.
10 MR PHATSHA: I was carrying my sticks.	10 What I know is that the people who are sitting there are
11 MR SEMENYA SC: Ja, we just wanted to see	11 Lonmin employees.
12 whether we are able to see Mambush in that group. Is it	12 CHAIRPERSON: Mr Semenya, I think you've
13 the end of the clip? Can you go at the very beginning of	13 made the point you want to make, if there's a point that's
14 the clip where there are – Chair, I'll find an opportunity	14 been made. Perhaps you can move on to the next aspect of
15 to reconcile the two a little later. Mr Phatsha, can we	15 the matter. He's obviously taken the position, it's in
16 continue. The people –	16 concrete, I think, and I think his view is made clear to us
	17 and your view is made clear. At the end we have to decide
 CHAIRPERSON: Sorry, before you carry on, Mr Semenya, when you said that you weren't in a group, 	18 if it's necessary, which of the two of you is correct.
19 everyone was all together, and I put to you that Mr Semenya	19 MR SEMENYA SC: Mr X will tell the
20 was correct in the sense that there was one group of	20 Commission that the group to which you are part was calle
21 people, quite a large group, and then another group sitting	21 the warrior group.
22 apart from them with a section of grass in between, so that	22 MR PHATSHA: Hence I'm saying let's put
the people with whom you were could correctly be described	23 this X aside because I really don't know the issue about
24 as being a separate group from the rest of the people. Now	24 this X.
25 what comment do you have to make about that?	25 CHAIRPERSON: What you're being asked in
Page 5735 1 MR PHATSHA: I am not saying that there 2 were groups, because a person sits wherever he feels he	Page 573 1 effect is whether an allegation which is to be made by a 2 witness who is to be called by Mr Semenya, that you were
3 should sit.	3 member of the warrior group at Marikana at the koppie,
4 CHAIRPERSON: But there's a clear	4 whether that allegation is correct.
5 division between the two groups that we can see on the	5 MR PHATSHA: I don't agree.
6 video clip. It's not just a question of people sitting	6 MR SEMENYA SC: And so the evidence will
7 higgledy-piggledy, as it were, where they want to sit.	7 continue that at the koppie on the 11th of August in the
8 There's a clear division which you can now see between the	8 evening the Mambush group was then taken to the river,
9 two groups. Isn't that so?	9 where the rituals were performed.
10 MR PHATSHA: I can see it.	10 MR PHATSHA: I was not present there.
11 MR SEMENYA SC: Do you accept there are	11 MR SEMENYA SC: And the group was told to
5	
	12 go and get two sheep, one white, one black. Do you know
13 MR PHATSHA: I'm watching.	13 about that?
14 MR SEMENYA SC: Do you agree?	14 MR PHATSHA: I was not there. I never
15 MR PHATSHA: Which thing?	15 heard about that.
16 MR SEMENYA SC: That there are two	16 MR SEMENYA SC: And the two sheep were
17 distinguishable groups in that frame.	17 put on fire alive, according to the instruction of the
18 MR PHATSHA: That's why I'm saying then a	18 sangoma.
19 person sits wherever he thinks he should sit.	19 MR PHATSHA: A person who might have been
20 MR SEMENYA SC: I'm going to argue you're	20 there could know it, but for me, a person who was not
21 being evasive. I'll ask you for the last time, are you in	21 there, I know nothing about that.
22 agreement with all of us, I may even hazard to say, that	22 [14:15] MR SEMENYA SC: And the ashes of the
23 looking at that frame, there are two distinct groups	23 sheep were mixed with "muti" and people were, and it was
24 separated by a patch of grass?	24 put on their ear cuttings.
25 MR MPOFU: Chairperson, I hope Mr Semenya	25 MR PHATSHA: It is at a time I was not

	5		
1	Page 5738 present during those things.	1	Page 5740 MR SEMENYA SC: Okay, now let's go to the
2	MR SEMENYA SC: And they were told that	2	Sunday of the 12th. You were with the group on the 12th,
3	with that "muti," the "muti" will prevent the bullet to	3	were you not? Sunday.
4	penetrate their bodies.	4	MR PHATSHA: Which group?
5	MR PHATSHA: How can I know about such a	5	MR SEMENYA SC: The group of Mambush.
6	thing when I was not there when those things happened?	6	MR PHATSHA: There we had no group. We
7	MR SEMENYA SC: And it was illustrated to	7	were sitting there as people who wanted money from the
8	this group that the "muti" was effective because a box was	8	employer.
