

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 161

**Lukmos**  
—communications—

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TRANSCRIPT PAGES 18439 TO 18584

1 **[PROCEEDINGS ON 4 DECEMBER 2013]**

2 **[09:09] CHAIRPERSON:** The Commission resumes.

3 Brigadier, you're still under oath.

4 **BRIGADIER CALITZ:** Thank you, Mr

5 Chairperson.

6 **CHAIRPERSON:** Mr Ntsebeza.

7 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

8 Thank you, Mr Chairman. Now Brigadier, there was a small

9 exercise that we're going to do just to establish the

10 numbers of the units, the various divisions, which you were

11 in charge of on the day, the 16th of August, and we've also

12 taken advantage of looking at exhibit L and we are able to

13 indicate as follows. It looks like, and you'll agree with

14 me if you are able to, it looks like in terms of exhibit

15 L137 there are 45 POP units indicated there. You see that?

16 **BRIGADIER CALITZ:** Mr Chairperson,

17 it is correct. If I may just say, Mr

18 Chairperson, you gave me some homework again. I'm just

19 talking about the homework, the question now, it is

20 about the different numbers, I made a

21 summary –

22 **CHAIRPERSON:** Yes, please. I think I

23 also referred you to those slides, if I recall correctly.

24 **BRIGADIER CALITZ:** Yes.

25 **CHAIRPERSON:** Slides is the correct

1 word.

2 **BRIGADIER CALITZ:** I undertook

3 to –

4 **CHAIRPERSON:** Did you do the necessary?

5 Maybe you can share your results of your labour

6 last night, so that we can move forward. Sorry, you

7 won't mind that, Mr Ntsebeza, will you? If he gives us the

8 results of his labour last night.

9 **MR NTSEBEZA SC:** Yes, if he can do that –

10 **CHAIRPERSON:** Let him give us the results

11 and then you can either, you can mark his paper out of 10

12 if you like and then we can carry on.

13 **MR NTSEBEZA SC:** That's one way to go, Mr

14 Chairman.

15 **BRIGADIER CALITZ:** Thank you, Mr

16 Chairperson. What I did was to take

17 "exhibit" L, and use the pages we referred to and

18 then tried to get a whole picture of the

19 operational part –

20 **CHAIRPERSON:** *[Microphone off, inaudible]*

21 **BRIGADIER CALITZ:** - May I assist.

22 **CHAIRPERSON:** It will be very helpful.

23 **BRIGADIER CALITZ:** I further divided them into

24 scene 1 and scene 2, what was happening on both scenes,

25 what happened in the air, and then the total. I think I will

1 go through it like that. Regarding the  
2 negotiations team, there were 5 on scene 1, and they  
3 moved on to scene 2 and then from there to the  
4 incident. The Public Order Policing Unit was  
5 173, 1-7-3, on scene 1, and scene 2 and from the "forward holding  
6 area" there were eight, but some of the 173, moved on to  
7 scene 2, which gave us a total of 181 in  
8 Public Order Policing members present.

9 The TRT, Tactical Reaction Team, was 134 at  
10 scene 1 and scene 2, and at the "forward holding area 2," there was  
11 21 placed. From the 134 at scene 1 also moved on with,  
12 the Public Order Policing,  
13 as they were instructed to do in phase 2 –  
14 some of them also moved on to scene 2. In  
15 total they were 155.

16 The STF (Special Task Force) were on both scenes.  
17 They were 21 in total. They were on their position,  
18 away from the scene in the "immediate response"  
19 area, but they also moved from scene 1, to  
20 scene 2 with their vehicles. Some of them were  
21 at the Public Order Policing posts. There were also one in the  
22 air, in the helicopter, that was the  
23 brigadier we referred to from the STG. Therefore, they were  
24 22 in total.

25 The NIU (National Interventions Unit) was on both scenes and they

1 were in total one hundred. They started at scene one and

2 moved through –

3 **CHAIRPERSON:** All hundred that was at

4 scene 1?

5 **BRIGADIER CALITZ:** It was –

6 **CHAIRPERSON:** The whole hundred, were

7 they at scene 1?

8 **BRIGADIER CALITZ:** No, no, I said

9 both – I will explain just now, Mr Chairperson –

10 **CHAIRPERSON:** No, no, I understand. I

11 understand the whole – there were one hundred in total.

12 **BRIGADIER CALITZ:** Yes.

13 **CHAIRPERSON:** Altogether there were a

14 hundred.

15 **BRIGADIER CALITZ:** Yes.

16 **CHAIRPERSON:** I must try to speak one

17 language. But how many of them were at scene 1? Do you

18 know?

19 **BRIGADIER CALITZ:** There was a break up.

20 They were divided in – I just have to check my

21 notes– the NIU under Colonel Modiba

22 at IRA2 was 74 and the others at IRA – the “immediate

23 response areas” – 1 was 25 and the rest were on the vehicles as they

24 moved in. That is how we get the numbers

25 before they moved into

1 action, they moved in at scene 1 and moved on to  
2 scene 2. In the air, in the helicopter was  
3 –13 NIU. There total then were 113.  
4 K9, our Dog-Unit, they were six at scene  
5 1, at the “forward holding,” and then there were 32 at scene 2 that  
6 move around toward scene 2. In total, I have 38.  
7 The Mounted unit” was at both scene. They  
8 started ride, dismount, saddled up and then moved onto  
9 scene 2. In total, I counted them to be 14.  
10 The “detectives,” was just at scene 2  
11 and on standby at the “forward holding area” and they were  
12 three. LCRC, was four,  
13 plus one in the air, in the  
14 helicopter, so there I have five in total. From the  
15 medical and “fire,” personnel, I have five ...  
16 **MR SEMENYA SC:** Brigadier, remember the  
17 interpreter.  
18 **BRIGADIER CALITZ:** Okay, I will go  
19 slower.  
20 **CHAIRPERSON:** Yes, you are going a little  
21 bit fast actually. The interpreters I gather have a  
22 problem because there’s no TV feed at the moment.  
23 **BRIGADIER CALITZ:** Oh, sorry, can I –  
24 **CHAIRPERSON:** No, no, because there’s no  
25 TV feed they can’t look at the screen and see who is

1 talking, so they have to go entirely by what they can hear,  
2 you see.

3 **BRIGADIER CALITZ:** I understand.

4 **CHAIRPERSON:** This is what I understand.

5 So Mr Semanya is quite right; take it slowly.

6 **BRIGADIER CALITZ:** May I just – must I

7 just give the grand totals again, I

8 think –

9 **CHAIRPERSON:** Well, I presume they've

10 caught up by now, but just carry on –

11 **BRIGADIER CALITZ:** Okay, Mr

12 Chairperson. I finished with the LCRC. The medical

13 staff and the "fire brigade," we had five medical personnel on

14 standby at "scene" 2, which is actually, "forward holding

15 area" 1, but they moved to scene 2, and the "fire" personnel

16 moved to scene 2, that is how I have it in total. Then the

17 pilots, from the side of the police we had three, we had two

18 helicopters, as well as the Oryx helicopter. ALEOS, it is

19 the crew with the pilots that

20 "match" the number and I had one Crime Intelligence

21 in the helicopter, which was in charge of the

22 video recording.

23 In total, is I have it at

24 "scene" 1 – but maybe it is not accurate because they

25 will move through – 318 started at scene 1, 75 at scene 2,

1 but remember I said, a lot of the people from scene 1, moved  
2 through to scene 2, on both scenes the specialist units amounted  
3 to 135. In the air we had 21, that is the total number  
4 I have for the day, under the different commanders,  
5 according to "exhibit" L 5-4-  
6 9. Yesterday, I said under correction it was 600, that is  
7 what I referred to. The total was 549. I think it is –

8 **CHAIRPERSON:** Is that the result of your  
9 homework?

10 **BRIGADIER CALITZ:** If you are happy  
11 with it, Mr Chairperson, that was my homework.

12 **CHAIRPERSON:** Yes. No, it sounds very  
13 comprehensive, but Mr Ntsebeza, are there any points that  
14 you want to raise with the witness on this topic before you  
15 move on to the rest of your cross-examination?

16 **MR NTSEBEZA SC:** Yes, thank you very  
17 much, Mr Chairman. And thank you very much, Brigadier. In  
18 fact your homework has been quite helpful. It's not very  
19 far from some of the things that we think. We are ad idem;  
20 we had thought that the POP members were 176 in total, but  
21 you say they were 180.

22 **BRIGADIER CALITZ:** 181.

23 **MR NTSEBEZA SC:** 181.

24 **BRIGADIER CALITZ:** In total.

25 **MR NTSEBEZA SC:** In total, yes.

1 **BRIGADIER CALITZ:** According to my  
2 calculations.

3 **MR NTSEBEZA SC:** And I don't think it's  
4 neither here nor there. We had worked out that the TRT  
5 unit was 154 total, and you have brought it to 155.

6 **BRIGADIER CALITZ:** Correct, Mr  
7 Chairperson.

8 **MR NTSEBEZA SC:** The STF we had worked  
9 out the final number to be 20, but you have brought it to  
10 22.

11 **BRIGADIER CALITZ:** Correct, Mr  
12 Chairperson.

13 **MR NTSEBEZA SC:** And the NIU we had  
14 thought was 111, but your calculations say they were 113.

15 **BRIGADIER CALITZ:** 1-1-3.

16 **MR NTSEBEZA SC:** 1-1-3, yes.

17 **BRIGADIER CALITZ:** 113.

18 **MR NTSEBEZA SC:** And the K9 unit, there  
19 we're ad idem; you said there were 38 of those and we are  
20 also able to say they were 38. Now it seems to me, and  
21 this is the point that I want to put to you, that we can  
22 safely say that at both scene 1 and 2 the POP units were  
23 outnumbered by the special units on this calculation at any  
24 one time.

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 no, I do not agree, except if I am understanding the

2 question incorrect.

3 **CHAIRPERSON:** Let's take scene 1 for

4 example. How many POP – you gave us the figure, but just

5 by way of repetition to focus on the point that Mr Ntsebeza

6 is busy with, how many POP people did you have at scene 1?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 Public Order Policing "scene" 1, I had 173.

9 **CHAIRPERSON:** 173, and then combined all

10 the special units, how many did you have?

11 **BRIGADIER CALITZ:** Oh no, okay, no, I

12 understand. I said they were placed at scene 1 to support Public

13 Order Policing and the TRT was then 134, but if you add the STF in the

14 air, the helicopters, the NIU, everyone that moved in,

15 in that case I agree, there were more. I

16 agree.

17 **CHAIRPERSON:** If you take out the people

18 in the air, just the ground forces, if one can call them

19 that, I understand what you had initially, but other people

20 came in. So what he wants to know, I think, is on the

21 ground, were there more combined specialised forces than

22 POP people, or the other way around? Just give us the

23 numbers, the special –

24 **BRIGADIER CALITZ:** No, I agree with

25 you, Mr Chairperson. I understood the question now.

1 In total the Public Order was 181, TRT 155, adding the  
2 STF of 21, subtracting the one in the air, adding  
3 the 100, subtracting the 13 in the air, then it is 155 plus  
4 100, in other words 255 plus 20, 274, 275, if my maths are correct –

5 **CHAIRPERSON:** So Mr Ntsebeza is right  
6 when he says at the critical moment there were more  
7 specialised forces there than POP people.

8 **BRIGADIER CALITZ:** Combined.

9 **CHAIRPERSON:** That his point.

10 **BRIGADIER CALITZ:** I agree, Mr  
11 Chairperson.

12 **MR NTSEBEZA SC:** Right, thank you. And  
13 if we look at exhibit L, slide 211, you got that?

14 **BRIGADIER CALITZ:** I did, Mr  
15 Chairperson.

16 **MR NTSEBEZA SC:** Yes, now there seems to  
17 be at scene 1 more ammunition fired by the TRT unit, than  
18 there were by the POP.

19 **BRIGADIER CALITZ:** Mr Chairperson,  
20 no, I disagree, unless –

21 **CHAIRPERSON:** I think by “ammunition” Mr  
22 Ntsebeza –

23 **MR NTSEBEZA SC:** Sharp-point.

24 **CHAIRPERSON:** - probably means sharp-  
25 point.

1 **BRIGADIER CALITZ:** The Public Order does not

2 have sharp points, except ...

3 **CHAIRPERSON:** Well, they did have a bit.

4 I mean if we look here you see the POP, there were 10 9mm,

5 11 5.56mm.

6 **BRIGADIER CALITZ:** It is correct.

7 **CHAIRPERSON:** So they had – but

8 relatively small amounts of sharp-point ammunition. Major

9 ammunition that they fired was less lethal.

10 **BRIGADIER CALITZ:** If you referred to a

11 sharp point, it is correct, Mr Chairperson.

12 **CHAIRPERSON:** Yes.

13 **MR NTSEBEZA SC:** Yes. That's the point.

14 In fact the indication there is that 284 rounds of sharp-

15 point ammunition were fired at scene 1. You agree with

16 that?

17 **BRIGADIER CALITZ:** That is what we see on this

18 "slide" under total, Mr Chairperson,

19 correct.

20 **CHAIRPERSON:** 284 sharp-point ammunition

21 units were expended, if that is the correct expression,

22 whereas only 37 of those were expended by the POP. The

23 balance were by the TRT. That's what the figures reveal.

24 **BRIGADIER CALITZ:** If you look at the calculations,

25 it is correct, Mr Chairperson.

1 **MR NTSEBEZA SC:** Now is there a way you  
2 can indicate how you determine, or how it could be  
3 determined that some were warning shots and some were shots  
4 fired towards the – I suppose it was the victims? You have  
5 109 which it is claimed were fired as warning and 175 as  
6 towards.

7 **BRIGADIER CALITZ:** Mr Chairperson, I  
8 do not know if I can give evidence in "hindsight". I  
9 was not there myself, so I do not think my evidence will be  
10 factually correct regarding what happened. If I understand  
11 the question correct, you want to know the difference between a warning shot  
12 and I direct shot aimed at a person. In operational terms a warning  
13 shot will be when I hold the weapon on a  
14 45-degree angle, and shoot into the ground in front of  
15 me. That is a warning shot. It is – how can I say it?  
16 – "Less lethal", it is aimed at warning the person that there is  
17 danger ahead, so that he can turn around and move away. "Towards the  
18 crowd," it is in self-defence,  
19 "private defence," self-defence, which is where this will  
20 happen.

21 **CHAIRPERSON:** Directly fired at them, for  
22 whatever reason.

23 **BRIGADIER CALITZ:** Directly fired at  
24 them, for whatever reason, was reported to me,  
25 that is why I say in "hindsight", it was in

1 self-defence.

2 **CHAIRPERSON:** I suspect that Mr Ntsebeza

3 is interested to know also how the numbers were arrived at,

4 and I assume, I mean that must have been based essentially

5 on what the members said. I take it, it was clear how many

6 units they had expended, how many shots they'd fired. That

7 could be seen by the amount of ammunition they'd used up

8 and so on, but how it was divided up is dependent really on

9 their say-so, I would imagine. Is that correct?

10 **BRIGADIER CALITZ:** It will be correct,

11 Mr Chairperson.

12 **MR NTSEBEZA SC:** No, I don't intend to

13 take that further with you. It's just that now that we are

14 talking about this slide, I thought you might be able to

15 throw some light on how the calculation was made to

16 determine. It probably was based on the statements made

17 by those who were involved. You did not as a person who

18 was in command on the day, you did not seek to establish

19 how that was arrived at, I take it?

20 **BRIGADIER CALITZ:** Negative, Mr

21 Chairperson.

22 **[09:29] MR NTSEBEZA SC:** So when you say you

23 might, you would have to go and check, is it an indication

24 that it would be for the first time that you actually apply

25 your mind to the differentiation?

1 **BRIGADIER CALITZ:** Mr Chairperson,  
2 no, if I can refer to what the chairperson said, it was  
3 reported like that. All the people reported,  
4 and they reported on how many rounds they fired,  
5 and in which area they were situated and fired the shots,  
6 that is where the information came from and that  
7 is why we told the members to  
8 consolidate.

9 **MR NTSEBEZA SC:** No, I ask because you  
10 must know or you would know that one of the contested areas  
11 is whether there were any warning shots that were fired, as  
12 a way of warning the protestors who on the SAPS version  
13 were attacking the police lines. Now I see you nod, you  
14 are aware of that contest, yes. Now since you became aware  
15 that there is a challenge by the mineworkers as to whether  
16 they were warned before they were shot at, did you, I'm  
17 talking now as you as brigadier, did you seek to establish  
18 whether this is well founded or did you just dismiss it?

19 **BRIGADIER CALITZ:** Mr Chairperson,  
20 no, I would not be able to help you in those  
21 circumstances.  
22 **MR NTSEBEZA SC:** No, I don't know whether  
23 you're answering the question. The question is, did you  
24 since you became aware that the miners are contesting and  
25 contending that there were no warning shots given before

1 they were fired at?

2 **MR SEMENYA SC:** Chairperson, we don't know

3 where that evidence is, Mr Ntsebeza may assist us?

4 **CHAIRPERSON:** I don't remember the

5 witnesses who were called, it is not your witnesses because

6 you're for the families, my recollection was that the

7 witnesses, the survivors who gave evidence about scene 1, I

8 don't remember that evidence been given, but in any event

9 we did see on the video, which Colonel Scott took us

10 through, what he said were warning shots. Do you remember

11 there were, - well, I don't think you were here but your

12 learned junior was here, I think or both of them, there

13 were shots, which appear to be fired at a 45-degree angle

14 into the ground and there were then dust clouds that went

15 up and according to Colonel Scott, this was his

16 interpretation of what we saw on the video, these were

17 warning shots.