9	fired at and the bullet would not penetrate it.	9	MR SEMENYA SC: While you're still with
10	MR PHATSHA: I never saw that.	10	Mambush on that day?
11	MR SEMENYA SC: And Mr X will say that he	11	MR PHATSHA: Which day?
12	and others believed as a result that the "muti" was indeed	12	MR SEMENYA SC: Sunday.
13	working.	13	MR PHATSHA: I don't know whether I was
14	MR PHATSHA: X is the one who could know	14	with him or whether he was there or not.
15	that, but I personally don't know about it.	15	MR SEMENYA SC: You were with those who
16	MR SEMENYA SC: And the instructions to	16	were armed.
17	the crowd was that to keep the "muti" effective they must	17	MR PHATSHA: On which day?
18	never open their arms; they must speak with fists in the	18	MR SEMENYA SC: Sunday.
19	air.	19	MR PHATSHA: I don't recall very well.
20	MR PHATSHA: Can you repeat?	20	MR SEMENYA SC: Were the others having
21	MR SEMENYA SC: Maybe I'll repeat after	21	arms on Sunday when you were there?
22	we play the clip showing Mr Mpembe and Mr Mambush at the	22	MR PHATSHA: That's why I'm saying I
23	railway line, if we can play that clip. Are we able to get	23	don't recall whether weapons were carried or sticks were
24	to that clip? Alright, let's proceed, Mr Phatsha. This is	24	carried.
25	what Mr X will say about the events of the 12th, that that	25	MR SEMENYA SC: But Mr X will say then
1 2	Page 5739 morning at 9 o'clock the group decided, whilst at the mountain, to go to the NUM offices again and took a	1 2	Page 5741 there was a decision to go back to the NUM offices and that you were going to resist any attempt at stopping you as a
3	decision that they were going to fight anyone who stands or	3	group.
4	block their way.	4	MR PHATSHA: I neither heard nor saw
5	CHAIRPERSON: Mr Semenya, the slide 50 of	5	that.
6	exhibit L relates to the confrontation between General	6	MR SEMENYA SC: And that this group of
7	Mpembe and the group coming back from Karee. I don't know	7	people were having spears, bush knives, pangas,
8	whether that's what you're looking for.	8	knobkieries. They had firearms, pistols and handguns with
9	MR SEMENYA SC: That is the one. I'm	9	them.
10	indebted to you, Chair. Are we able to find slide 50 on	10	MR PHATSHA: I never saw guns and
11	exhibit L? If we can have the audio as well. Mr Phatsha,	11	assegais. The things that were carried were sticks and
12	please look at the video clip; you'll see that Mr Mambush	12	branches.
		1 1 2	MR SEMENYA SC: When is it the first time
13	does not open his arm at all.	13	
14	[VIDEO RECORDING PLAYED]	14	you see people holding sharp weapons like you're having?
14 15	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe	14 15	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the
14 15 16	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their	14 15 16	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th.
14 15 16 17	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their clenched fists?	14 15 16 17	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th. MR SEMENYA SC: When do you for the first
14 15 16 17 18	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their clenched fists? MR PHATSHA: I see them.	14 15 16 17 18	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th. MR SEMENYA SC: When do you for the first time get to know that there were security personnel that
14 15 16 17 18 19	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their clenched fists? MR PHATSHA: I see them. MR SEMENYA SC: Were you part of that	14 15 16 17 18 19	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th. MR SEMENYA SC: When do you for the first time get to know that there were security personnel that was killed?
14 15 16 17 18 19 20	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their clenched fists? MR PHATSHA: I see them. MR SEMENYA SC: Were you part of that group?	14 15 16 17 18 19 20	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th. MR SEMENYA SC: When do you for the first time get to know that there were security personnel that was killed? MR PHATSHA: Can you repeat?
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 14 15 16 17 18 19 20 21 22 23 24 	[VIDEO RECORDING PLAYED] MR SEMENYA SC: Okay. Did you observe that the speakers from the crowd, they speak with their clenched fists? MR PHATSHA: I see them. MR SEMENYA SC: Were you part of that group? MR PHATSHA: I was not there. MR SEMENYA SC: Were you told that it is	14 15 16 17 18 19 20 21 22	you see people holding sharp weapons like you're having? MR PHATSHA: I started seeing that on the 14th, 15th, and the 16th. MR SEMENYA SC: When do you for the first time get to know that there were security personnel that was killed? MR PHATSHA: Can you repeat? MR SEMENYA SC: Do you recall being told, according to your evidence, that there was security

	Dogo 5742		Dogo 5744
1	Page 5742 what did you hear?	1	Page 5744 MR PHATSHA: They never told me.
2	MR PHATSHA: I heard that the employees	2	MR SEMENYA SC: Neither were you
3	were shot at by security personnel.	3	interested to know?