18 They appeared to have been deliberately fired

19 into the ground in front of the advancing strikers. It was

20 done in re-examination by Mr Semenya when he led Colonel

21 Scott. I just mention that you because you may not be

22 aware of it, but I also do not recall direct evidence from

23 the side of the survivors who testified that there were no

24 warning shots. Therefore, I do not know where you get the statement

25 from. If it is intended to lead evidence to that effect, I

1 have not seen all the statements but if it is intended to  
2 lead evidence to that effect I haven't a statement in which  
3 that statement appears. That's the basis of Mr Semenya's  
4 objection, unless there is something in the transcript that  
5 supports, that I've missed, I'm not saying categorically  
6 that there was no evidence but I don't recall it, but  
7 that's the basis, my understanding of the objection. I put  
8 that to you to enable you to answer.

9 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

10 I may not be able to pinpoint the passage right away but I  
11 do recall that in his testimony Magidiwana did say that as  
12 they came around the kraal they were shot at and it clearly  
13 could be established from his evidence that they were not  
14 warned before they were shot at. Maybe let me try to see  
15 if we cannot find that.

16 **CHAIRPERSON:** It is also possible, to be  
17 fair, that he didn't appreciate it and it all happened so  
18 fast, so quickly, he didn't appreciate perhaps that shots  
19 were actually fired in the ground, which caused dust clouds  
20 to go up, were intended as warning shots. He may have seen  
21 them as shots fired but anyway in due course if there is a  
22 passage directly you can refer us to it, but proceed with  
23 the cross-examination at the moment.

24 **MR NTSEBEZA SC:** Yes, thank you, Mr

25 Chairman. Now –

1 **CHAIRPERSON:** Advocate Hemraj says to me  
2 that I must ascertain from you, you're talking about  
3 warning shots and not a verbal warning. That is common  
4 cause, as I understand it, that there were no verbal  
5 warnings at that point. The witness intended to give  
6 warnings later on when he proceeded further with phase 3,  
7 so he didn't give a verbal warning but the police evidence  
8 for what it is worth, is that there were warning shots  
9 fired, as I have described and of course, they say that  
10 there were warnings, or it is not really a warning strictly  
11 so called, but the use of non-lethal force would be a kind  
12 of a warning, although it may well be that it would be said  
13 that he didn't construe a warning that more lethal  
14 ammunition will be used later if the non-lethal force was  
15 not successful, but that is their case.

16 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

17 Let me investigate that evidence.

18 **CHAIRPERSON:** I don't think it is

19 important for your case.

20 **MR NTSEBEZA SC:** Indeed, I think in our

21 opening statement as well as everywhere else and you know,

22 can I just say at this stage we dispute that there were any

23 warning shots and if there is a need for us to lead

24 evidence on that aspect we will do so. We said so in our

25 opening statement but for now, for purposes of this cross-

1 examination –

2 **CHAIRPERSON:** In order to avoid

3 confusion, it may be, it is more of a terminological

4 difference in the sense that your clients, well, really the

5 survivors, your clients' colleagues may not have

6 interpreted the shots which were apparently fired into the

7 ground and caused dust clouds to rise, they may not have

8 interpreted those as warning shots. They may have expected

9 some sort of shot in the air or something like that, so it

10 may be that the difference is more terminological as it

11 were than actual, but anyway, -

12 **MR NTSEBEZA SC:** No, no, I –

13 **CHAIRPERSON:** Bear in mind Mr Semenya's

14 objection.

15 **MR NTSEBEZA SC:** No, no, that point was

16 made, you made that point, Mr Chairman, and it is going to

17 be part of our dealing with this issue going forward. Now,

18 Brigadier, I don't know if you know this from your own

19 experience on the day, but it does appear from all accounts

20 that the distances between the protestors and the TRT line

21 when the TRT opened fire was between 20 to 25 metres. The

22 distance between –

23 **CHAIRPERSON:** The TRT line and –

24 **MR NTSEBEZA SC:** The TRT line –

25 **CHAIRPERSON:** - between 20 to 25 metres.

1 **MR SEMENYA SC:** How was that measure

2 taken, Chairperson –

3 **COMMISSIONER HEMRAJ:** Where does it

4 appear from, Mr Ntsebeza, if you could just assist me

5 please?

6 **CHAIRPERSON:** If necessary we can get the

7 Google Earth map.

8 **MR NTSEBEZA SC:** I was going to say that,

9 Mr Chairman, that the Google maps do give the distance.

10 **CHAIRPERSON:** But you know the question

11 is, had the exercise been performed and before you state it

12 as a fact, it should be cleared that it is a fact. May I

13 make a suggestion; I do not know how important it is for you

14 to make this point at this stage in your cross-examination,

15 if you can make it after tea it might be possible for the

16 exercise to be performed between you and the police

17 representatives.

18 **MR NTSEBEZA SC:** Okay.

19 **CHAIRPERSON:** And you may well be able to

20 agree on the distance and it is an objective fact what the

21 distance is, it is simply a question of ascertaining it.

22 **MR NTSEBEZA SC:** Yes, that's fair, Mr

23 Chairman. Now the members of the Special Units were armed

24 with R1 and R5 rifles, it seems to be common cause, would

25 you agree with that?

1 **BRIGADIER CALITZ:** It is correct, especially

2 regarding the weapons, sir.

3 **MR NTSEBEZA SC:** And what I want to put

4 to you is that in terms of your own experience as well as

5 in terms of evidence that has been led by an expert from

6 the SAPS, R5 and R1 rifles do inflict very serious wounds

7 and are in fact designed to incapacitate and to kill, would

8 you agree with that?

9 **BRIGADIER CALITZ:** Mr Chairperson, if

10 I understand the question, a R5 weapon can kill and

11 seriously injure, correct.

12 **MR NTSEBEZA SC:** In fact if you could up,

13 Mr Chairman, the evidence of Warrant Officer Wessels,

14 T2152?

15 **CHAIRPERSON:** What's the point you want

16 to establish? The witness accepts the main proposition you

17 put to him that these are assault rifles, designed to

18 assault people legally or illegally.

19 **MR NTSEBEZA SC:** Well, if that, I take

20 your point, Mr Chairman. Now on the basis that you accept

21 this portion of what was testified to and that is that they

22 can inflict very serious wounds and can incapacitate

23 whoever is shot at, if a person were to be shot in the leg

24 with an R1 or an R5 rifle, the shot would cause very

25 serious injury, would it not?

- 1 **BRIGADIER CALITZ:** I did not clearly  
2 hear to what part of the body you referred to, but  
3 the –
- 4 **MR NTSEBEZA SC:** In the leg.
- 5 **BRIGADIER CALITZ:** The leg?
- 6 **MR NTSEBEZA SC:** The leg, yes.
- 7 **BRIGADIER CALITZ:** It will leave a wound,  
8 it is correct, Mr Chairperson.
- 9 **MR NTSEBEZA SC:** The person concerned  
10 will not be able to carry on running, would they?
- 11 **BRIGADIER CALITZ:** Mr Chairperson, I am  
12 not an expert, maybe if it is a flesh wound the  
13 person will be able to run, if it goes through the leg,  
14 the bone will fracture and the person will not be able  
15 to run. It depends on where in the leg the shot  
16 is going through.
- 17 **MR NTSEBEZA SC:** Is your evidence that an  
18 R5 or an R1 rifle would leave a superficial wound?
- 19 **BRIGADIER CALITZ:** I do not understand the  
20 question, superficial, maybe if you can explain it to me?
- 21 **MR NTSEBEZA SC:** A flesh wound, I'm  
22 sorry?
- 23 **BRIGADIER CALITZ:** Again, Mr  
24 Chairperson, I am not an expert on wounds, so  
25 I would not be able to tell if a person

1 would be able to continue running,

2 I cannot testify on that.

3 **MR NTSEBEZA SC:** Let me put the question

4 again, if a person was shot in the leg with an R1 or an R5

5 rifle, that person would be incapacitated, would not be

6 able to move and I put this to you as an experienced

7 policeman of a number of years that you have been an

8 experienced policeman, would you accept that as a

9 proposition?

10 **MR SEMENYA SC:** Chairperson, I don't know, we

11 do know that some of the witnesses cut their own toes and

12 they ran to the next koppie and these propositions are

13 inconsistent to the evidence as we know it.

14 **MR NTSEBEZA SC:** No, I don't know whether

15 that's a comment or –

16 **CHAIRPERSON:** That's what the comment

17 was, the point taken, I think the question is unfair

18 because on the evidence we have, one at least of the

19 witnesses was shot in the leg, shot in the foot actually

20 and he was able to go on running albeit obviously in

21 circumstances of great pain and difficulty, so the point

22 taken is that your question is unfair because it is

23 contrary to the evidence that we've had. If I may say so,

24 I think the problem is the generality of the proposition.

25 Clearly some people, possibly most people who have been

1 shot through the leg with R1 or R5 ammunition would be  
2 incapable of running any further. There would be cases of  
3 people who, perhaps with superficial wound, a flesh wound  
4 were able to go on running.

5 I don't know if you can state it as a general  
6 proposition that's always applicable. It may well be, it  
7 might be worthwhile exploring insofar as you can based on  
8 the experience of this witness, how frequently that would  
9 happen, but I think the objection taken to the generality  
10 of the proposition read against the background of the  
11 evidence led must be upheld.

12 **MR NTSEBEZA SC:** Maybe let me put the  
13 question differently based on the comments by Warrant  
14 Officer Wessels when that proposition was put to him when  
15 there is a colleague of yours, he might want to express a  
16 view. In line –

17 **CHAIRPERSON:** Perhaps the record, perhaps  
18 the relevant passage from the transcript can be put on the  
19 screen so that we can all see it and follow it.

20 **MR NTSEBEZA SC:** Yes, Mr Chairman.

21 **CHAIRPERSON:** I don't know if the witness  
22 was referred to this passage in the evidence in the bundle  
23 of papers, were you?

24 **BRIGADIER CALITZ:** No, Mr  
25 Chairperson.

1 **CHAIRPERSON:** But I would imagine you could  
2 handle it when we see the transcript on the screen.

3 **BRIGADIER CALITZ:** If he gets it, I  
4 will look at it, thank you, Mr Chairperson.

5 **MR NTSEBEZA SC:** We know the brigadier  
6 has been here for quite some time, he is now used to it.

7 **BRIGADIER CALITZ:** Sorry, I did not  
8 hear the comment –

9 **MR NTSEBEZA SC:** I say you have been here  
10 for quite some time, you will now be able to navigate your  
11 way through surprise questions if this is –

12 **CHAIRPERSON:** It depends on how  
13 surprising they are.

14 **MR NTSEBEZA SC:** No, it is not, Mr  
15 Chairman.

16 **CHAIRPERSON:** I don't know how much of  
17 ambush is involved, but I'm not suggesting you're ambushing  
18 him but let's get the passage and the transcripts –

19 **MR NTSEBEZA SC:** Yes –

20 **CHAIRPERSON:** - and then he can look at  
21 it and we can see whether he can deal with it.

22 **MR NTSEBEZA SC:** I think it was cross-  
23 examination from my elder colleague –

24 **CHAIRPERSON:** The page?

25 **MR NTSEBEZA SC:** It is T2105, lines 14 to

1 24.

2 **CHAIRPERSON:** It is page 2105 of the  
3 transcript, let's get that page and then we'll zoom in on  
4 the lines. What lines did you refer to, Mr Ntsebeza? We  
5 do not have the page?

6 **MR NTSEBEZA SC:** Lines 14 to 24.

7 **CHAIRPERSON:** Alright, so is it possible  
8 for that page of the transcript to be shown? I hope we're  
9 not waiting for nothing and that something is being done to  
10 get the page. Do you know, has he got it, Adv. Pillay, if  
11 it is going to be shown we'll wait a minute or two, if it  
12 is not going to be shown I don't think we should wait for  
13 nothing?

14 **MR NTSEBEZA SC:** Can I put this

15 proposition to you whilst –

16 **CHAIRPERSON:** We have it, Mr Ntsebeza,  
17 we're in business, what line did you say, 14 to 24?

18 **MR NTSEBEZA SC:** Yes.

19 **[09:49] CHAIRPERSON:** Now Mr Bizos is cross-  
20 examining Warrant Officer Wessels, he's made the point that  
21 the 5.56 by 45 millimetre cartridge, that's the R1, or  
22 that's the cartridge fired by R1 and R5 weapons, is it?  
23 And he said it was developed by the USA for military  
24 operations due to the fact it creates a severe wound, has  
25 the capability to inflict serious damage. Therefore, it was

1 designed to inflict damage, and then let's go on a bit  
2 further, 14 to 24 is the passage – if you could take 14 up  
3 to the top of the screen, please? - The passage that Mr  
4 Ntsebeza is referring to. So, says the warrant officer, "a  
5 serious wound can certainly cause death. There is however  
6 a theory from the military for the US states, the cartridge  
7 was designed to such a state, would inflict such a wound,  
8 it would take two or three soldiers on battlefield to carry  
9 the wounded soldier to the back, thus making less soldiers  
10 available on the frontline, and having the effect of  
11 inducing fright to the enemy's soldier." If someone,"  
12 proceeds the warrant officer, "in my instance, in my point  
13 of view, if it's just designed to kill, not just  
14 incapacitate, would not have the same effect." That's the  
15 passage you're relying on, is it?

16 **MR NTSEBEZA SC:** Yes. Now, the question  
17 I want to put to you is relative to this and it's a  
18 revisiting of the first one that I put. If an R1 rifle was  
19 used and a person was hit in the bone part of a leg – let's  
20 now forget about the flash – given the kind of effect that  
21 it appears these R1 and R5 ammunition have, in terms of  
22 incapacitation, would the person be able to move?

23 **BRIGADIER CALITZ:** Correct, Mr  
24 Chairperson.

25 **CHAIRPERSON:** I understood the witness to

1 concede that before. He said if the bullet came into  
2 contact with the bone and fractured the bone, he said,  
3 which it would obviously if it came in contact with, I  
4 understood him to say the person concerned, the injured  
5 person, would not be able to move further. That was his  
6 evidence earlier and I take it he still sticks to that, is  
7 that right?

8 **BRIGADIER CALITZ:** Yes, I just answered  
9 the question, asked by Mr Ntsebeza, "Will the person  
10 be able to move?" I said it was correct.

11 **MR NTSEBEZA SC:** Now, by correct, what do  
12 you mean by correct?

13 **BRIGADIER CALITZ:** Mr Chairperson, your  
14 question to me was, if you are shot in the leg with a R5 or with a R1,  
15 you referred to the bone part of  
16 the leg, "Will  
17 that person be able to move?" I then answered, yes,  
18 that person will still be able to move.

19 **MR NTSEBEZA SC:** Can the person keep on  
20 running, let alone charging?

21 **BRIGADIER CALITZ:** In that case I  
22 do not believe that I would be able to run with a broken leg,  
23 no.

24 **MR NTSEBEZA SC:** No. The person would  
25 fall to the ground in all likelihood?

1 **BRIGADIER CALITZ:** I guess so, Mr

2 Chairperson, I cannot

3 – I cannot testify on that, but in all likelihood I

4 presume he will be on the ground with a broken

5 leg, yes.

6 **MR NTSEBEZA SC:** The impact of the bullet

7 may even cause the bones in that leg to break?

8 **BRIGADIER CALITZ:** Again, Mr

9 Chairperson, I am not an expert, but I believe if the bullet

10 enters the leg, there will be a fracture.

11 **MR NTSEBEZA SC:** Can we agree, and I take

12 also the exception made by even Warrant Officer Wessels,

13 who's an expert, that even a wound can lead to death, but

14 is it fair to put to you that if a person were charging

15 towards you in order to attack, you would stop them in

16 their advance if you shot them in the leg?

17 **BRIGADIER CALITZ:** Mr Chairperson,

18 it all depends on the distance and the

19 circumstances. I would say a warning shot is supposed to

20 stop him, it all depends on the

21 circumstances and the distance.

22 **MR NTSEBEZA SC:** Yes, what I'm trying to

23 say to you is that all things being equal, where you had a

24 choice, as I think one would have a choice, there is person

25 who's charging at you, and in fairness to you, let's say

1 the person is charging armed with panga and spear and all  
2 the other lethal weapons associated with the mineworkers  
3 here, and you had a R1 rifle, if you wanted to incapacitate  
4 that person, is it fair to say where you would aim at is at  
5 the legs, if you wanted to stop them in their tracks from  
6 attacking?

7 **BRIGADIER CALITZ:** No, Mr

8 Chairperson, I do not agree.

9 **MR NTSEBEZA SC:** Can you indicate why you  
10 do not agree?

11 **BRIGADIER CALITZ:** Mr Chairperson, I

12 indicated that it depends on the circumstances, it depends  
13 on the distance he is from the person, it also  
14 depend on how I, as a person, react to an attack.

15 The advocate and myself will react differently when being  
16 attacked. It depends on the members at the left and the  
17 members at the right. I also presume everybody that  
18 everyone did not shoot, so it depends on what side you observed the attack.

19 How did you react to the attack and how far you were from the attack?

20 I would say there are factors, Mr Chairperson.

21 **CHAIRPERSON:** We're going to get to the

22 distance after tea, I think, but I take it's a general

23 proposition, subject to other aspects, if someone has come

24 rushing towards me to kill me, I'm expected, if I can, to

25 rather shoot – and I have a firearm – to shoot him in the

1 leg, rather than in the chest, if I can do so, because if I  
2 shoot in the leg, I'll stop him from coming to me, but I  
3 won't kill him. But, of course, that's the - of  
4 perfection, it may not always be possible to do that, but I  
5 think the general proposition being put to you is that  
6 other things being equal - I know you say they weren't, but  
7 other things being equal, someone advancing towards you,  
8 particularly if he's only armed with a panga - so in other  
9 words, he'd really have to get close to you before he could  
10 do you harm, and if you've got a firearm and he's some  
11 distance away, you should, as a general proposition, try to  
12 shoot him in the legs rather than in the torso, in the  
13 chest. I take you'd agree with that?

14 **BRIGADIER CALITZ:** It is a  
15 possibility, Mr Chairperson.

16 **CHAIRPERSON:** Of course, it's made more  
17 difficult, I suppose, in fast moving scene, to make sure  
18 you shoot someone in the leg, if he's leaning forward, sort  
19 of bending forward as he approaches you, easier to hit  
20 someone in the leg, I would imagine, if he were standing  
21 upright. That must be right, I would think?

22 **BRIGADIER CALITZ:** I agree with you in  
23 that case -

24 **CHAIRPERSON:** The general proposition  
25 being put to you by Mr Ntsebeza is you should shoot for the

1 legs, rather than the torso, and that's the preferred  
2 option. You would agree with that?

3 **BRIGADIER CALITZ:** Mr Chairperson, again,  
4 my evidence will be, there is a possibility.

5 It depends on each individual person, but I agree with  
6 u, Mr Chairperson.

7 **CHAIRPERSON:** Assuming you've got two  
8 members of the service standing next to each other, it's  
9 possible to shoot in the leg. One of them does the, what I  
10 would suggest, is the right thing. He shoots in the leg.  
11 The mere fact that the one next to him takes a different  
12 attitude and shoots in the torso, doesn't mean because the  
13 fact that he did that somehow lets him off the hook. If it  
14 was possible to shoot in the leg, the circumstances  
15 permitted, and then he should have done it. Isn't that right?

16 **BRIGADIER CALITZ:** I agree with you on that  
17 case – it is correct, sir.

18 **MR NTSEBEZA SC:** Now what the chairman  
19 has proposed to you is a scenario pretty much the kind of  
20 scenario you would encounter, because between a choice that  
21 he and I would have to exercise, as ordinary people,  
22 assuming we are able to use firearms, ordinarily that's  
23 what you would expect, that if I was confronted with a  
24 person who's attacking me, if I'm going to plead self-  
25 defence, I'm expected to have attempted to shoot the person

1 where it would not be fatal. Would you accept that as a  
2 general proposition?

3 **BRIGADIER CALITZ:** Mr Chairperson, if I understand  
4 correctly, he also referred to what Mr  
5 Chairperson said. I made notes, Mr  
6 Chairperson, I said where and if possible, and I said  
7 I accept it.

8 **MR NTSEBEZA SC:** But you'll agree with me  
9 it's a different kettle of fish if we are dealing here with  
10 trained police officers. Trained police officers who have  
11 been trained, I would assume, to take a route in decision  
12 making that would be less fatal for the victim. Do you  
13 agree?

14 **BRIGADIER CALITZ:** Mr Chairperson,  
15 yes, the members were trained and then to refer to the second part of  
16 the question?

17 **MR NTSEBEZA SC:** You are not going to  
18 suggest to the Commission that trained police officers do not  
19 have to make a choice as to where they can shoot a victim,  
20 when an option is there for them to shoot them either in  
21 the head or in the leg? Those two options are open. You  
22 are not going to suggest that you are trained to shoot at  
23 anyone who attacks you, irrespective of whether you shoot  
24 them in the head or you shoot them in the legs?

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 yes, let us return to you previous question where I said,

2 as far as possible and I agreed.

3 **MR NTSEBEZA SC:** And therefore to come to

4 what the chairman was saying, if you know that you are

5 armed with an R5 or an R1 rifle, and it is possible for you

6 to avoid shooting a person who's attacking you on the upper

7 body, because you want to avoid killing them, would it be

8 fair to say your choice would be to aim for the lower body?

9 **MR SEMENYA SC:** Chairperson, asked in a

10 different formats, the witness has conceded the point.

11 **CHAIRPERSON:** I think the objection now

12 is one of repetition, Mr Ntsebeza. You've made the point

13 already. The witness has conceded it. You don't have to

14 underline it. There's always the danger, you know, if you

15 ask a question twice and you get a good answer the first

16 time, you may not get the same answer the second time. I

17 think the suggestion is you've made your point, you might

18 like to move on to the next one.

19 **MR NTSEBEZA SC:** If that is the view of

20 the Chairperson that the point has been made –

21 **CHAIRPERSON:** By Mr Semanya –

22 **MR NTSEBEZA SC:** Well –

23 **CHAIRPERSON:** He and I agreed on this –

24 **MR NTSEBEZA SC:** Well, it's nice to know

25 that there is a concession from my colleague.

1 **CHAIRPERSON:** - comment, Mr Ntsebeza.

2 **MR NTSEBEZA SC:** Now, just so that I

3 don't ask the same question, but I try to expand on the

4 questions that I've been putting. Is it so that police are

5 given accuracy training in the use of rifles, like R5 or

6 R1?

7 **BRIGADIER CALITZ:** Will you just

8 repeat, please. Is what -?

9 **MR NTSEBEZA SC:** Accuracy training

10 **BRIGADIER CALITZ:** Do you want to know if a R5 or

11 a R1 are accurate?

12 **MR NTSEBEZA SC:** No, no, what I want to

13 know is whether it is not part of the training of police

14 officers, and especially specialised forces, to be trained

15 to be accurate in the manner in which they discharge -

16 **BRIGADIER CALITZ:** Mr Chairperson,

17 yes, no, I understand the question now, thank you, very much. The best

18 answer I can give to that is, if we do shooting practice,

19 we do it on targets and we shoot at different parts of the targets,

20 so yes, they are definitely trained.

21 **MR NTSEBEZA SC:** And specialised units,

22 like the TRT, would be given and have to pass even a higher

23 learning of training in that regard than ordinary SAPS

24 members, which is why they are called specialised units,

25 isn't it?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **MR NTSEBEZA SC:** So given that they were

4 in the majority there, and there is now evidence that they

5 did fire at the people who were conceived by them to be

6 attacking them, and given their training, would it be fair

7 to suggest that unless it is clear that they had no other

8 choice, the aim should have been for them to incapacitate

9 the attackers by shooting them in their legs, certainly

10 their lower bodies, so that they could not advance anymore?

11 **BRIGADIER CALITZ:** Mr Chairperson,

12 yes, I understand the question the same as before,

13 on which I answered, and your words were, "unless there was other

14 choice," I understand it the same way, and again I will

15 say, yes.

16 **MR NTSEBEZA SC:** Now, are you contesting

17 – as I understand it, you do not contest that in order to

18 avoid fatalities; it would be preferable, if it were

19 possible, not to aim at the upper body or at the heads of

20 those who are attacking? If it is possible and you are

21 being attacked, it is preferable?

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 yes, I do not know if I will be in the way. I still

24 understand the question as I did before. I did – my

25 answer will be – I do not want to go through it for

1 the fifth time – but I think I said, yes,  
2 if it would be possible, I agreed with  
3 you. Again, if possible, yes, I agree with  
4 you.

5 **MR NTSEBEZA SC:** Now, I don't know

6 whether you have had an occasion to look at the file that  
7 was provided to you, with respect to the deceased persons,  
8 where the evidence shows where they were shot. And I am  
9 not wanting to put to you questions that seek to establish  
10 whether you can authenticate the post-mortem reports.

11 **[10:09]** That obviously would be put to other witnesses.

12 You are not an expert there. There is also in your bundle  
13 a summary by the SAPS of forensic experts' reports of 16  
14 people who were killed in scene 1, and fatal wounds that  
15 were sustained by all 16. Now as I say, you are not the  
16 witness for us to be putting those questions to as to  
17 whether or not the wounds – but if we proceed on the basis  
18 that the reports say what they say, and as I say, I'm only  
19 relying on the SAPS's own summary, the results show that  
20 most of the people related to the families I represent were  
21 killed in a particular way. For instance, the report you see  
22 at page 15 - Mr Chairperson, I would like to introduce as an  
23 exhibit the summary of the forensics experts' reports.

24 **CHAIRPERSON:** I suppose we'd better make

25 them an exhibit, shouldn't we?

1 **MR NTSEBEZA SC:** I don't believe it was

2 made –

3 **CHAIRPERSON:** No, I say I think we should

4 make them an exhibit.

5 **MR NTSEBEZA SC:** It's a new exhibit, Mr

6 Chairman.

7 **CHAIRPERSON:** It will be KKK10. Is that

8 right, Ms Pillay?

9 **MS PILLAY:** KKK10, Chairperson.

10 **CHAIRPERSON:** How do we describe them, Mr

11 Ntsebeza?

12 **MR NTSEBEZA SC:** Shouldn't we describe it

13 as the SAPS's summary of forensic experts' reports?

14 **CHAIRPERSON:** Regarding those killed at

15 scene 1?

16 **MR NTSEBEZA SC:** Regarding those who were

17 killed at both scene 1 and scene 2.

18 **CHAIRPERSON:** Regarding strikers killed

19 at both scenes.

20 **MR NTSEBEZA SC:** Indeed, Mr Chairman.

21 **CHAIRPERSON:** Alright, so that whole

22 bundle of documents will go in – I think the pages have

23 been numbered and so we'll simply call the whole bundle

24 KKK10. So there are 36 pages. Cause of death is the 36th

25 page.

1 **MR NTSEBEZA SC:** Yes.

2 **CHAIRPERSON:** And 35th page is a summary  
3 of selected aspects of the autopsy finding, but for the  
4 rest, the 1 to 34, each page relates to a particular  
5 incident.

6 **MR NTSEBEZA SC:** Yes, that's how I  
7 understand the bundle.

8 **CHAIRPERSON:** Alright, so we now know how  
9 to describe the exhibit when you refer to it further.

10 **MR SEMENYA SC:** Chairperson, can we place on  
11 record the genesis of the document, that it is an internal  
12 document created by the SAPS working on the various  
13 information, for the purposes of ascertaining it. It has  
14 not been vouched to be correct. It was extracted out of  
15 the hard drive of the SAPS when the evidence leaders sought  
16 to, requested the hard drives to be produced. It can be  
17 used with that statement being said.

18 **CHAIRPERSON:** Alright, you are not  
19 objecting to its use, but you're just entering sort of a  
20 caveat that not too much reliance must be placed upon it  
21 because some of the evidence isn't –

22 **MR SEMENYA SC:** May. May, may not be  
23 accurate.

24 **CHAIRPERSON:** Well, I was going to say  
25 isn't necessarily correct, but I mean it may not be

1 correct, but you're not being obstructionist, you say they

2 can use it but as long as that caution is borne in mind.

3 That seems fair enough, Mr Ntsebeza.

4 **MR NTSEBEZA SC:** Yes. I wouldn't expect

5 my colleague to be obstructionist in any way. We come a

6 long way.

7 **CHAIRPERSON:** But I take it the material

8 relating to the actual post mortem findings are extracted

9 from exhibits that are before us, and there shouldn't be

10 much argument about that, but if there is it's a matter

11 than can easily be sorted out by reference to the original

12 source document. But there is other information about

13 where they lived and whether they were employed and whether

14 they had Teba contracts and all that kind of stuff. That's

15 material, which is not vouched for by the police. That's

16 right, Mr Semanya, is it?

17 **MR NTSEBEZA SC:** Yes.

18 **MR SEMENYA SC:** Correct, Chairperson.

19 **MR NTSEBEZA SC:** Thank you, Mr Chairperson, and

20 thank you, my colleague. We are quite happy with the basis

21 on which the document is – because we, as I indicated when

22 I presaged this line of cross-examination, we are not

23 seeking the witness to vouch for the correctness or

24 otherwise, but on the basis only that if it is so then we

25 will take the witness just through certain aspects. It

1 should be tedious, but –

2 **CHAIRPERSON:** I take it you're cross-

3 examining the witness at the moment on scene 1, the people

4 who were killed at scene 1, are you?

5 **MR NTSEBEZA SC:** Yes.

6 **CHAIRPERSON:** So if that's correct we

7 start at page 14 of the document. I take it you're not

8 going to take him through each one of the summarised post

9 mortem reports, but we start at 14. Whether you're going

10 to use 14 is for you to decide, but that's where we start

11 as far as the scene 1 victims are concerned. Is that

12 correct?

13 **MR NTSEBEZA SC:** Yes, Mr Chairman.

14 **CHAIRPERSON:** Victims is not the exact –

15 the word I should use is "deceased," or "killed persons."

16 Sorry, we were looking at the document. I understand you

17 want to say something, Brigadier?

18 **BRIGADIER CALITZ:** [Microphone off,

19 inaudible]

20 **CHAIRPERSON:** You're the witness, so

21 you have the right to say something.

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 no, it is correct. I asked on which page – I think

24 you referred to 14, so I just tried to find my place.

25 **CHAIRPERSON:** 14 is the first deceased in

1 respect of which material appears –

2 **BRIGADIER CALITZ:** I have it, yes.

3 **CHAIRPERSON:** - who was killed at scene

4 1. The first 13 was the scene 2, they were scene 2 people.

5 So anyway, Mr Ntsebeza, are you going to start with 14, or

6 which page are you going to start with, using this bundle?

7 **MR NTSEBEZA SC:** I'm going to start with

8 J-I-J-A-S-E, page 15. Mr Chairman, I don't know

9 whether it's appropriate to give a warning.

10 **CHAIRPERSON:** Are we going to see

11 pictures of them as well on the screen –

12 **MR NTSEBEZA SC:** Well, we might –

13 **CHAIRPERSON:** - deal with the material

14 here?

15 **MR NTSEBEZA SC:** We might describe the –

16 **CHAIRPERSON:** Sorry?

17 **MR NTSEBEZA SC:** We might describe the –

18 **CHAIRPERSON:** Alright. What is going to

19 happen from now on is details are going to be given

20 relating to certain of the people, who were shot at scene 1,

21 to start with, and descriptions will be given which will be

22 rather graphic in some cases, of the wounds these persons

23 sustained before they died, and if anyone here who is

24 related to one of those people, or a close friend of that

25 person, and who feels that there is a danger that he or she

1 will be distressed and deeply troubled by hearing this  
2 description, I would suggest they leave the chamber at this  
3 point. I will ask that Mr Ntsebeza only proceed when he's  
4 satisfied that all persons who wish to leave, have availed  
5 themselves of the opportunity.  
6 I understand, Mr Ntsebeza, that you've been  
7 repeating in somewhat expanded form perhaps in Xhosa what I  
8 said in English earlier.

9 **MR NTSEBEZA SC:** Yes, Mr Chairman.

10 **CHAIRPERSON:** So there could be no  
11 misunderstanding and everybody here who are dependent on  
12 the translation will know what is being said.

13 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

14 Now Brigadier, we are wanting merely to show that the 16  
15 people according to these records, they create a case that  
16 suggests that fatal wounds that were sustained by all 16  
17 people who were killed at scene 1, were wounds that were in  
18 the upper body. Do you follow?

19 **BRIGADIER CALITZ:** I follow as we go on,  
20 and then try to keep up, thank you, Mr  
21 Chairperson.

22 **MR NTSEBEZA SC:** Yes. I just wanted to  
23 do that introduction, and then I say for instance if we  
24 turned to page 15 of that bundle and the number is 15, and  
25 the name of the deceased is Mr Patrick Akhona, now

1 we will not burden the record with his address. We may  
2 just indicate that he was a 26-year old rock drill operator  
3 at that shaft, but this report says in the fourth column,  
4 "gunshot wound in the head, old wound in arm." Now, and  
5 also on forensic findings there is something that says,  
6 "Shot in back of head, arm and chest." Do you see that?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 yes, I disagree. You are referring to column 4, if I can  
9 read it, I do not think it is on the  
10 screen – "gunshot wound in head, old wound in arm."  
11 You left out the part, "Traditional markings on body." You left that  
12 out in the sentence, but with the rest I agree with  
13 you, and then in "forensic findings", I see it says,  
14 "Shot in back of head, arm and chest."

15 **CHAIRPERSON:** Yes, I take it it's not  
16 suggested that he died because of the traditional markings  
17 on the body, so Mr Ntsebeza is concentrating on the fatal  
18 injuries, I think.

19 **MR NTSEBEZA SC:** I would have thought  
20 that the Brigadier is not suggesting that the traditional  
21 marks were the cause of death.

22 **BRIGADIER CALITZ:** Not at all, Mr

23 Chairperson. I referred to the column that you –

24 **MR NTSEBEZA SC:** So the omission was

25 quite deliberate.

1 **CHAIRPERSON:** You're reading it for the  
2 sake of completeness, but with respect, the extra bit you  
3 added didn't take it any further.

4 **BRIGADIER CALITZ:** Correct, Mr  
5 Chairperson.

6 **MR NTSEBEZA SC:** Yes. So we can accept  
7 that. Now on page 21, in relation to Mr Tukusa, name of  
8 deceased, occupation, Mpangeli Tukusa, 41-year old ex-  
9 Lonmin worker. Now in that column – and please ignore the  
10 fresh traditional healer markings on neck, spine, and  
11 everywhere else, and let's concentrate on the findings,  
12 "Gunshot wound to head. Entrance wound at earlobe. Exit  
13 wound over left eye. Two toes missing on right foot." You  
14 see that?

15 **BRIGADIER CALITZ:** Yes, Mr  
16 Chairperson, there is "Birdshot," but I do not know if I  
17 have to read it and if you are going to take it further.

18 **MR NTSEBEZA SC:** Yes.

19 **CHAIRPERSON:** Those weren't fatal. This  
20 is one of the people who were also shot with pellets.  
21 Remember that was the subject of earlier debate. One day  
22 perhaps we'll find out who was firing pellets, but we're  
23 not busy with that at the moment. But Mr Ntsebeza as I  
24 understand it is concentrating on the fatal wounds. Is  
25 that right, Mr Ntsebeza?

1 **MR NTSEBEZA SC:** Yes, Mr Chairman, and  
2 insofar as it is, those fatal wounds are indicated to have  
3 been in the upper body, unless of course –

4 **BRIGADIER CALITZ:** Mr Chairperson, I  
5 – sorry, is the question still not –

6 **MR NTSEBEZA SC:** No, go ahead.