4	MR SEMENYA SC: And?	4	MR PHATSHA: I could not have been
5	MR PHATSHA: I wouldn't know then as to	5	interested when people died.
6	the stage on which they died.	6	MR SEMENYA SC: On the Monday, the 13th,
7	MR SEMENYA SC: No, I'm interested in	7	Mr X will tell us there was a decision to go and stop
8	what you're told now.	8	people who were going to work at the Eastern Platinum
9	MR PHATSHA: I cannot hear.	9	Shaft. That's where you worked. Am I correct?
10	MR SEMENYA SC: I'm interested in you	10	MR PHATSHA: This X is the one that I
11	telling us what was reported to you about the killing of	11	said we should ignore because I cannot answer your question
12	Lonmin security people.	12	satisfactorily if X is mentioned.
13	MR PHATSHA: Can you repeat?	13	MR SEMENYA SC: Were you part of a group
14	MR SEMENYA SC: Please tell us what you	14	of people who went to the Eastern Plats Shaft to stop
15	were told regarding the killing of Lonmin security	15	people from working?
16	personnel.	16	MR PHATSHA: I was not there.
17	MR PHATSHA: What I am telling you is	17	MR SEMENYA SC: Where were you on the
18	that the security personnel from Lonmin shot at the	18	13th?
19	employees.	19	MR PHATSHA: I was in the shanty.
20	MR SEMENYA SC: And?	20	MR SEMENYA SC: Were you on strike as
21	MR PHATSHA: And the fact that they died	21	well?
22	in my absence, I don't know whether they indeed died or	22	MR PHATSHA: How?
23	not.	23	CHAIRPERSON: Were you on strike? The
24	MR SEMENYA SC: What else were you told?	24	question, it's a simple question – were you on strike, yes
25	How were these people killed?	25	or no?
	Page 5743		Page 5745
1	MR PHATSHA: I never heard as to how they	1	MR PHATSHA: On the issue of the strike I
2	MR PHATSHA: I never heard as to how they died.	2	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money.
2 3	MR PHATSHA: I never heard as to how they died. MR SEMENYA SC: You're not interested at	2 3	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the
2 3 4	MR PHATSHA: I never heard as to how they died. MR SEMENYA SC: You're not interested at all?	2 3 4	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you?
2 3 4 5	MR PHATSHA: I never heard as to how they died. MR SEMENYA SC: You're not interested at all? MR PHATSHA: You cannot be interested if	2 3 4 5	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you? MR PHATSHA: I was on strike.
2 3 4 5 6	MR PHATSHA: I never heard as to how they died. MR SEMENYA SC: You're not interested at all? MR PHATSHA: You cannot be interested if it is said that people died.	2 3 4 5 6	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you? MR PHATSHA: I was on strike. CHAIRPERSON: Thank you.
2 3 4 5 6 7	MR PHATSHA: I never heard as to how they died. MR SEMENYA SC: You're not interested at all? MR PHATSHA: You cannot be interested if it is said that people died. MR SEMENYA SC: You don't want to know	2 3 4 5 6 7	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you? MR PHATSHA: I was on strike. CHAIRPERSON: Thank you. MR SEMENYA SC: Why don't you join those
2 3 4 5 6 7 8	MR PHATSHA:I never heard as to how theydied.MR SEMENYA SC:You're not interested atall?MR PHATSHA:You cannot be interested ifit is said that people died.MR SEMENYA SC:You don't want to knowhow they were killed?You don't want to know	2 3 4 5 6 7 8	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you? MR PHATSHA: I was on strike. CHAIRPERSON: Thank you. MR SEMENYA SC: Why don't you join those who were on strike at the koppie?
2 3 4 5 6 7 8 9	MR PHATSHA:I never heard as to how theydied.MR SEMENYA SC:You're not interested atall?MR PHATSHA:You cannot be interested ifit is said that people died.MR SEMENYA SC:You don't want to knowhow they were killed?MR PHATSHA:I never wanted to know	2 3 4 5 6 7 8 9	MR PHATSHA: On the issue of the strike I was supposed to be there because I want money. CHAIRPERSON: You still don't answer the question. Were you on strike, or weren't you? MR PHATSHA: I was on strike. CHAIRPERSON: Thank you. MR SEMENYA SC: Why don't you join those who were on strike at the koppie? MR PHATSHA: It's because I could feel it
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			5 5740
1	Page 5746 MR PHATSHA: You don't carry weapons when	1	Page 5748 yourself then, I must ask?
2	you go to the doctor.	2	MR PHATSHA: I have to carry weapons when
3	MR SEMENYA SC: I know. I'm just asking,	3	I go to other employees who have been attacked.
4	Mr Phatsha, to orientate yourself. By the time you went to	4	MR SEMENYA SC: Why don't you go to the
5	see the doctor, was it before or after you started carrying	5	other employees who are not carrying arms, who are the
6	weapons to the koppie?	6	other group?
7	MR PHATSHA: I was carrying a stick	7	MR PHATSHA: No-one was without his
8	because I could feel that to me that I was not well and I	8	weapons.
9	was not sure that I could carry my weapons.	9	MR SEMENYA SC: No, we can play that clip
9 10	MR SEMENYA SC: So you're not able to	10	again. The big part of the crowd are people that are there
11	tell us whether it was before or after you went to see the	11	without arms, on the koppie.
12	doctor?	12	MR MPOFU: Chairperson, that is not the
12	MR PHATSHA: I carried my weapons after I	13	evidence. The so-called other group also had weapons, from
14	had consulted the doctor.	14	what I saw, otherwise we'll have to play it again.
14	MR SEMENYA SC: Okay, now we know up to	14	MR SEMENYA SC: Mr Phatsha, let me narrow
16	this point you have never been part of any attacks. Am I	16	it for you. I'm talking about the group that's not having
17	right?	17	spears and sharp weapons and bush knives.
18	MR PHATSHA: It is so.	18	MR PHATSHA: I know nothing about people
19	MR SEMENYA SC: And you have never been	19	who carried no weapons. What I know is that at the
20	part of a group that was attacked, at the point when you	20	mountain people were carrying their weapons and their
20	decided to arm yourself.	20	sticks.
22	MR PHATSHA: I was never attacked of	22	MR SEMENYA SC: You consciously joined
23	that.	23	the ones that were holding the sharp weapons, the pangas,
23	MR SEMENYA SC: So by the time you	23	and the "inculas."
25	decided to take arms, you have never been attacked; you	25	MR PHATSHA: I had to go to them,
20	decided to take arms, you have never been attacked, you	20	
	Page 5747		Page 5749
1	have never been part of a group attacking anybody?	1	carrying my sticks, because I was not aware as to when we
2	MR PHATSHA: I never attacked anyone. I	2	were again going to be attacked.
			5 5 5
3	was also never attacked.	3	MR SEMENYA SC: So before the 15th your
3 4	was also never attacked. MR SEMENYA SC: So you did not need to	3 4	
-			MR SEMENYA SC: So before the 15th your
4	MR SEMENYA SC: So you did not need to	4	MR SEMENYA SC: So before the 15th your evidence is there was nothing significant that you saw
4 5	MR SEMENYA SC: So you did not need to defend yourself against anything.	4 5	MR SEMENYA SC: So before the 15th your evidence is there was nothing significant that you saw happening?
4 5 6	MR SEMENYA SC: So you did not need to defend yourself against anything. MR PHATSHA: I do not understand.	4 5 6	MR SEMENYA SC: So before the 15th your evidence is there was nothing significant that you saw happening? MR PHATSHA: I never saw anything.
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1	down our weapons?	1	[14:55] CHAIRPERSON: I've already explained to
2	MR SEMENYA SC: Mr Mathunjwa.	2	you that Mr X is going to come and give his evidence.
3	MR PHATSHA: You didn't say that it is Mr	3	Insofar as he gives evidence that relates to you it's only
4	Mathunjwa who said we must put down our weapons. That's	4	fair that Mr Semenya should now, while you're in the
5	why I want to know this person who said we must put down	5	witness box, put to you what will be said so that you can
6	our weapons.	6	deal with it. So you must answer the questions he puts to
7	CHAIRPERSON: Counsel has now told you it	7	you in that regard.
8	was Mr Mathunjwa, so would you like to answer the question?	8	MR PHATSHA: That is why, or the thing I
9	MR PHATSHA: Mr Mathunjwa never said we	9	have in me that each and every person in the court answers
10	must put down our weapons. He said we must go to our	10	for himself.