7 **BRIGADIER CALITZ:** I thought you had –

8 **CHAIRPERSON:** If you have a comment to  
9 make, you're entitled to make it.

10 **BRIGADIER CALITZ:** No, no, sorry, I  
11 thought the question was put to me that the wounds were in the  
12 "upper body." I wanted to refer to "two toes  
13 missing on the right foot."

14 **CHAIRPERSON:** Fatal wounds.

15 **BRIGADIER CALITZ:** Are we now only talking about  
16 the "fatal wounds?"

17 **CHAIRPERSON:** He's concentrating on fatal  
18 wounds. There are a lot of other wounds and marks and so  
19 on, but that's not, as I understand it, the thrust of Mr  
20 Ntsebeza's cross-examination.

21 **BRIGADIER CALITZ:** I understand, I  
22 understand it now, Mr Chairperson.

23 **CHAIRPERSON:** If he departs from fatal  
24 wounds I'll ask him to indicate it expressly to you.

25 **BRIGADIER CALITZ:** I understand. I have

1 it like that, Mr Chairperson. Thank you.

2 **MR NTSEBEZA SC:** No, I see the thing

3 about toes and I remember the remark that was made by my

4 learned friend earlier on about people removing their own

5 toes. We are not there. If we went to page 24 –

6 **MR SEMENYA SC:** Chairperson –

7 **CHAIRPERSON:** Mr Semenya?

8 **MR SEMENYA SC:** I'm lost as to where we

9 are going. Are we just reading the reports for what they

10 are –

11 **CHAIRPERSON:** No, I think he's –

12 **MR SEMENYA SC:** - because that's what

13 they are?

14 **CHAIRPERSON:** No, I think he's putting to

15 the witness a number of cases, as I read it, where there

16 were injuries in the head, and presumably, when he is

17 collected all those, the number started at 13 and he's

18 already at 24, so there are not so many, it would seem.

19 **MR SEMENYA SC:** But the witness can't

20 dispute it, Chairperson. That's the point I'm making.

21 **CHAIRPERSON:** No, no, I understand, but –

22 **MR NTSEBEZA SC:** The witness has had –

23 **[10:28] CHAIRPERSON:** You and I might cross-

24 examine differently from the way Mr Ntsebeza is doing it,

25 but he's got his cross-examination worked out, the

1 questions aren't irrelevant so I think we can let him carry  
2 on for the moment. If it gets too repetitive then we can  
3 come back to it, but for the moment I'm happy with him.

4 **MR NTSEBEZA SC:** Can I show my learned  
5 friend or the chairman, it won't be repetitive because  
6 we'll be talking about each of the employees who got  
7 killed. Thank you very much, Mr Chairman. Page 24, and we  
8 are on number 24, Mr Mguneni Noki. Now the post mortem  
9 finding there –

10 **CHAIRPERSON:** Do you have the name of  
11 the person, sorry?

12 **MR NTSEBEZA SC:** Mguneni, it is Mr Noki,  
13 the man with the green blanket.

14 **CHAIRPERSON:** The deceased in this case  
15 aren't just numbers and letters, we must respect their  
16 dignity even, the deceased in this case are not just  
17 numbers or letters.

18 **MR NTSEBEZA SC:** No, no, no, no, I  
19 mentioned the name; I am quite sensitive to that aspect, Mr  
20 Chairman. I mentioned his name as Mr –

21 **CHAIRPERSON:** It is my fault, okay, carry  
22 on.

23 **MR NTSEBEZA SC:** No, I did, Mr Chairman,  
24 thank you very much, but I accept your concern. Mguneni  
25 Noki, we are not, I'll put the question, you see that the

1 post mortem findings show that he was killed as a  
2 consequence of gunshot wounds to the face and neck.

3 **BRIGADIER CALITZ:** Correct, Mr

4 Chairperson.

5 **CHAIRPERSON:** I'm not sure if that is

6 correct, Mr Ntsebeza. Those are post mortem findings that

7 you chosen to emphasis by printing them in heavier type

8 than the others, but I'm not sure that that was the cause

9 of death because there were, you'll remember in his case

10 there was a substantial number of wounds in the lower body

11 as well, and I'm not sure what exactly killed him, but

12 you're correct in pointing out that he had gunshot wounds

13 in the face and the neck. Whether they were the cause of

14 death is a matter, or part of the cause of death is a

15 matter that may be a subject for debate but I would think,

16 with respect, that for your purposes it is enough for you

17 to focus on the gunshot wounds in the face and neck which

18 you've actually emphasised in heavy type on your document.

19 **MR NTSEBEZA SC:** Well, Mr Chairman, our

20 argument would be to say that that's the one which the

21 experts have reconciled between themselves to have been the

22 fatal –

23 **CHAIRPERSON:** Yes, I see that actually,

24 yes. Under LRC experts, there is a column that says,

25 reconciled main cause of death.

1 **MR NTSEBEZA SC:** Indeed.

2 **CHAIRPERSON:** Gunshot wound on face, so

3 you were correct and I was wrong, please proceed.

4 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

5 Now you have heard the exchange between the chair and I.

6 **CHAIRPERSON:** Mr Ntsebeza, are you going

7 to deal with a number of these, a substantial number? It

8 is half past ten and I was proposing to take tea but if you

9 would like to round off this part of the cross-examination

10 by referring to other pages in these exhibits relating to

11 scene 1, the you're free to do so and when it is convenient

12 for you, for us to take the tea adjournment will you please

13 let me know?

14 **MR NTSEBEZA SC:** Mr Chairman, in the

15 light of, I sometimes hazard to say it is common cause, but

16 it seems to me that the exercise would be to seek a

17 confirmation from the witness of the proposition that I

18 made.

19 **CHAIRPERSON:** Yes, I understand that.

20 **MR NTSEBEZA SC:** Yes.

21 **CHAIRPERSON:** Do you want his

22 confirmation before or after tea?

23 **MR NTSEBEZA SC:** After tea.

24 **CHAIRPERSON:** We'll take the adjournment.

25 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

- 1 **[11:03] CHAIRPERSON:** - Exhibit KKK10, is that  
2 correct? Brigadier, you're still under oath.
- 3 **BRIGADIER CALITZ:** Thank you, Mr  
4 Chairperson.
- 5 **CHAIRPERSON:** Mr Ntsebeza?
- 6 **MR NTSEBEZA SC:** Thank you, Mr Chairman.  
7 Brigadier, can we look at page 26?
- 8 **CHAIRPERSON:** Before you do that, may I  
9 ask whether the police, whether they've got a Google map  
10 and worked out, had a chance to do that, work out the  
11 distance?
- 12 **MR NTSEBEZA SC:** Mr Chairman, may I  
13 indicate that I've indicated to my learned friend that it  
14 is an exercise that we will do during lunch.
- 15 **CHAIRPERSON:** I see, okay, that's fine,  
16 so we can carry on immediately –
- 17 **MR NTSEBEZA SC:** Yes, we can –
- 18 **CHAIRPERSON:** - from where you were when  
19 we took the adjournment?
- 20 **MR NTSEBEZA SC:** Indeed, Mr Chairman.
- 21 **COMMISSIONER HEMRAJ:** At this point, is  
22 this point not capable of agreement between SAPS and you,  
23 Mr Ntsebeza, about the number of deceased that died as a  
24 result of gunshot wounds to the head?
- 25 **MR NTSEBEZA SC:** I don't know what we

1 would agree.

2 **MR SEMENYA SC:** We admit the correctness

3 of the post mortem reports.

4 **MR NTSEBEZA SC:** Yes.

5 **COMMISSIONER HEMRAJ:** Well, it is in your

6 hands then.

7 **MR NTSEBEZA SC:** Yes.

8 **CHAIRPERSON:** The examination, Mr

9 Ntsebeza, as I indicated to Mr Semenya, I might do it

10 differently if I was cross-examining, he might but I can't

11 stop you from adopting your style.

12 **MR NTSEBEZA SC:** Indeed.

13 **CHAIRPERSON:** Subject to -

14 **MR NTSEBEZA SC:** It is always subject to

15 something. Mr Chairman, may I just say this and I hope I

16 would never have to say it again? In October last year

17 when we went for an inspection in loco none of the families

18 were here and some of us had assumed that, as we had all

19 seen it on television, this and that and the next thing,

20 that the details of what happened to those about whom the

21 Commission is also, were common cause. If for nothing else

22 this exercise is intended to inform them, between you and

23 me and my learned friend and everybody else here, it is

24 easy for us to say, but the documents say what they say,

25 but it is difficult for, - we can tell them in consultation

1 but that is not the point and –

2 **CHAIRPERSON:** I understand the point you

3 make.

4 **MR NTSEBEZA SC:** Yes.

5 **CHAIRPERSON:** I made a comment yesterday,

6 you'll remember, about the, I think it was before you

7 arrived, about the importance of their being present at

8 least during some of your cross-examination, I didn't put

9 it on that basis because I'd hoped they could be here for

10 the whole of your cross-examination, but I made the point

11 that it was important. Some of them, I take it, are still

12 coming back from tea, they haven't left, did they?

13 **MR NTSEBEZA SC:** No, they haven't left.

14 **CHAIRPERSON:** Oh, dear, my attention is

15 drawn to the fact that the air-conditioning is leaking.

16 Well, maybe it turned out for the best, shall we take a

17 short adjournment, let them sort out that air-conditioning.

18 **MR NTSEBEZA SC:** Yes.

19 **CHAIRPERSON:** And during that time the

20 rest of the family people who are coming back from tea will

21 be here and we can then carry on to a full house.

22 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

23 **CHAIRPERSON:** We will adjourn for five

24 minutes to sort out the air-conditioning.

25 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

1 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

2 **[11:19] CHAIRPERSON:** The Commission resumes.

3 You're still under oath, Brigadier.

4 **BRIGADIER CALITZ:** Thank you, Mr

5 Chairperson.

6 **CHAIRPERSON:** Mr Ntsebeza, are you going

7 to proceed now? I'm sorry that we lost time there, but

8 there's nothing we can do about it. Please proceed.

9 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

10 Thank you, Mr Chairman. Mr Chairman, may I just also say

11 that one of the reasons we are taking the rather tedious

12 route is that –

13 **CHAIRPERSON:** I don't think "tedious" is

14 a fair word. I think you mean lengthy.

15 **MR NTSEBEZA SC:** Lengthy. Lengthy.

16 **CHAIRPERSON:** A lot longer.

17 **MR NTSEBEZA SC:** The long road to – is

18 that your Commission has been established in the public

19 interest and it is the public that has taken – rightly or

20 wrongly – positions about the rightness or wrongness of the

21 actions of the miners and the actions of the SAPS, and it

22 is also against that backdrop that we are taking the longer

23 road. Between us we could agree on a number of things, but

24 I think I made the point. Thank you, Mr Chairman.

25 **CHAIRPERSON:** Thank you, Mr Ntsebeza.

1 Please proceed.

2 **MR NTSEBEZA SC:** Now the next page we'd

3 like to look at, Brigadier, is page 24 – we have done page

4 24. That was Mguneni Noki. We'd like to look at Mr

5 Ndongophele on page 26. Now Mr Ndongophele, Bongani

6 Ndongophele, the post mortem findings show that he was, he

7 had one gunshot wound on the right forehead and a

8 reconciled main cause of death with the LRC experts also

9 says the main cause of death was a gunshot wound of the

10 head. Do you see that?

11 **BRIGADIER CALITZ:** Correct, Mr

12 Chairperson.

13 **MR NTSEBEZA SC:** It's a single shot, it

14 appears. The next page would be page 29, Mr Gwelani. Mr

15 Gwelani, gunshot wound at back of head entering on right

16 scalp area. You see that?

17 **BRIGADIER CALITZ:** Correct, Mr

18 Chairperson.

19 **MR NTSEBEZA SC:** And that is the position

20 that the LRC experts also find to have been the main cause

21 of death, gunshot wound of head.

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **MR NTSEBEZA SC:** Now you may or may not

25 know, it appears that Mr Gwelani is a person who was found

1 210 metres from scene 1. Do you know that?

2 **BRIGADIER CALITZ:** No, Mr

3 Chairperson.

4 **MR NTSEBEZA SC:** Okay, and when once that

5 has been established, we will make the submission, as you

6 see in the PM reports, that that single gunshot was

7 intended to dissuade him from running away. It was a

8 single gunshot, which on our argument will have been shot

9 when he was about 210 metres away. You won't know that.

10 **CHAIRPERSON:** Mr Semanya, you've got your

11 light on.

12 **MR SEMENYA SC:** Chairperson, obviously from

13 what we have read, Mr Ntsebeza can say the individual

14 suffered that wound and he was found at that distance. I

15 don't see the basis for saying the wound was sustained

16 where he was found.

17 **CHAIRPERSON:** It sounds like a good

18 point, Mr Ntsebeza. I don't know that you need that point

19 to make the point you are busy with.

20 **MR NTSEBEZA SC:** No, we will not make the

21 point, Chairperson, except that when one is shot at the back of

22 the head they can't run, can they?

23 **CHAIRPERSON:** [*Microphone off, inaudible*]

24 **MR NTSEBEZA SC:** Yes. Do you see on page

25 29, Brigadier, "survival period and incapacitation," do you

1 see that?

2 **BRIGADIER CALITZ:** On the right-hand side,

3 under –

4 **MR NTSEBEZA SC:** Yes.

5 **BRIGADIER CALITZ:** Correct, Mr

6 Chairperson.

7 **MR NTSEBEZA SC:** Yes, almost immediate

8 death to brainstem, immediate incapacitation.

9 **BRIGADIER CALITZ:** I see it, Mr

10 Chairperson.

11 **MR NTSEBEZA SC:** So that's the point we

12 will be arguing - perhaps we'll call for your comment -

13 that he died where the shot hit him. Do you have any

14 comment to make on that?

15 **BRIGADIER CALITZ:** No, Mr

16 Chairperson, I have no "comment" on that.

17 **MR NTSEBEZA SC:** And part of the story of

18 course is that it's unlikely at that place that he could

19 have been charging at the police, 210 metres away.

20 **BRIGADIER CALITZ:** Mr Chairperson, I

21 already indicated that I was not aware of the person.

22 I also indicated that I couldn't be of assistance

23 to you on that.

24 **MR NTSEBEZA SC:** No, some of the

25 questions are taking into account the fact that, you know,

1 you were elsewhere when all of these things were happening,  
2 but you were the overall commander of the entire operation.

3 **BRIGADIER CALITZ:** No, Mr

4 Chairperson, I am the "operational commander."

5 **CHAIRPERSON:** The operational commander.

6 **MR NTSEBEZA SC:** operational commander.

7 **CHAIRPERSON:** The overall commander was

8 General Mpembe.

9 **MR NTSEBEZA SC:** Oh, operational

10 commander. Well, we'll go into that when we want to unpack

11 what it means to be an operational commander. The medical

12 reports, which report does say though that Mr Gwelani was

13 shot on the back of the head and that's all that I just was

14 raising the issue with you, that if he was shot at the back

15 of the head, we would argue that it would be unlikely that

16 he was shot by the person who he was charging at. Do you

17 understand what I'm saying? He was not moving towards the

18 person who shot him. That's the argument we'll make.

19 **BRIGADIER CALITZ:** I hear your argument,

20 Mr Chairperson.

21 **MR NTSEBEZA SC:** And you don't agree with

22 it?

23 **BRIGADIER CALITZ:** As I already told you,

24 Mr Chairperson, no, I cannot assist you – I

25 do not know where the person was – if you can maybe

1 indicate the position to me, then I know it what

2 direction it was. I cannot assist you at all

3 in this case.

4 **MR NTSEBEZA SC:** No, we are simply saying

5 just based on what the document say, if you are shot

6 on the back of the head, you're shot on the back of the

7 head. You cannot be shot by somebody who is in front of you

8 who you are attacking, would you? You wouldn't. Is there

9 a way in which you can explain how you are shot at the back

10 of your head by somebody at whom you are charging? There

11 is not.

12 **BRIGADIER CALITZ:** Mr Chairperson, my answer

13 will be, there have to be reasons. One of the reasons will be,

14 if a person comes running toward you shooting at you, and

15 I turn around at the stage when the shots are fired and then

16 run away, it is possible to be shot in the

17 back of the head.

18 **MR NTSEBEZA SC:** Indeed. On your own

19 proposition the person would no longer be a danger to the

20 person whom he was attacking if he was shot at the back of

21 the head because he had turned around, would they?

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 again, I keep to what I just testified.

24 **MR NTSEBEZA SC:** Anyway, we'll argue at

25 the appropriate time that, you know, you are just not

1 considering the obvious.

2 **CHAIRPERSON:** That's a matter for

3 argument later, isn't it?

4 **MR NTSEBEZA SC:** Yes. Yes, Mr Chairman.

5 The next person on our list is Mr Ngweyi – or let me put it

6 this way. We will say the following 12 people were shot in

7 the chest, in the abdomen, in the neck, and/or back, all of

8 them in other words on the upper body. Now let's quickly,

9 very quickly go to these, and these would be Mr Ngweyi on

10 page 14. The forensic report says "Gunshot wound in

11 abdomen," but the reconciled main cause of death, in other

12 words by all the experts, LRC experts included, it says,

13 "Gunshot wound of chest and abdomen" is the main cause of

14 death. You see that?

15 **BRIGADIER CALITZ:** I see, Mr

16 Chairperson.

17 **MR NTSEBEZA SC:** Yes, the next person is

18 Mr Yona. Mr Yona is accounted for on page 16. Now Mr

19 Yona, the post mortem findings are that he was shot in the

20 chest. "Gunshot wound to chest," and on the reconciled

21 main cause of death report, you see there, "Shotgun wound

22 of chest and neck." You see that? Are we together?