11	places of residence because the situation was bad, and	11	CHAIRPERSON: What happens in a court is
12	further it was going to be bad.	12	that each and every person who is implicated in the
13	MR SEMENYA SC: Mr Mathunjwa didn't say	13	evidence that's going to be given by other witnesses has
14 15	you must disarm?	14	that evidence put to them so that they get a chance to deal
15	MR PHATSHA: He never said that. He said	15	with it.
16	we must go back to our places of residence because the	16	MR PHATSHA: Am I then going to represent
17	situation was bad, and it was still going to be bad.	17	X?
18	MR SEMENYA SC: What did you understand	18	CHAIRPERSON: That is a question which is
19	him to be referring to?	19	totally irrelevant to what we're concerned with. You're
20	MR PHATSHA: He wanted us to leave that	20	just wasting our time and playing the fool. Stop doing
21	place and we were waiting for the employer.	21	that; behave yourself and answer the questions.
22	MR SEMENYA SC: But he told you the	22	MR PHATSHA: I don't believe that I could
23	employer is not coming. Did he not?	23	be in this place and displaying folly in the court.
24	MR PHATSHA: What would be the reason for	24	CHAIRPERSON: Well, if you confine
25	him not to come, as we are his employees, working for the	25	yourself to answering the questions then you will certainly
1	Page 5751 employer?	1	Page 5753 not display folly. I suggest you take that advice and let
2	MR SEMENYA SC: Mr Mathunjwa said that to	2	Mr Semenya proceed.
3	you that the employer is not coming. Am I right?	3	MR SEMENYA SC: Did you hear Mr Mathunjwa
4	MR PHATSHA: Mathunjwa is not the	4	say people must lay their arms down and otherwise there
5	employer. We wanted the employer.	5	will be bloodshed?
6	MR SEMENYA SC: Did he tell you, or he	6	MR PHATSHA: What I said is Mr Mathunjwa
7	didn't?	7	said, "Men, go back to your places of residence because the
8		8	situation is going to be bad." He never said we must lay
9	I never heard him.	9	down our weapons.
10	MR SEMENYA SC: Because it will be the	10	MR SEMENYA SC: Would this be a
11	evidence that Mr Mathunjwa told you to surrender your	11	convenient stage, Chair, to take the tea adjournment?
12	weapons, move away from the koppie, because there would be	12	CHAIRPERSON: I just want to make a note
13	bloodshed.	13	of what he said and then we'll take the adjournment. Very
14	MR MPOFU: Sorry, Chairperson, if I can	14	well, the Commission will take the tea adjournment.
15	get clarity from that last question, where that evidence is	15	[COMMISSION ADJOURNS COMMISSION RESUMES]
16	going to emanate from that Mathunjwa said something about	16	[15:21] CHAIRPERSON: The Commission resumes. Mr
17	weapons?	17	Phatsha, you're still under oath. Mr Semenya, do you still
18	MR SEMENYA SC: The evidence, Chair, will	18	have questions in cross-examination?
19	come from somebody who the witness doesn't want to mention.	19	MR SEMENYA SC: I do, Chair.
20	Every time I say Mr X, I know predictably what the witness	20	SIPETE PHATSHA (CONTD.): Yes.
21	is going to say to me. That will be the evidence. Did you	21	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
22	hear Mr Mathunjwa say that?	22	Mr Phatsha, I want to put a series of propositions that I'm
23	MR PHATSHA: Let X come forward so that	23	going to argue at the end of this hearing, and I'm going to
24	we can hear what he has to say. I must not be mentioned in	24	invite you to react to these propositions, if you are able
25	the issues of X whereas I'm not part of it.	25	to. The one is that after the initial confrontation with

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1	Page 5754 the personnel of NUM on the 11th, there was a decision to	1	Page 5756 protect myself from the rocks. Now I'm hearing for the
2	take up arms. Are you able to react to that?	2	first time that people are referred to as "makarapa."
2		2	MR SEMENYA SC: And that this warrior
		3 4	group had armed themselves to the teeth with all assortment
4	saying it.		
5	CHAIRPERSON: How do you respond to it?	5	of dangerous weapons.
6	Was there a decision to take arms on the 11th when a group		MR PHATSHA: On which day?
7	of people went to the NUM offices?	7	MR SEMENYA SC: The days when you were
8	MR PHATSHA: Can you repeat? I did not	8	there.
9	hear.	9	MR PHATSHA: People had to arm themselves
10	CHAIRPERSON: Listen carefully next time.	10	because we had been attacked by NUM.
11	Was there a decision to take arms on the 11th of August, on	11	MR SEMENYA SC: And that the warrior
12	the part of the group who were going to the NUM offices?	12	group was fortified in their belief of invincibility
13	MR PHATSHA: On the 11th, because I never	13	because the security tried to fire rubber bullets at them
14	heard the weapons would be carried.	14	and they came out of that unscathed.
15	MR SEMENYA SC: And then the decision was	15	MR PHATSHA: I wouldn't know that.
16	also made to appoint a committee of 15, comprising groups	16	MR SEMENYA SC: And on the contrary, it
17	of five from each shaft.	17	was the security personnel that was killed on the 12th.
18	MR PHATSHA: I don't know.	18	MR PHATSHA: That is the exact thing that
19	MR SEMENYA SC: And that Mambush was one	19	I do not know.
20	of those 15.	20	MR SEMENYA SC: And the following day,
21	MR PHATSHA: I wouldn't know.	21	the 13th, they killed the police, with very few casualties
22	MR SEMENYA SC: And that committee	22	on the warrior group, if there was any.
23	decided a "inyanga" or a sangoma must be secured.	23	MR PHATSHA: I have no knowledge of that.
24	MR PHATSHA: I never heard about such a	24	MR SEMENYA SC: On the two occasions,
25	thing.	25	Sunday and Monday, they disarmed police of firearms and an
	Page 5755		Page 5757
1	MR SEMENYA SC: Sorry, I lost you. I did	1	R5 –
1 2	MR SEMENYA SC: Sorry, I lost you. I did not follow your answer.	1 2	R5 – CHAIRPERSON: On Sunday, security guards?
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	Page 5762		Page 5764
1	power of God I then survived on that war which was directed	1	shot at, we were not going to agree with our weapons.
2	to us as we were being shot at.	2	MR SEMENYA SC: No, before any shooting,
3	MR SEMENYA SC: And that you and 200-odd	3	they were to stop you and say okay, you can put your
4	of Mambush crowd, armed as you were, you had jointly	4	firearms, your arms on the ground and go home, what would
5	concluded you were going to run through the police line	5	have happened? Would you have agreed to put your arms
6	with those weapons you had.	6	down?
7	MR PHATSHA: Being armed, we had to be	7	MR PHATSHA: We would concede, we would
8	armed because we never did anything to anyone and no-one	8	have conceded.
9	had intended to kill the police with those weapons.	9	MR SEMENYA SC: And that's where your
10	MR SEMENYA SC: Okay, let me establish	10	evidence is completely unbelievable. They have been
11	this as a last area I take up with you. On your way home	11	pleading with you to put your arms down all along and now
12	as a group of 200, on your version, when there was a police	12	all of a sudden you're going to do it?
13	line in front of you, you had meant to run through that	13	MR PHATSHA: We said we must lay down our
14	line of police, armed as you were - am I correct? - on	14	weapons?
15	your way home.	15	MR SEMENYA SC: And you were not going to
16	MR MPOFU: Sorry, Chairperson, I think	16	disarm, whatever the circumstances were.
17	we're going to have another interpretational light measure.	17	MR PHATSHA: The thing that made us not
18	Mr Semenya's question is very clear that they intended to	18	to lay down our weapons was because we were shot at.
19	go through the line, as it were. The interpretation, it's	19	MR SEMENYA SC: And I'll argue finally
20	not incorrect but it gives the impression of going, passing	20	that your evidence is not dependable to support any
21	the line, [Xhosa word], you pass something, and those are	21	conclusion, unless otherwise supported by objective
22	two different things. If maybe the interpreter, just on	22	evidence.
23	what I've said, Chair, can just adjust. It's not that he's	23	MR PHATSHA: You then do well by not
24	wrong, but the words that he used, [Xhosa words], can	24	believing because you are not the one who was shot at.