23 **BRIGADIER CALITZ:** I see what you read,

24 although there is more information in the fourth column, but

25 I see what you read.

1 **MR NTSEBEZA SC:** So is there any comment  
2 you want to make in relation to that?

3 **BRIGADIER CALITZ:** Just the part where you  
4 said, "Gunshot wound to chest" –

5 **MR NTSEBEZA SC:** Yes.

6 **BRIGADIER CALITZ:** - in the fourth column,  
7 but in the doctor's report it said, "Chest and  
8 neck."

9 **MR NTSEBEZA SC:** Yes.

10 **BRIGADIER CALITZ:** I referred to  
11 column four where you neglected to say that there was also  
12 "shot" to the neck. I just mentioned the small  
13 difference in the statement.

14 **MR NTSEBEZA SC:** Yes, which is consistent  
15 with what we are seeking to put to you, that of the  
16 following victims that we are going to indicate, all these  
17 gunshot wounds were in the upper body.

18 **BRIGADIER CALITZ:** Correct, Mr  
19 Chairperson, I accept it like that.

20 **MR NTSEBEZA SC:** Thank you. And there  
21 will be, you will have seen in your bundle that we will be  
22 dealing with shotgun wounds, but do you see that the LRC on  
23 that page, page 16, do have a comment that says one or two,  
24 two shots via shotgun. Do you see that?

25 **BRIGADIER CALITZ:** Under the "comment"

1 part?

2 **MR NTSEBEZA SC:** Yes.

3 **BRIGADIER CALITZ:** It is the first sentence of  
4 that paragraph. I see it, Mr Chairperson.

5 **MR NTSEBEZA SC:** Yes, okay. But I think  
6 we will also probably refer to it when we deal with shotgun  
7 incidents in the course of that operation. We want now to  
8 go to Mr Msenyeno on page 17. Quickly, Mr Msenyeno,  
9 gunshot wound to neck, thigh, and since we are  
10 concentrating on those that were in the upper body, the  
11 reconciled cause of death by all the experts, bottom left,  
12 "Gunshot wound of neck." See that?

13 **BRIGADIER CALITZ:** I see it, Mr  
14 Chairperson.

15 **MR NTSEBEZA SC:** Next victim was Sompeta.  
16 Sompeta you'll find on page 18. Sompeta, Mzukisi Sompeta,  
17 according to the post mortem findings sustained a gunshot  
18 wound to trunk and the reconciled report with LRC experts  
19 gives the main cause of death as having been gunshot wound  
20 of abdomen. You see that?

21 **BRIGADIER CALITZ:** I see it, Mr  
22 Chairperson.

23 **MR NTSEBEZA SC:** Now the next one is Mr  
24 Lehupa, and you'll find that on page 19. Mr Lehupa,  
25 "multiple gunshot wounds over trunk, thigh," and the

1 reconciled main cause of death with the LRC experts says,

2 "Gunshot wounds of chest and abdomen." See that?

3 **BRIGADIER CALITZ:** I see it, Mr

4 Chairperson.

5 **MR NTSEBEZA SC:** Then Mr Ntenetya will be

6 seen on page 20. Mr Ntenetya, "Six gunshot wounds in body,

7 head, upper and lower," I suppose it should be "lower

8 limbs," and the reconciled finding of the experts is

9 "Gunshot wound of chest and abdomen." You see that?

10 **BRIGADIER CALITZ:** I see it, Mr

11 Chairperson.

12 **MR NTSEBEZA SC:** Yes, Zibambele is the

13 next victim, and you'll find that on page 22. Zibambele in

14 terms of the post mortem findings, "Gunshot wound in

15 pelvis, shoulder, thigh," and then there's – I don't think,

16 yes, and then the reconciled version is "Gunshot wound of

17 chest." That is given as the main cause of death. You see

18 that?

19 **BRIGADIER CALITZ:** I see it, Mr

20 Chairperson.

21 **MR NTSEBEZA SC:** And the next person is

22 Yawa. Yawa comes from Cala where I was born. Mr Yawa on

23 page 23, "Gunshot wound on arm." Then it goes on to talk

24 about "pellet wounds on left side of face, neck, and upper

25 arm."

1 **[11:39]** And then it talks about left wound in left  
2 buttock, etcetera, but the reconciled finding with the  
3 other experts from the LRC, "gunshot wounds of the abdomen  
4 and chest", do you see that?

5 **BRIGADIER CALITZ:** I see it, Mr  
6 Chairperson.

7 **MR NTSEBEZA SC:** The next one will be  
8 Monisa or Monesa on page 25. Now Mr Monesa, Khawamare  
9 Elias Monesa, "gunshot wound to the head, right chest and  
10 abdomen and then lower limbs. The reconciled main cause of  
11 death with the LRC experts' report says gunshot wound of  
12 chest and abdomen." Do you see that?

13 **BRIGADIER CALITZ:** I see that part  
14 you are reading, Mr Chairperson.

15 **MR NTSEBEZA SC:** Ledingoane is on page  
16 27. Sorry, Mr Chairman, "gunshot wound to chest" and that  
17 is also the reconciled finding with LRC experts, "gunshot  
18 wound to chest, one shot appears," do you see that?

19 **BRIGADIER CALITZ:** I see it, Mr  
20 Chairperson.

21 **MR NTSEBEZA SC:** And in this series the  
22 next person would be Mr Mdze, - Mr Mtshazi, Mtshazi, and page  
23 28, Mtshazi. Mtshazi, "gunshot wound to right side of  
24 face" and the reconciled main cause of death with the other  
25 experts gives the cause of death, the main cause of death

1 as having been "gunshot wound of cervical spine," do you  
2 see that?

3 **BRIGADIER CALITZ:** I see that part  
4 that you are reading, Mr Chairperson.

5 **MR NTSEBEZA SC:** And then Mr Mdze, Mr  
6 Mdze's details are on page 31, "bullet wounds in left arm,  
7 right leg, 8 pellet wounds in abdomen and head" and the  
8 experts concurred on the main cause of death having been  
9 "gunshot wound to the abdomen," do you see that?

10 **BRIGADIER CALITZ:** I see it, Mr  
11 Chairperson.

12 **MR NTSEBEZA SC:** And their conclusion on  
13 the number of shots seems to be that these were two shotgun  
14 inflicts, these were from a shotgun, do you see that, there  
15 is a column, "number of shots, 2 times shotgun."

16 **BRIGADIER CALITZ:** I see it, Mr  
17 Chairperson.

18 **MR NTSEBEZA SC:** Now it seems to me,  
19 other than Mr Yona and Mr Mdze, were shot with shotgun, the  
20 rest of the deceased were, according to this report shot  
21 and killed by high velocity ammunition which would have  
22 come from the R5 and the R1. Will you agree with that  
23 assessment based on what you see here?

24 **BRIGADIER CALITZ:** What we see in this  
25 report, Mr Chairperson, correct.

1 **MR NTSEBEZA SC:** Thank you. Now I know

2 that earlier on when you testified you said –

3 **MR SEMENYA SC:** Maybe while –

4 **MR NTSEBEZA SC:** - it is possible –

5 **MR SEMENYA SC:** No, I say while Mr

6 Ntsebeza is formulating the question it does appear to me

7 in respect of the last question, a shotgun and high

8 velocity seem to be contradictions in terms –

9 **CHAIRPERSON:** It sounds like a good

10 point, Mr Ntsebeza, would you like to ponder that before

11 you carry onto your next question, what's your response to

12 it?

13 **MR NTSEBEZA SC:** Well, I formulated the

14 question on this basis, with the exception, - sorry, Mr

15 Chairman, my learned friend is directing me to look at page

16 31. Now page 31 is the story of Mr Mdze. Now do I

17 understand my learned friend to be saying, to the extent

18 that the second column talks about high or low velocity and

19 it says, high? It is a contradiction to then say "two

20 shotgun wounds were inflicted there –

21 **CHAIRPERSON:** It does sound like a

22 contradiction, I never heard of a high velocity shotgun,

23 have you?

24 **MR NTSEBEZA SC:** Yes.

25 **CHAIRPERSON:** You have?

1 **MR NTSEBEZA SC:** So I, you know –

2 **CHAIRPERSON:** Yes, I think maybe this one

3 can be taken off the table in this particular case.

4 **MR NTSEBEZA SC:** Yes, except that what we

5 are saying is that it would appear, according to these

6 reports, that Mdze and Yona were shot with a shotgun. Now

7 other than the two of them, I hear what you're saying about

8 this qualified contradiction in terms, to say Mdze, Mr

9 Yona, no, Bongani Mdze, two shotguns and then high or low

10 velocity and it says, high, I take that point but –

11 **MR CHASKALSON SC:** Mr Chairperson, I

12 wonder if I can assist here because I think the source of

13 the confusion becomes apparent if we look at the actual

14 post mortem report in respect of Mr Mdze, because the cause

15 of death that was indicated by the State pathologist was

16 "gunshot wounds to the left arm and abdomen with signs of

17 exsanguination." Now if one looks at the post mortem

18 report, the gunshot wound to the left arm was a high

19 velocity R5 bullet. The gunshot wounds to the abdomen,

20 with the shotgun wound, so I think that explains the cause

21 of the confusion.

22 **CHAIRPERSON:** Yes, I see, thank you for

23 that. In fact, when I look at it in light of what you said,

24 I see under post mortem findings it says, "Bullet wounds in

25 left arm and right leg, 8 pellet wounds in abdomen,"

1 etcetera, so there isn't a contradiction. In fact it is a  
2 combination of high velocity and pellets, shotgun wounds  
3 and pellets, so –

4 **MR NTSEBEZA SC:** What I understand it to  
5 be is that –

6 **CHAIRPERSON:** Sorry, sorry, the error  
7 appears to be in the bottom section, under number of shots  
8 it says, "Two by shotgun." It should actually be, I would  
9 think, "Two", there is a misprint there, if there were two  
10 bullet wounds, only one in the left arm and one on the  
11 right leg, it looks as if there were two gunshot, - sorry,  
12 there were two shots by an R5 or an R1 and the remaining  
13 shots were by a shotgun. So that inaccuracy gives rise to  
14 this apparent contradiction, but I think in time it is  
15 sorted out.

16 **MR NTSEBEZA SC:** Yes, I think it does.

17 What it does say is that either it is not or, it is both,  
18 high velocity and shotgun shots that were fired, except  
19 that it does appear that they reconcile on, the main cause  
20 of death has been gunshot wounds.

21 **CHAIRPERSON:** Yes, that's correct,  
22 because it was wounds to the abdomen.

23 **MR NTSEBEZA SC:** Yes.

24 **CHAIRPERSON:** Wounds to the abdomen that  
25 caused the death and that was the gunshot.

1 **MR NTSEBEZA SC:** So –

2 **MR CHASKALSON SC:** Mr Chairperson, -

3 **BRIGADIER CALITZ:** Not the pellet one.

4 **MR CHASKALSON SC:** No, in fact the State

5 pathologist describes the cause of death as gunshot wounds

6 to the left arm and abdomen. Now the left arm was the high

7 velocity projectile.

8 **CHAIRPERSON:** - the pellets, so anyway as

9 Mr Ntsebeza correctly says, it is actually a combination.

10 **MR NTSEBEZA SC:** Anyway, we will deal

11 with shotgun victims shortly, but the point here that I

12 would like to make and that I want to put it to you,

13 Brigadier, is that other than Yona and Mdze who clearly

14 were shot also with shotguns, the rest of the deceased from

15 this report in scene 1, the 16, were shot and killed by

16 high velocity ammunition, which must have emanated from R1s

17 and R5s.

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 yes, if I understand the report correctly, it is correct.

20 **MR NTSEBEZA SC:** And the point here is

21 that these wounds were either to the head, secondly by all

22 accounts they were wounds that were inflicted on the upper

23 body. Will you agree with that?

24 **BRIGADIER CALITZ:** It is how you went

25 through the report, Mr Chairperson.

1 **MR NTSEBEZA SC:** Now I know that you did  
2 qualify how police officers came or would be expected to  
3 react when they are being attacked. First of all let me  
4 just put it on record, just so that, the way that I was  
5 putting questions is not misunderstood. It is not the  
6 family's case that the mineworkers at any stage were  
7 attacking the police. We dispute that, I just want you to  
8 know that whatever else I have been asking, it should be  
9 understood that we are disputing the fact that those who  
10 got killed were killed because they were attacking the  
11 police. What is your comment thereto?

12 **MR SEMENYA SC:** The witness can't –

13 **CHAIRPERSON:** He can't comment to that,  
14 surely the point is simply this, your case and the case of  
15 Mr Mpfu's clients has been always clearly stated to be  
16 this, that they weren't attacking the police, the group at  
17 scene 1, they weren't attacking the police, they were on  
18 their way to Nkaneng, that's the case.

19 **MR NTSEBEZA SC:** Hmm.

20 **CHAIRPERSON:** What you are putting, as I  
21 understand it and I'm not sure it is for the witness to  
22 answer, is to say, in the alternative the police case is,  
23 they were attacking the police. So what you were saying  
24 is, you don't accept that, you say they weren't attacking  
25 police, they were on their way to Nkaneng but in the

1 alternative, in the event it was to be found that they were  
2 attacking the police, or alternatively I suppose if the  
3 police were acting in imputative self-defence or private  
4 defence, then in any event your argument would be that this  
5 wasn't appropriate or proper or, let me put it more  
6 accurately. This is not covered by the doctrine of self  
7 defence or private defence, because these were not shots to  
8 the legs which were be appropriate in a self-defence or  
9 private defence situation, but were shots to the head and  
10 the upper body, that's your case, is that correct?

11 **MR NTSEBEZA SC:** Indeed.

12 **CHAIRPERSON:** You understand what Mr  
13 Ntsebeza's case is? He doesn't accept that there was an  
14 attack, he says there wasn't but he says if there was,  
15 alternatively if the police on reasonable grounds thought  
16 there was, they still did not go about self-defence of  
17 private defence properly, because they should have shot the  
18 lower parts of the body and not the upper parts and he has  
19 taken you through the post mortem reports, is that the  
20 situation?

21 **MR SEMENYA SC:** Chairperson?

22 **CHAIRPERSON:** Yes, Mr Semanya?

23 **MR SEMENYA SC:** This witness did not  
24 witness any of this; he cannot make us, give us any useful  
25 comment.

1 **CHAIRPERSON:** No, I'm aware of that, I'm  
2 just trying to explain what Mr Ntsebeza's point is, but you  
3 know there is now an anticipatory objection to what you're  
4 going to ask next, Mr Ntsebeza, and that is that this is  
5 the wrong witness to put these questions to. Perhaps you  
6 would like to deal with that before you proceed further.

7 **MR NTSEBEZA SC:** Now, Brigadier, as an  
8 operational commander when this, I know you've been asked a  
9 number of questions about what you were doing, where you  
10 were, what you saw, what you heard. I just want to get a  
11 sense for purposes of putting a limited number of questions  
12 to you, whether your position is that you were not there  
13 and therefore you do not know, it is part of your statement  
14 which we've put up yesterday, you do not know why the  
15 people you were in command of acted the way they did. Do I  
16 understand that to be your position? You were at the scene  
17 but you were not at the scene in the sense that you don't  
18 know why people, your people acted the way they did? Is  
19 that your case?

20 **BRIGADIER CALITZ:** If you are referring to, "your  
21 people" is that what we refer to as the shooting accident that  
22 occurred.

23 **MR NTSEBEZA SC:** Yes.

24 **BRIGADIER CALITZ:** Mr Chairperson,  
25 it is correct, yes, at that stage I testified that

1 when I moved forward, I was not aware of the actions  
2 behind me.

3 **MR NTSEBEZA SC:** Yes, so you don't know  
4 and I would like to get this on record, you don't know  
5 whether they acted in self-defence when they shot the  
6 mineworkers?

7 **BRIGADIER CALITZ:** Mr Chairperson, I  
8 did not observe it myself, it was  
9 reported to me.

10 **CHAIRPERSON:** To your knowledge the point  
11 is only hearsay. According to your evidence you only heard  
12 about 15 minutes later that there had been this incident at  
13 scene 1 where people were shot and killed?

14 **BRIGADIER CALITZ:** Correct, Mr  
15 Chairperson.

16 **CHAIRPERSON:** You were on the way to the  
17 dry riverbed, as I understand it, at the time that that  
18 incident took place, is that correct?

19 **BRIGADIER CALITZ:** It is correct, Mr  
20 Chairperson.

21 **CHAIRPERSON:** That's your evidence?

22 **BRIGADIER CALITZ:** Correct, Mr  
23 Chairperson.

24 **CHAIRPERSON:** You heard reports later  
25 about self-defence and private defence, whether they are

1 not true or not, you cannot from your own knowledge add

2 anything to that debate, is that correct?

3 **BRIGADIER CALITZ**: I will not be able to,

4 Mr Chairperson, you are correct.

5 **MR NTSEBEZA SC**: Now I would like to

6 understand the entirety of your evidence.

7 **CHAIRPERSON**: Mr Ntsebeza, before you

8 proceed; Mr Bizos has a comment, yes, Mr Bizos?

9 **[11:59] MR BIZOS SC**: Mr Chairman, I think I must

10 disclose in view of your question that the case is not as

11 simple as that, that he was away does not mean he is

12 exculpated, and I am given notice that there is good

13 authority to which that we will make available to the

14 Commission, that for the operation commander to make

15 himself an absentee on the authorities, does not exculpate

16 him for - over what happened.