25	either mean –	25	MR SEMENYA SC: Those are the questions I
	Page 5763		Page 5765
1	CHAIRPERSON: It's not that he's wrong,	1	have for the witness, Chair.
2	it's just that there's a nuance that the interpretation		
~	-	2	CHAIRPERSON: Mr Semenya, as far as I can
3	didn't cover, which you've now explained.	3	see you haven't dealt with paragraph 19 of his statement,
4	didn't cover, which you've now explained. MR MPOFU: Thank you, Chair.	3 4	see you haven't dealt with paragraph 19 of his statement, nor the second paragraph of the second page of exhibit
4 5	didn't cover, which you've now explained. MR MPOFU: Thank you, Chair. CHAIRPERSON: Alright.	3 4 5	see you haven't dealt with paragraph 19 of his statement, nor the second paragraph of the second page of exhibit DDD4, unless I am mistaken. If you have dealt with it,
4 5 6	didn't cover, which you've now explained. MR MPOFU: Thank you, Chair. CHAIRPERSON: Alright. MR SEMENYA SC: You were meaning to go	3 4 5 6	see you haven't dealt with paragraph 19 of his statement, nor the second paragraph of the second page of exhibit DDD4, unless I am mistaken. If you have dealt with it, then fine, I won't ask anymore about it.
4 5 6 7	didn't cover, which you've now explained. MR MPOFU: Thank you, Chair. CHAIRPERSON: Alright. MR SEMENYA SC: You were meaning to go through the police line, armed as you were, on your way	3 4 5 6 7	see you haven't dealt with paragraph 19 of his statement, nor the second paragraph of the second page of exhibit DDD4, unless I am mistaken. If you have dealt with it, then fine, I won't ask anymore about it. MR SEMENYA SC: Mr Phatsha, on your
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	Page 5766		Page 5768
1	MR SEMENYA SC: No, before the arrests.	1	MR SEMENYA SC: So I'm going to argue
2	You remember when there was, the water canons were spraying	2	that your version must be rejected where you suggest that
3	water there?	3	police shot at anyone whilst they had their arms raised in
4	MR PHATSHA: I personally was watching	4	surrender.
5	them.	5	MR PHATSHA: That is known then by you.
6	MR SEMENYA SC: At that time you did not	6	MR SEMENYA SC: And on the contrary,
7	put your weapons on the ground, raised your hands and went	7	amongst the Mambush group at koppie 3 where people with
8	to the police. Am I right?	8	firearms were firing at the police.
9	MR PHATSHA: We laid down our weapons and	9	MR PHATSHA: That I wouldn't know.
10	we were made to lie down and the Nyala was parked there and	10	MR SEMENYA SC: Those are the questions I
11	people were being arrested.	11	have for the witness, Chair.
12	MR SEMENYA SC: Before the arrests, while	12	[16:01] CHAIRPERSON: It's 4 o'clock, so we're
13	there was blue water, you remember that time?	13	going to take the adjournment now, but before we do that,
14	MR PHATSHA: Yes.	14	let's find out if there's anyone who wishes to ask
15	MR SEMENYA SC: That's the time you're	15	questions in cross-examination before Mr Mpofu has an
16	saying the police were shooting you?	16	opportunity to re-examine. Anyone going to ask questions
17	MR PHATSHA: They were really shooting at	17	in cross-examination from the AMCU side?
18	us.	18	
19	MR SEMENYA SC: Whilst the water was	19	MS BARNES: Chairperson, yes, we are, but very short. We'll be very quick, Chair.
20	being sprayed on this crowd?	20	CHAIRPERSON: And Ms Lewis, from the
20	MR PHATSHA: The water would be sprayed,	20	family side?
22	but it would land or hit the rocks, and in turn would be	21	-
22	sprinkled on the people who were in the nearby, but at that	22	
23 24	time I was a bit far from where the water was being	23 24	cross-examine this witness. CHAIRPERSON: And Mr Mpofu, I take it
24 25	sprayed.	24 25	CHAIRPERSON: And Mr Mpofu, I take it you've got some re-examination.
25	sprayeu.	25	you ve got some re-examination.
	Page 5767		Page 5769
1	Page 5767 MR SEMENYA SC: That's when you see	1	Page 5769 MR MPOFU: Indeed I do, Chairperson.
1 2		1 2	
	MR SEMENYA SC: That's when you see		MR MPOFU: Indeed I do, Chairperson.
2	MR SEMENYA SC: That's when you see people raising their arms and being shot at by the police?	2	MR MPOFU: Indeed I do, Chairperson. CHAIRPERSON: Mr Bizos?
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