17 **CHAIRPERSON**: I'm sorry to interrupt, Mr

18 Bizos. If I understand the argument, you put up. It's

19 substantially a legal argument, but I was busy with

20 something else. The witness was being asked to comment on

21 certain factual averments and I was simply endeavouring to

22 understand his answer, if I put, it in terms of I

23 understood, to be I can't deal with those facts, because I

24 wasn't there. I've already told you that I only heard 50

25 minutes later that this happened, and I was on my way to

1 the dry riverbed at the time it happened, so I can't, from  
2 my own knowledge, throw light on what actually happened. I  
3 understand your point. You may well contend and in fact  
4 question him about it, as to why he left at the time, why  
5 he didn't stay where he was or possibly even move to  
6 another position, so he could see what was happening.  
7 That is a very different inquiry, but that's not what Mr  
8 Ntsebeza is about at the moment. He's busy with a factual  
9 averment as to actually how these people were shot and  
10 whether what happened was covered by the documents. That's  
11 a matter on which he can't throw any light, but I take your  
12 point. It's – we are aware of it, and you'll be developing  
13 it in due course, I take it.

14 **MR BIZOZ SC:** Yes, the reason why I  
15 interjected, Mr Chairman, is the witness must not think  
16 that just before – because he left, he is not culpable.

17 **CHAIRPERSON:** No, no, I understand that's  
18 going to be your contention, but that's not the point Mr  
19 Ntsebeza is busy with at the moment.

20 **MR BIZOZ SC:** Thank you, Mr Chairman.

21 **CHAIRPERSON:** The witness will, I'm sure,  
22 be cross-examined along those lines by you and the witness  
23 will not be under any false impression as to what the case  
24 is that you've putting to him. Shall we carry on, Mr  
25 Ntsebeza?

1 **MR SEMENYA SC:** Neither would an

2 impression be that his culpable.

3 **CHAIRPERSON:** Sorry?

4 **MR SEMENYA SC:** Neither must be labour

5 under an impression that he is culpable.

6 **CHAIRPERSON:** No, no, the impression

7 under which he will be brought, if he hasn't been brought

8 already, is it will be contented by Mr Bizos that he's

9 culpable. Whether he really was culpable, is a matter that

10 we will express views on at the end of the Commission, and

11 which may or may not be the subject of further

12 investigations elsewhere, but certainly, I imagine it would

13 be hotly contended that he was not culpable, and that's a

14 matter on which we're not competent, at this stage, to

15 express an opinion, and even if we were competent to

16 express an opinion – able to do so, I mean, it would

17 inappropriate to do so. We must keep an open mind on that

18 issue, like all the other issues, and only endeavour to

19 come to some kind of conclusion at the very end, and

20 certainly no impression must be created, one or the other.

21 It is simply a contention that's going to be advanced in due

22 course. Shall we carry on, Mr Ntsebeza?

23 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

24 Brigadier, this is where I am at and I would like to be

25 satisfied that your week and a half or two of your being on

1 the stand has been – has not been in support of a case that  
2 the police were acting in self-defence, because you were  
3 not there. You have been in that stand for all this  
4 period. Is it your testimony that you are not alleging  
5 that the police acted in self-defence?

6 **BRIGADIER CALITZ:** Mr Chairperson, I  
7 am not sure if I understand the question correctly. If it is the  
8 same question and I understand it correctly in relation to the  
9 previous question, yes, I cannot testify on what happened at the back,  
10 as I was not there.

11 **MR NTSEBEZA SC:** So all your testimony  
12 thus far, whatever it has been saying, has not been to  
13 support a theory that the police were justified in shooting  
14 my clients?

15 **BRIGADIER CALITZ:** Mr Chairperson, regarding  
16 the shooting by the TRT, behind me,  
17 if you are talking about that evidence, I cannot  
18 assist you, no.

19 **MR NTSEBEZA SC:** I want an unequivocal  
20 response. Is it your case that because you were not there  
21 –

22 **CHAIRPERSON:** Mr Ntsebeza, I'm sorry to  
23 interrupt you, the self-defence – I think the question is,  
24 the way it is phrased, may be a bit not – unclear. In  
25 regard to the defence of self-defence. There will be

1 various facts which will have to be established. Part of  
2 it will be the situation in which the people acted, whether  
3 they were being attacked. That will be one part of it.  
4 The further part of it, on the assumption that they were  
5 being attacked, which is the assumption which were you were  
6 proceeding with at the moment, whether they acted  
7 appropriately and whether what they did was covered by the  
8 doctrines of self-defence. The witness has made it clear,  
9 as far as that part of the inquiry is concerned, he can  
10 throw no light. In regard to the run up to the events,  
11 whether there – a situation existed where there was an  
12 attack on the police, as opposed to an endeavour to proceed  
13 to Nkaneng, that's something on which he can give no direct  
14 evidence, but he does testify to facts, which, if accepted,  
15 might form part of a circumstantial finding concerning  
16 the question, but – so it's not entirely correct to say  
17 that his evidence will be very irrelevant to that  
18 question, but on the main part, what I call the second  
19 part, he's made it quite clear he can't assist us and he  
20 cannot, concerning the first aspect, he can't give direct  
21 evidence, but the facts to which he testified, may or may  
22 not, on analysis, assist one side or the other, in regard  
23 to the first question, but I think now having said that,  
24 removing any scope for misunderstanding from the –  
25 **MR NTSEBEZA SC:** Mr Chairman, thank you

1 very much. I don't want to find myself not knowing whether  
2 I'm dealing with a fish or a fowl, which is why I would to  
3 get some clarity as to what exactly the brigadier is able  
4 to testify based on circumstantial evidence and what  
5 it is that he's able to testify on the basis of facts that  
6 he knows. Put the same question differently – can I put it  
7 on this basis? Are you able, sitting there, as you are  
8 today, to say based on your presence or absence on  
9 the 16<sup>th</sup> of August 2012 at the scene, that there was an  
10 attack on the police by the mineworkers at scene 1?

11 **BRIGADIER CALITZ:** If you say my absence,  
12 what do you mean by that?

13 **CHAIRPERSON:** The fact that you, on your  
14 own, you left before the actual engagement – if one can  
15 call it that – between the strikers and TRT people really –

16 **BRIGADIER CALITZ:** The shooting.

17 **CHAIRPERSON:** The shooting happened. And  
18 – but in any event, before that, you were in a situation –  
19 in a position where you couldn't actually see what happened  
20 there, because it was out of your line of sight. What you  
21 saw was the movements of people towards that spot, some  
22 seconds - or I'm not sure, it may even be minutes – before  
23 the actual shooting took place. So that's the basis of the  
24 question, as I understand it?

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 yes, if that is the basis of the question, I can testify on what  
2 I was asked before, up to the stage where  
3 I could observe the attack. I also explained  
4 on what I meant on the attack, at that  
5 stage I instructed the vehicles to move in  
6 between them. Up to that stage, I can testify,  
7 and after that too, but what  
8 happened behind me, regarding where the shooting took place,  
9 that was referred to, no, Mr Chairperson,  
10 I cannot testify to that.

11 **MR NTSEBEZA SC:** Yes. I – is it your  
12 case, as a witness, that the police were being attacked by  
13 the mineworkers at the moment that the police shot and  
14 killed the 16 mineworkers on scene 1 that we have now dealt  
15 with?

16 **BRIGADIER CALITZ:** Mr Chairperson,  
17 again, it is hindsight. It was reported to me.  
18 I was not there and therefore I cannot testify to it,  
19 as I did not observe it. What was reported in hindsight  
20 is that what we recollected from the members,  
21 is that it was self-defence and that there were definitely  
22 an attack.

23 **MR NTSEBEZA SC:** And is it your case, as  
24 a hindsight, that the police –

25 **CHAIRPERSON:** Mr Ntsebeza, I'm sorry to

1 interrupt you. You know, I don't like this word "case."  
2 He's a witness. The SAPS will presumably have a case,  
3 which they present to us. He's here simply to give us his  
4 evidence. He tells you he formed an opinion, which it may  
5 well be coincide – and I'm sure it does – with what's going  
6 to be the SAPS case. His opinion was based upon  
7 information he received immediately after the events and  
8 thereafter at the Roots conference. I must tell you,  
9 without intending any disrespect to him, I'm not interested  
10 in his impression. His impression doesn't bind me. My  
11 colleagues and I have to decide on the evidence before us,  
12 not the impression of people who attended the Roots  
13 conference, and it's a total, as far as I'm concerned, a  
14 waste of valuable time to explore his impression based upon  
15 what he heard at Roots. So I do not intend to be  
16 disrespectful to him, but he will understand we have to  
17 make up our own minds – it's our impressions, as it were,  
18 based upon a careful analysis of the evidence that will be  
19 relevant. So I do not propose to allow you to plead on this  
20 line. You obviously would not be prejudiced by an inability to  
21 do so, because I've already indicated to you that his  
22 impression of the matter is not relevant for me. I can  
23 understand he may have an impression based upon what he saw  
24 while he was still there, but that was limited nature and  
25 that I think has been explored, but –

1 **MR NTSEBEZA SC:** Mr Chairman, what Mr  
2 Chairman has said will be useful string to uphold, if I  
3 understand the chairman well. Can I just make one  
4 tentative question?

5 **CHAIRPERSON:** Sorry, it's not my  
6 intention to add strings to anybody, but anyway you may  
7 proceed, but please bear in mind what I said.

8 **MR NTSEBEZA SC:** Yes, I will – I will, Mr  
9 Chairman. Brigadier, why I - I don't want to attribute to  
10 you things that you didn't say, because I've been reading  
11 your evidence and that is why I came to the impression  
12 that, for instance, your statement, whether it's on the  
13 basis of what you were told and based on what you  
14 arrived at – for instance, I mean in that paragraph 19 of  
15 your statement you stated very clearly what were your  
16 opinions. That these people would never give up their  
17 firearms – I mean, their arms and whatever it was, their  
18 pangas and what have you. And you quite clearly stated in  
19 your statement that you came to a clear conclusion. Now –  
20 so that is why I am careful, not always successfully, to  
21 put to you something, which you can help us with. For  
22 instance, you are not able, based on your presence  
23 on the 16<sup>th</sup> of August, as an operational commander, to say  
24 whether the police were being attacked by the mineworkers.  
25 Would that be a fair statement to put to you?

1 **BRIGADIER CALITZ:** No, Mr

2 Chairperson.

3 **MR NTSEBEZA SC:** And therefore, you are

4 also not able to say whether the police, in shooting to the

5 detail that we have now been exploring via post-mortem

6 reports, were acting in self-defence on the basis of your

7 presence there? You can't say? Because you don't know

8 that they were being attacked, so you can't say that they

9 acted in self-defence?

10 **BRIGADIER CALITZ:** What happened behind me,

11 it is correct, I cannot testify on that, Mr

12 Chairperson.

13 **MR NTSEBEZA SC:** Yes. But, and I'll put

14 it no higher than this and I'll move on.

15 **CHAIRPERSON:** If we move on to another

16 point, may I suggest you do so after we've taken the

17 comfort break, because –

18 **MR NTSEBEZA SC:** Thanks, Chairman.

19 **CHAIRPERSON:** This is long sessions and

20 my experience is it's difficult to concentrate for a long

21 stretch without taking a short break at some point -

22 **MR NTSEBEZA SC:** Especially if one takes

23 age into account, Mr Chairman. I'm talking about me.

24 **CHAIRPERSON:** I'm sure it applies to a

25 number of us here. Shall we take the comfort break now?

1 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

2 **[12:35] CHAIRPERSON:** The Commission resumes.

3 I've been handed, I see while we were out, a document which  
4 appears to be an IPID statement by, is it Hendrik Legau, Mr  
5 Ntsebeza? I take it you're responsible for giving us the  
6 document. Is that correct?

7 **MR NTSEBEZA SC:** Yes, Mr Chairman. It  
8 was supposed to be in the files because I think it was one  
9 in relation to which notice has been given –

10 **CHAIRPERSON:** Well, Hendrik Legau,  
11 anyway. It has not been handed in. Do you want me to make  
12 it an exhibit? KKK11?

13 **MR NTSEBEZA SC:** Yes, at a later stage,  
14 or at this stage –

15 **CHAIRPERSON:** Not yet. Alright, not yet,  
16 okay.

17 **MR NTSEBEZA SC:** We're not going to –

18 **CHAIRPERSON:** Alright. Brigadier, are  
19 you looking for the document? Have you not seen it before?

20 **BRIGADIER CALITZ:** I just received  
21 it, Mr Chairperson. So –

22 **CHAIRPERSON:** Right, before you answer  
23 I'd better remind you, you're still under oath.

24 **BRIGADIER CALITZ:** I have it.

25 It is correct, Mr Chairperson.

1 **CHAIRPERSON:** It appears that Mr Ntsebeza  
2 isn't going to reach it yet, and I suspect he'll only get  
3 there after lunch, so you've got the whole lunch hour to  
4 read the statement at your leisure.

5 **BRIGADIER CALITZ:** Thank you, Mr  
6 Chairperson.

7 **CHAIRPERSON:** Mr Ntsebeza, would you like  
8 to proceed?

9 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

10 Thank you, Mr Chairman. Brigadier, I would like us to go  
11 to scene 1 – I mean to scene 2 where further miners were  
12 killed and if we went to the chart, and again what we will  
13 be seeking to show here is that of the 16 people who were  
14 shot, or believed to have been shot at the scene 2, seven  
15 of them sustained single high velocity gunshots to their  
16 upper bodies. That is what we are going to try to show.  
17 Now, if we went to – and may I propose that we go to page 3,  
18 page 3 you will see relates to Anele, I think it should be  
19 Mdizeni. It is not Mdezi, Mr Chairman, Commissioners. It  
20 should be Mdizeni, M-D-I-Z-E-N-I. You have page 3,  
21 Brigadier? You are on that page?

22 **BRIGADIER CALITZ:** I agree with you, Mr  
23 Chairperson.

24 **MR NTSEBEZA SC:** Thank you. Thank you.

25 There you will see it is one wound in pelvis, high velocity

1 firearm, and the reconciled main cause of death is gunshot  
2 wound of pelvis, and on the last column headed "Survival  
3 period and incapacitation," we have there "Rapid death."  
4 You see there? "Rapid death, immediate incapacitation from  
5 spinal injury."

6 **BRIGADIER CALITZ:** Mr Chairperson,  
7 maybe we are not on the same page. You said  
8 page 11?

9 **CHAIRPERSON:** Page 3.

10 **BRIGADIER CALITZ:** Are you reading from page 11?

11 -

12 **MR NTSEBEZA SC:** It's page 3.

13 **BRIGADIER CALITZ:** I heard it just like  
14 they did, page 11.

15 **MR NTSEBEZA SC:** No, no, no, no -

16 **BRIGADIER CALITZ:** But let us move to  
17 page 3. I have it, Mr Chairperson.

18 **MR NTSEBEZA SC:** We are on the same page  
19 now, are we not? Mdizeni instead of Mdezi, Mdizeni, M-D-I-  
20 Z-E-N-I. You see that? Have you found the -

21 **BRIGADIER CALITZ:** Which column - I do  
22 not understand. Which column did you read now? I am on  
23 page 3. I just want to know what -

24 **MR NTSEBEZA SC:** Yes, it's column 4,  
25 "Post mortem findings."

1 **BRIGADIER CALITZ:** Okay, the one wound in  
2 the pelvis, high velocity firearm.

3 **MR NTSEBEZA SC:** One wound in pelvis, yes.

4 **BRIGADIER CALITZ:** I am with you, Mr  
5 Chairperson.

6 **MR NTSEBEZA SC:** Yes, and bottom left,  
7 the reconciled main cause of death is "Gunshot wound of  
8 pelvis." You see that?

9 **BRIGADIER CALITZ:** I see it, Mr  
10 Chairperson.

11 **MR NTSEBEZA SC:** Yes, and I also drew  
12 your attention to the comment under "Survival period and  
13 incapacitation" where it talks about "Rapid death.  
14 Immediate incapacitation, lower limb paralysis from spinal  
15 injury." You see that?

16 **BRIGADIER CALITZ:** I see it as it is standing  
17 here, Mr Chairperson.

18 **MR NTSEBEZA SC:** Yes, now the next person  
19 killed at scene 2 will be on page 6, Mr Liau. Now Mr Liau  
20 was shot at – or put it this way; their findings are that  
21 there was a single wound in chest, handgun, and the  
22 reconciled main cause of death report is gunshot wound of  
23 chest, handgun. You see that? Single shot.

24 **BRIGADIER CALITZ:** I see what is  
25 written there, Mr Chairperson.

1 **MR NTSEBEZA SC:** Mabiya is the next  
2 person and that we'll find on page 8. Now under the post  
3 mortem findings is "Gunshot entrance wound through right  
4 side of head." You see that?

5 **BRIGADIER CALITZ:** I see it, Mr  
6 Chairperson.

7 **MR NTSEBEZA SC:** And there seems to be  
8 agreement with the LRC experts in that regard because under  
9 reconciled main cause of death, "Gunshot wound, head" as  
10 the main cause of death. Survival period and  
11 incapacitation, "Immediate death, immediate  
12 incapacitation." You see that?

13 **BRIGADIER CALITZ:** I see it, Mr  
14 Chairperson.

15 **MR NTSEBEZA SC:** The next family member  
16 to have died – I mean, the next mineworker to have died is  
17 Nokamba, and that you will find on page 9. Nokamba died of  
18 a "Wound in chest from a high velocity firearm. Entrance  
19 wound in the back of the body." You see that under post  
20 mortem findings?

21 **BRIGADIER CALITZ:** I see it, Mr  
22 Chairperson.

23 **MR NTSEBEZA SC:** And that seems to be  
24 what is agreed between the experts, "Gunshot wound of the  
25 chest, left to right. Rapid death, capable of movement."

1 I don't know what that means. The next person was  
2 Saphendu, or Samphendu, page 10, "Gunshot wound in chest,"  
3 and it is possible handgun is reconciled main cause of death  
4 as to report as to what was used. We are together?

5 **BRIGADIER CALITZ:** I see it,

6 Mr Chairperson.

7 **MR NTSEBEZA SC:** Yes, the next one is

8 Mkhonjwa. Mkhonjwa is on page 4. There Mkhonjwa is  
9 indicated to have had "wounds on left chest and left arm."

10 The agreed position is, or the reconciled position,  
11 "Gunshot wound of chest and abdomen. Handgun." You see  
12 that?

13 **BRIGADIER CALITZ:** I see it, Mr

14 Chairperson.

15 **MR NTSEBEZA SC:** Now we also have

16 Theleyesne. Theleyesne is on page 2. Now he was shot in the  
17 pelvis and head wounds, and the reconciled main cause of  
18 death is the gunshot wound to the head. Do you see that?

19 **BRIGADIER CALITZ:** I see it, Mr

20 Chairperson.

21 **MR NTSEBEZA SC:** And it appears that this

22 is a person who seems to have been shot twice in the head,  
23 number of shots, two.

24 **CHAIRPERSON:** [*Microphone off, inaudible*]

25 repeat that one. Number of shots, two, but he's got an

1 injury of the pelvis and injury of the head. So I do not –  
2 unless there's something I'm missing. It doesn't look as  
3 if there were two head injuries, and if you look at the  
4 section below of the LRC experts, Dr Naidoo's comments, he  
5 concurs, it says in the comments section, with the State  
6 pathologist who records a right buttock injury as high  
7 velocity gunshot wound of the pelvis. So there was only  
8 one head injury. I'm not sure that it affects the thrust  
9 of the point you're making, but it's not correct to say  
10 there were two head wounds.

11 **MR NTSEBEZA SC:** Yes, Mr Chairman, it  
12 would be unfair to put to the witness on the basis hereof  
13 that he was shot twice in the head, but I seem to remember  
14 that in the post mortem report there will be verification  
15 of this. However, I am not pursuing that at this stage. The  
16 next person would be Mangcotywa. Mangcotywa, it should be  
17 M-A-N-G-C – oh yes, spelt correctly. Mangcotywa, post  
18 mortem finding –

19 **BRIGADIER CALITZ:** Can we please get a  
20 page number?

21 **MR NTSEBEZA SC:** Oh, sorry. I'm sorry,  
22 Brigadier. Page 5.

23 **BRIGADIER CALITZ:** Thank you, Mr  
24 Chairperson.

25 **MR NTSEBEZA SC:** Page 5 of this exhibit.

1 "Wound in chest entering from right side of chest, high  
2 velocity firearm." The agreed position is "Gunshot wound  
3 of chest." You see that?

4 **BRIGADIER CALITZ:** Correct, Mr

5 Chairperson.

6 **MR NTSEBEZA SC:** Yes, the next victim is

7 Mosebetsane. Mosebetsane is on page 7. You will notice

8 there that the finding is that he had a wound below the

9 right eye and the reconciled position is that he died of

10 the gunshot wound of the head. You see that?

11 **BRIGADIER CALITZ:** I see it, Mr

12 Chairperson.

13 **MR NTSEBEZA SC:** Now do you see where it

14 says "Pertinent dissensions between State and independent

15 reports," that would be column 7. You see that?

16 **BRIGADIER CALITZ:** I see it, Mr

17 Chairperson.

18 **MR NTSEBEZA SC:** It reads, "The body

19 shows two gunshot wounds through the head, both passing

20 from front to rear, whilst the State pathologist records

21 only one gunshot. Two gunshots are supported by the

22 external wounds, as well as internal brain and skull

23 findings. There is no dissension relating to range of fire

24 or direction of shot." You see that?

25 **BRIGADIER CALITZ:** I see it, Mr

1 Chairperson.

2 **MR NTSEBEZA SC:** The next person would be

3 Mr Ngxande, and that you will find on page 11. Now Mr

4 Ngxande's post mortem findings are that he had a gunshot

5 wound to the chest, high velocity firearm, and the LRC

6 experts agree that it was a gunshot wound of the chest that

7 caused his death. You see that?

8 **BRIGADIER CALITZ:** I see it, Mr

9 Chairperson.

10 **[12:55] MR NTSEBEZA SC:** The next person would be

11 Gadlela. Gadlela you will find on page 12. Mr Gadlela was

12 according to this PM finding, "Gunshot wound to neck."

13 Now, and then the reconciled main cause of death is chest

14 wound, I mean gunshot wounds to chest as the main cause of

15 death, do you see that?

16 **BRIGADIER CALITZ:** I see it, Mr

17 Chairperson.

18 **MR NTSEBEZA SC:** Now the next person

19 would be Mr Pato. Mr Pato you will find on page 13. Mr

20 Pato had a gunshot wound to neck and that is the agreed

21 position by all the pathologists, do you see that?

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson, I think we all had it in the previous –

24 **MR NTSEBEZA SC:** Oh, –

25 **BRIGADIER CALITZ:** - reference.

1 **MR NTSEBEZA SC:** No, I'm not aware that

2 we did Mr Pato but anyway.

3 **BRIGADIER CALITZ:** We already dealt with

4 15 when we were at scene 1 was, but if I can be of

5 assistance.

6 **MR NTSEBEZA SC:** We're on 13.

7 **CHAIRPERSON:** Page 13.

8 **BRIGADIER CALITZ:** 15?

9 **MR NTSEBEZA SC:** 13?

10 **CHAIRPERSON:** 15.

11 **MR NTSEBEZA SC:** My apologies, -

12 **CHAIRPERSON:** 15 is scene 1.

13 **BRIGADIER CALITZ:** My apologies, I have

14 16 and 13 -

15 **CHAIRPERSON:** The -

16 **MR NTSEBEZA SC:** Oh, alright.

17 **BRIGADIER CALITZ:** That is why I, -

18 13, I am with you, Mr Chairperson.

19 **MR NTSEBEZA SC:** Okay, 13, we are looking

20 at Mr Pato, Henry Mvuyisi Pato, "a gunshot wound to the

21 neck," and that is the reconciled position with the LRC

22 experts, "a gunshot wound to the neck, main shot direction

23 back to front," do you see that?

24 **BRIGADIER CALITZ:** I see it, Mr

25 Chairperson.

1 **MR NTSEBEZA SC:** Now Mr Xalabile is the  
2 next person we want to consider, Mr Xalabile is on page 13.

3 Also Mr Xalabile, findings, "gunshot wound to chest and  
4 also to left thigh." Now the main cause of death between  
5 all the experts is gunshot wound chest, do you see that?

6 **BRIGADIER CALITZ:** I see it, Mr  
7 Chairperson.

8 **MR NTSEBEZA SC:** Now there are three more  
9 that I want to indicate. There are three more names in  
10 this summary which I'm going to direct your attention to.  
11 I believe that the evidence is that they died in hospital  
12 and that it is not clear whether they were in scene 1 or in  
13 scene 2. The likelihood though is that they were at scene  
14 2. The name is Mr Mohai –

15 **MR CHASKALSON SC:** Sorry, Mr Chairperson,  
16 we can positively confirm that Mr Mohai was at scene 2,  
17 we've identified him on the video footage at scene 2.

18 **MR NTSEBEZA SC:** I'm greatly indebted to  
19 Mr Chaskalson for that. Do you see page 32, Brigadier,  
20 number 32, Teleng Mohai, post mortem findings, "entrance  
21 wound in back right chest" and then there is commentary,  
22 "injury probably sustained when the victim was in the bend  
23 over position or when the body was flat on the surface" and  
24 then there are further in respect of this, further forensic  
25 findings, if you look at column number 6, "gunshot wound in

1 back, right abdomen area, bullet trajectory is downwards

2 across the spinal column, wound in chin" and the reconciled

3 main cause of death with the LRC experts is that of

4 "gunshot wound to the chest," do you see that?

5 **BRIGADIER CALITZ:** I see it, Mr

6 Chairperson.

7 **MR NTSEBEZA SC:** The next person, I don't

8 know whether Mr Chaskalson has anything to assist here

9 with, is Modisaotsile Sagalala and that will be on page 33.

10 Now, it is one of those in relation to whom we said we do not

11 know whether they were in scene 1 or scene 2, but they died

12 in hospitals. Do you see there is "gunshot wound in chest"

13 and then there is "gunshot wound in back of left shoulder,

14 gunshot wound to left wrist" and then the reconciled main

15 cause of death position is "gunshot wound to the chest."

16 Do you see that, Brigadier?

17 **BRIGADIER CALITZ:** I see it, Mr

18 Chairperson.

19 **MR NTSEBEZA SC:** Yes, now the last person

20 is Molefi Ntsoele. Now Molefi Ntsoele's post mortem

21 findings on page 34, I'm sorry, page 34, "gunshot wounds to

22 abdomen, gunshot wound to back of left chest, general

23 direction from upper left side." Further forensic findings

24 are "wound in chin, neck, entrance wound in back of body,

25 wound on lower neck." The reconciled position between all

1 the experts is that the main cause death was attributed to  
2 "gunshot wounds of chest and abdomen, high velocity power."

3 **CHAIRPERSON:** Mr Ntsebeza, may I ask you  
4 this, what time are your clients scheduled to leave? I  
5 gather they're leaving on a bus?

6 **MR NTSEBEZA SC:** Mr Chairman, I believe  
7 they will leave at half past two.

8 **CHAIRPERSON:** Half past two, and how much  
9 longer do you need to round up the point that you're busy  
10 with at the moment? You've now reached the end of the list  
11 of deceased persons that you were taking the witness  
12 through.

13 **MR NTSEBEZA SC:** Yes.

14 **CHAIRPERSON:** How much longer do you  
15 need? Obviously this cycle of injuries to the various  
16 deceased persons is leading to a point. Now how long is  
17 that going to be?

18 **MR NTSEBEZA SC:** Mr Chairman, I think -

19 **CHAIRPERSON:** I take it you would like to  
20 finish the point before your clients go?

21 **MR NTSEBEZA SC:** Yes, yes, Mr Chairman.

22 **CHAIRPERSON:** Now we either adjourn now  
23 and have lunch and try to come back punctually at, say ten  
24 to two or, - well, I'm in your hands, if they're only  
25 leaving at half past two presumably you will be able to

1 finish the point between say ten to two and when they have  
2 to go, is that correct?

3 **MR NTSEBEZA SC:** Yes, Mr Chairman.

4 **CHAIRPERSON:** So we'll take the lunch

5 adjournment now and we must try; I know it is not always

6 possible but at this occasion we must make it possible, we

7 must try to resume strictly at ten to two.

8 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

9 **[13:55] CHAIRPERSON:** Brigadier, you're still

10 under oath.

11 **BRIGADIER CALITZ:** Still under oath

12 **CHAIRPERSON:** Mr Ntsebeza.

13 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

14 Thank you, Mr Chairman. I'll cut to the chase, Mr

15 Chairman. Now Brigadier –

16 **CHAIRPERSON:** Before you proceed, is it

17 possible for that door there, the left-hand door as I face

18 the wall there to be opened so we can get some air,

19 particularly as the air-conditioner isn't on. I think

20 there is an air-conditioners, there are air-conditioners in

21 the, fans and so on in the foyer there. Otherwise, it gets

22 very unpleasant. Mr Ntsebeza, sorry about that

23 interruption.

24 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

25 Now Brigadier, we have now gone through the records, post

1 mortem records of about 32 people and there is no doubt

2 that all 32 were shot and killed on the 16th of August at

3 scene 1 and at scene 2, something which is common cause.

4 Now, as operational commander did you get to know on that

5 day the extent of the injuries sustained by those who died?

6 **BRIGADIER CALITZ:** No, Mr

7 Chairperson, not on that day.

8 **MR NTSEBEZA SC:** I see. Other than today

9 – well, let me not put it on that basis. When did you get

10 to know the details of how these people met their death,

11 the ones now we have gone through?

12 **BRIGADIER CALITZ:** Mr Chairperson, I will

13 not be able to determine a date. We will have to look at when

14 the post mortem reports were released, the reasons and

15 all that. I will not be able to tell you now at what stage –

16 **MR NTSEBEZA SC:** Was it last year

17 already, or this year?

18 **BRIGADIER CALITZ:** I will honestly not be able

19 to tell you. I – it may be this year. I can really

20 not tell you, no.

21 **MR NTSEBEZA SC:** Was it before you came

22 to testify?

23 **BRIGADIER CALITZ:** That the reports are

24 out?

25 **MR NTSEBEZA SC:** Was it before the 18th of

1 August 2012 when you addressed for instance your -

2 **BRIGADIER CALITZ:** No, sir -

3 **MR NTSEBEZA SC:** - your members of your  
4 police?

5 **BRIGADIER CALITZ:** No, Mr

6 Chairperson, which was two days after the incident. It could  
7 not have been out yet.

8 **MR NTSEBEZA SC:** Now when you got to know  
9 the details, did it strike you, as it has struck me, that  
10 almost all the people who were killed on that day were  
11 killed based on these reports, because they were  
12 shot either in the head or certainly in their upper bodies?

13 **BRIGADIER CALITZ:** I did see it later on  
14 in the reports.

15 **MR NTSEBEZA SC:** So before you came to  
16 testify, it has been known to you that all of the people  
17 who died on the 16th died as a result of wounds inflicted on  
18 them either to their heads or faces, or certainly to their  
19 upper bodies?

20 **BRIGADIER CALITZ:** As I said, Mr  
21 Chairperson, what was in the reports is what  
22 I learned.

23 **MR NTSEBEZA SC:** Now I'm not saying it  
24 has been your case because I think that has been now  
25 clarified, but it seems to me that you have not been

1 unsupportive of a view that the police in killing these  
2 mineworkers were acting in self-defence. Do you hold that  
3 view? Just as an opinion.

4 **CHAIRPERSON:** Before you answer,  
5 Brigadier, Mr Semenya has turned his light on.

6 **MR SEMENYA SC:** I don't understand the  
7 question, Chairperson, that he was unsupportive of that defence.

8 **CHAIRPERSON:** Perhaps you can clarify,  
9 the question is a little bit unclear. Perhaps you could  
10 clarify for the benefit of the witness and Mr Semenya.

11 **MR NTSEBEZA SC:** Yes, Mr Chairman, thank  
12 you very much. Thanks, my learned colleague. Brigadier,  
13 the position is this; do you hold the view that the police  
14 in inflicting the wounds that caused the deaths of these  
15 34, 32 people we had talked about, did so because they were  
16 defending themselves?

17 **MR SEMENYA SC:** The witness's answer and  
18 opinion is totally irrelevant. It seeks to answer the  
19 question which has been tasked the Commission to answer.

20 **CHAIRPERSON:** Mr Ntsebeza, isn't this the  
21 point we traversed before the lunch adjournment that I said  
22 I'm not interested in his opinion –

23 **MR NTSEBEZA SC:** Thank you. Thank you,  
24 Mr Chairman –

25 **CHAIRPERSON:** - his impression or his

1 opinion. It's something we have to form an opinion on  
2 ourselves on the evidence and his conclusion not only  
3 doesn't bind us, it's really irrelevant as far as we are  
4 concerned. So I think the objection, and subject to what  
5 you may wish to say –

6 **MR NTSEBEZA SC:** Yes. No, no, Mr

7 Chairman –

8 **CHAIRPERSON:** I think the question can be  
9 perhaps, should be – if you want to ask something along  
10 those lines you must reformulate the question in a way that  
11 avoids the objection.

12 **MR NTSEBEZA SC:** No, Mr Chairman, thank  
13 you very much. May I just say that as an experienced  
14 police officer who knows what specialised units, their  
15 training, as I asked you earlier, their skill, would it be  
16 fair to put to you that TRT members are trained not to  
17 panic even under pressure in an environment where they are  
18 deployed to deal with a volatile situation? Would it be  
19 fair to say part of their training is that they must try  
20 and maintain coolness even under extreme pressure?

21 **BRIGADIER CALITZ:** Mr Chairperson, if I  
22 may testify, I think it is part of our training  
23 as police officers that we will be subject to danger on  
24 a daily basis, so I will say, correct.

25 **MR NTSEBEZA SC:** And TRT, NIU, STF even

1 more so because they are being trained for specialised  
2 operations, would you agree?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 yes, I am not totally – what is the word, “convinced”

5 I am not totally informed on the

6 training curriculum of the NIU and the STF and what it

7 physically entails, but I believe they get the same

8 training, but also a more extensive and specialised training as

9 the TRT.

10 **MR NTSEBEZA SC:** Yes. No, what I’m

11 saying, Brigadier, is simply that, you know, there would be

12 that measure of difference towards better and more training

13 for a person who was a specialised unit member and an

14 ordinary police officer.

15 **BRIGADIER CALITZ:** There is a difference –

16 **MR NTSEBEZA SC:** That should go without

17 saying –

18 **BRIGADIER CALITZ:** There is a difference,

19 between the training of Special Forces and those of

20 normal police officer, as you put it.

21 **MR NTSEBEZA SC:** And not to make a fine

22 point of it, I mean they carry those deadly weapons,

23 weapons of war, it has been referred to by Warrant-Officer

24 Wessels.

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 there I cannot agree, any police officers,  
2 even those in the patrol vehicles,  
3 are all issued with the same hand weapons and R5 weapons.

4 **MR NTSEBEZA SC:** No, Brigadier, I thought

5 this is a matter on which we really could agree. R1

6 rifles, R5 rifles are deadly weapons. They are weapons of  
7 war.

8 **BRIGADIER CALITZ:** I never said they

9 are not lethal. You said they are just issued with it and I

10 said, no, they do not exclusively issued with it –

11 **MR NTSEBEZA SC:** No, no, no –

12 **BRIGADIER CALITZ:** – also the –

13 **CHAIRPERSON:** You must give him a chance

14 to answer. The point he's making is you suggested to him

15 the specialised units are the only ones that carry these

16 weapons and he's saying that's not so; ordinary policemen

17 in patrol vans have them as well, but he did not disagree

18 with your proposition that they can be described as weapons

19 of war, they are assault rifles, and so on. So the facts

20 you are trying to establish he is admitted. You're having an

21 argument with him –

22 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

23 It's just a –

24 **CHAIRPERSON:** – about something that you

25 don't need to.

1 **MR NTSEBEZA SC:** - of expression, but  
2 what I meant is, you know, from TRT, NIU, and STF units,  
3 those people are not only well trained, but they are  
4 trained in the usage of those kinds of weapons.

5 **BRIGADIER CALITZ:** Mr Chairperson,  
6 yes, if I may answer the question directly, they are trained  
7 in those weapons, the R5, but so are the VISPOL members.

8 **MR NTSEBEZA SC:** Yes.

9 **BRIGADIER CALITZ:** They have better  
10 training, as I testified before.

11 **CHAIRPERSON:** Sorry to interrupt. I did  
12 say a few minutes ago that you agreed that these are  
13 weapons of war. Am I correct, or am I misstating what  
14 you're saying? It's probably just a technical point, but  
15 we have to be very accurate.

16 **BRIGADIER CALITZ:** Mr Chairperson,  
17 yes, maybe not "weapons of war". That was not the meaning of the  
18 words - I said it was an assault weapon also issued  
19 to all police officers - even those in patrol vehicles,  
20 which is definitely not "weapons of war". I just want to make  
21 it very clear.

22 **MR NTSEBEZA SC:** I'll accept assault  
23 rifles, and that is the context in which an expert from  
24 SAPS described what assault rifle is. Now the only thing I  
25 want to put to you, knowing that you were not there, is

1 that we will argue that the action of the police in  
2 inflicting the wounds that we have now gone through on all  
3 of those victims, was totally disproportionate and that is  
4 what we will argue, and I just want to put it to you as a  
5 person who was in operational command on the day. You may  
6 comment on that if you want to.

7 **CHAIRPERSON:** Do you wish to comment on  
8 that, Brigadier?

9 **BRIGADIER CALITZ:** Mr Chairperson,  
10 no, may I ask him to repeat the question, the part  
11 where you say "disproportional," if you can just explain that  
12 to me, but if I –

13 **CHAIRPERSON:** He didn't say  
14 disproportionate of what – sorry to interrupt, Brigadier –

15 **BRIGADIER CALITZ:** Yes, and when we –

16 **CHAIRPERSON:** The question was  
17 incomplete. You said it was disproportional, or  
18 disproportionate I suppose is more correct. You didn't say  
19 disproportionate to what and he wants to know that, which  
20 seems a fair request, before he answers the question.

21 **BRIGADIER CALITZ:** It is the only one,  
22 yes, Mr Chairperson.

23 **MR NTSEBEZA SC:** Now we are saying given  
24 what we now know, the weapons that were found in scene 1  
25 and in scene 2, even accepting that those were the weapons

1 that were found, the usage of lethal firepower, R1 rifles,  
2 R5 rifles, shotguns, was disproportionate, even assuming  
3 that the police were coming under attack, which of course  
4 we are denying.

5 **CHAIRPERSON:** Sorry, you still haven't  
6 finished the question. Maybe I can help you, and if I'm  
7 helping you incorrectly, please say so. What you're  
8 asking, I think, is you're suggesting that you're going to  
9 argue, you say you're going to argue that the use of all  
10 that firepower, all those assault rifles and so forth,  
11 against a group of people who were approached, armed as  
12 they were with the weapons described, was disproportionate  
13 to the threat, which they posed. I think that's what you're  
14 asking.

15 **MR NTSEBEZA SC:** That is on the  
16 assumption that –

17 **CHAIRPERSON:** Yes, yes, yes, sorry,  
18 you've already made it clear, I think –

19 **MR NTSEBEZA SC:** Yes, yes.

20 **CHAIRPERSON:** - that these questions are  
21 posed, or based upon a proposition that you don't accept,  
22 but for the purposes of this part of your cross-  
23 examination, for the sake of the argument you are accepting  
24 it without admitting it to be correct. So on the  
25 assumption that the threat was posed, you say that the use

1 of all this firepower to a threat, or alleged threat posed  
2 by these approaching strikers, armed as they were, was  
3 disproportionate. That's your question. Am I right?

4 **MR NTSEBEZA SC:** That's the basic one.

5 **MR SEMENYA SC:** And I still raise the  
6 same objection. That's for the Commission to determine.

7 **CHAIRPERSON:** He was the operational  
8 commander. I think I'll allow him to answer the question.  
9 What the value of the answer will be is a matter you can  
10 argue later, but I'd prefer to let him answer because it  
11 will be safer that way. Yes, Brigadier, do you agree with  
12 the proposition put?

13 **BRIGADIER CALITZ:** No, Mr  
14 Chairperson, I do not agree with the statement  
15 made.

16 **MR NTSEBEZA SC:** Mr Chairman, I want to  
17 move to something else. Brigadier, where I want to get to  
18 is just an examination of what you will find in your bundle  
19 under the head "Shotgun victims."

20 **BRIGADIER CALITZ:** Was this under your  
21 second request, or first request?

22 **MR NTSEBEZA SC:** Mr Chairman, we would  
23 like to make this a new exhibit.

24 **BRIGADIER CALITZ:** Mr Ntsebeza, I asked  
25 if it was under your first request, or second request that

1 you sent through? If you can assist me there.

2 **MR NTSEBEZA SC:** I think –

3 **BRIGADIER CALITZ:** How did you put it,

4 what is the “exhibit” –

5 **MR NTSEBEZA SC:** It is under the head

6 “Shotgun victims.”

7 **CHAIRPERSON:** This is behind the green

8 marker, is it, in the file? This will now be –

9 **MR NTSEBEZA SC:** Yes.

10 **CHAIRPERSON:** Adv. Pillay, can you help

11 me? This will be KKK?

12 **MS PILLAY:** KKK11.

13 **CHAIRPERSON:** 11. So how do I describe

14 it? Photographs of shotgun victims, is it? Is that

15 correct, Mr Ntsebeza? How do I describe it?

16 **MR NTSEBEZA SC:** Yes, Mr Chairman.

17 **CHAIRPERSON:** Alright, now if these

18 photographs are going to be put up on the screen, some kind

19 of warning will be required.

20 **MR NTSEBEZA SC:** Yes, Mr Chairman, I

21 think so.

22 **BRIGADIER CALITZ:** Mr Chairperson, I

23 just want to make sure it is correct,

24 in the “bundle”, you put it under the “heading,”

25 “PowerPoint presentation pertaining to the location of the

1 shotgun victims and the nature of their injuries." Is that

2 the one you're referring to?

3 **CHAIRPERSON:** Before we get there, we've

4 got a file; I wonder whether our file is the same as yours.

5 We have a file that started with the Ramanala

6 photographs, which were referred to. Then we have got a

7 section dealing "Deceased 16 August 2012," those are the

8 pages, which Mr Ntsebeza was going through. Then behind the

9 next card as it were in the file is a section, which is

10 headed, "The shotgun victims"

11 **[14:15] CHAIRPERSON:** And it consists of a series

12 of photographs.

13 **BRIGADIER CALITZ:** I have it, Mr

14 Chairperson, yes.

15 **CHAIRPERSON:** Now the –

16 **BRIGADIER CALITZ:** It is correct so.

17 **CHAIRPERSON:** I've had a quick look at

18 this and some of them are the kind of photographs, which are

19 likely to cause alarm and distress and pain actually to

20 people who were relatives or loved ones of the people so

21 depicted. So it is similar to the ones you have given

22 before, if anyone here feels that he/she is likely to

23 experience pain and distress at these photographs being

24 shown, screened on the screen, then I would suggest they

25 take advantage of the opportunity to leave now and I will

1 ask Mr Ntsebeza to kindly translate that into Xhosa and  
2 when he is finished to give those who wish to leave an  
3 opportunity to do so, and I'll ask him only to proceed when  
4 he is satisfied that all those who wish to leave have had  
5 enough time to do so. Yes, thank you, Mr Ntsebeza.

6 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

7 **CHAIRPERSON:** It doesn't look as if  
8 anyone wishes to leave, so I can imagine it would be in  
9 order for you to proceed, but while we're on the subject of  
10 that, you told me the bus leaves at half past two, does  
11 that mean they have to leave the chamber at half past two  
12 or shortly before that, because I think just before they  
13 leave we should adjourn so that they can walk out silently.

14 **MR NTSEBEZA SC:** Yes.

15 **CHAIRPERSON:** So when the time for their  
16 departure arrives would you please let me know so that I  
17 can address a few words to him before they go? You may  
18 proceed now, Mr Ntsebeza, I take it.

19 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

20 Now before we put the pictures can we just recall the  
21 evidence on page T17468, T17468 to T17470? Yes, can we get  
22 that?

23 **CHAIRPERSON:** Yes, there is no need  
24 waiting for it if we're not going to see it but if we're  
25 going to see it then, I'll give you a minute more.

1 **MR NTSEBEZA SC:** It is relevant to cross-  
2 examination of the brigadier, I think it was on the first  
3 day of his cross-examination by Mr Budlender. I am told to  
4 announce, it was day 155.

5 **CHAIRPERSON:** What page do you want, Mr  
6 Ntsebeza?

7 **MR NTSEBEZA SC:** It is 17468.

8 **CHAIRPERSON:** 17468?

9 **MR NTSEBEZA SC:** Yes, Mr Chairman.

10 **CHAIRPERSON:** Yes, we do not have it, what  
11 line do you want to refer to?

12 **MR NTSEBEZA SC:** It is line 4?

13 **CHAIRPERSON:** Are you dealing with the  
14 shotgun pellets?

15 **MR NTSEBEZA SC:** Yes, Mr Chairman.

16 **CHAIRPERSON:** As we can see it is in line  
17 4 –

18 **MR NTSEBEZA SC:** There we are, 4, now  
19 you'll remember giving that evidence. Now if we go down,  
20 scroll down –

21 **CHAIRPERSON:** You have got the  
22 transcripts in front of you, do you, Brigadier?

23 **BRIGADIER CALITZ:** I have my transcription file  
24 in front of me, Mr Chairperson.

25 **CHAIRPERSON:** Yes, good.

1 **MR NTSEBEZA SC:** So, Brigadier, the  
2 question then arises, "How does one explain the fact that  
3 at least six strikers were shot with shotgun pellets at  
4 scene 1 and 2?"

5 **CHAIRPERSON:** You're reading, Mr  
6 Ntsebeza, from line 4?

7 **MR NTSEBEZA SC:** Yes, Mr Chairman.

8 **CHAIRPERSON:** On that page, okay, and  
9 then the brigadier then answers, are you going to read his  
10 answer as well or do you want me to, Mr Ntsebeza?

11 **MR NTSEBEZA SC:** Yes, Mr Chairman, if you  
12 could?

13 **CHAIRPERSON:** "Mr Chairperson, afterwards,  
14 if I may give my opinion on that, we know the  
15 between AMCU and NUM took place on the Sunday,  
16 and we were," I'll translate this, "Mr Chairman, after the  
17 time, if I can give my opinion on that, we know that on the  
18 Sunday the attack took place between AMCU and NUM and we  
19 were," and then I interposed and said, "I'm not sure it was  
20 between AMCU and NUM, but we do know that people who  
21 appeared to have been strikers attacked the two security  
22 guards who were in the employ of Lonmin and I think may  
23 have been the members of NUM, but anyway they were Lonmin  
24 employees, security guards, and they were killed at the  
25 scene, we know about it," and you said,

1 "I withdraw what I now said.  
2 "The protestors attacked the NUM personnel or the  
3 security personnel on the Sunday, and we know that two of their  
4 shotguns were taken." "The protestors  
5 then attacked the NUM people or the security staff on the  
6 Sunday and we know that two of their shotguns were then  
7 taken." You went on, "I was also informed that the  
8 Lonmin personnel used, as you put it,  
9 pellets." "It was also communicated to me that  
10 the staff of Lonmin indeed made use of, as you put it,  
11 pellets." You continued, "The assumption we can make is that  
12 the group of protestors could have been the same group and  
13 they then used it in the attack on the  
14 police."  
15 "The inference which we have made is that the  
16 group of protestors could possibly have been the same group  
17 and that they then used it," I take it by "it", it is meant  
18 the shotguns, "in the attack on the police." Is that the  
19 passage you're busy with, Mr Ntsebeza?

20 **MR NTSEBEZA SC:** Yes, Mr Chairman, I'm  
21 indebted –

22 **CHAIRPERSON:** I endeavoured to translate  
23 the Afrikaans for you as went along.

24 **MR NTSEBEZA SC:** And if you could just  
25 read also the –

1 **CHAIRPERSON:** Mr Budlender then said,  
2 this is now on page 17469, line 2, "So the explanation  
3 you're offering is that the strikers who were shot and  
4 killed with shotgun pellets on the 16<sup>th</sup> were shot and killed  
5 by their own people," and you said, "Correct, Mr  
6 Chairperson," "Correct, Mr Chairman."

7 **MR NTSEBEZA SC:** Yes.

8 **CHAIRPERSON:** And then Mr Budlender said,  
9 "Is there any evidence to support that hypothesis," and Mr  
10 Semanya then, -

11 **MR NTSEBEZA SC:** Yes, that's the one -

12 **CHAIRPERSON:** I don't know if you want me  
13 to read that?

14 **MR NTSEBEZA SC:** No, if I have to ask you  
15 to read anything it will be later on where after the debate  
16 was engaged in as to whether there is evidence or no  
17 evidence, but for purposes of my cross-examination I think  
18 it is sufficient to ask the brigadier now his evidence, on  
19 the basis of the passage you have read up to where Mr  
20 Budlender asked him whether he is giving an explanation.  
21 Is it your evidence that according to your thinking the  
22 strikers were shot and killed with birdshot at scene 1,  
23 were shot by one or more or the strikers themselves? Is  
24 that what that passage is seeking to convey?

25 **BRIGADIER CALITZ:** Mr Chairperson, -

1 **CHAIRPERSON:** The passage he refers to is

2 the passage for the record-

3 **BRIGADIER CALITZ:** I have –

4 **CHAIRPERSON:** - which I endeavoured to

5 translate.

6 **BRIGADIER CALITZ:** I have it like that, sir.

7 He referred to birdshot, but I understood it was pellets,

8 but I will answer him. My testimony remains the same,

9 Mr Chairperson.

10 **MR NTSEBEZA SC:** Let me ask it again. Is

11 it your evidence that those strikers who were shot with

12 shotguns, pellets at scene 1 were shot by one or more of

13 the strikers themselves?

14 **BRIGADIER CALITZ:** Mr Chairperson,

15 correct, my statement is the same as in that

16 paragraph.

17 **CHAIRPERSON:** Counsel is just making

18 clear, endeavouring to make it clear whether you are stating

19 that as a positive fact that the strikers who were shot by

20 pellets at scene 1 on the 16<sup>th</sup> were shot and killed by some

21 of their fellow strikers?

22 **BRIGADIER CALITZ:** No, Mr

23 Chairperson, I did not say it is a “positive fact”,

24 I said I keep to my testimony, in other words

25 the conclusion I made. That was my

1 my opinion, if I can put it that way.

2 **MR NTSEBEZA SC:** Now –

3 **CHAIRPERSON:** Sorry, Mr Ntsebeza, before

4 we can continue, it is now 2:30, I don't know what the

5 position is in regard to your clients leaving, I understand

6 this is an important point but if they've got to leave

7 they have got to leave. If on the other hand the bus is

8 waiting for them and they're not going to miss the bus,

9 then you can carry on but –

10 **MR NTSEBEZA SC:** I am told there is

11 flexibility –

12 **CHAIRPERSON:** I see –

13 **MR NTSEBEZA SC:** - up to three o'clock.

14 **CHAIRPERSON:** Okay, I see, alright, well,

15 then carry on.

16 **MR NTSEBEZA SC:** Can I then ask this, I

17 would like to clarify my own mind, not being trained in

18 these things and you can assist us. Now shotguns, are

19 those the same things as what is sometimes used, I mean is

20 sometimes called pump actions, shotguns?

21 **BRIGADIER CALITZ:** I believe it will

22 be the same as what you are referring to, correct.

23 **MR NTSEBEZA SC:** Yes, now there is a

24 difference, - is there is a difference between rubber

25 bullets and rubber balls?

1 **BRIGADIER CALITZ:** Mr Chairperson,

2 no, there is no rubber balls, if you refer to the ammunition that

3 the police uses, -

4 **MR NTSEBEZA SC:** Yes -

5 **BRIGADIER CALITZ:** - it is a blue

6 round, -

7 **MR NTSEBEZA SC:** Yes -

8 **BRIGADIER CALITZ:** - we talk of a

9 round, but maybe it is the bullet you are referring to, it is

10 not a bullet, we refer to blue rounds and on the inside

11 inside we have a load with two soft balls,

12 if you feel it with your fingers it is not

13 really soft, but it compresses and the two

14 balls are loaded and when fired

15 the shotgun will fire the two

16 balls. So the rubber balls you are referring to is inside,

17 what we refer to as a shotgun round.

18 **MR NTSEBEZA SC:** Yes, now -

19 **BRIGADIER CALITZ:** It is two

20 different things.

21 **MR NTSEBEZA SC:** Do SAPS have or did they

22 use to have rubber bullets in the form of sharp pointed

23 rubbers, which were used?

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 no, since I joined the police,

1 I never came across sharp point rubber bullets, I have not  
2 knowledge thereof.

3 **MR NTSEBEZA SC:** So whenever one talks  
4 about rubber bullets and rubber balls one is talking about  
5 the same thing, is that the evidence?

6 **BRIGADIER CALITZ:** It is correct, it is ...

7 -

8 **CHAIRPERSON:** The evidence we had was  
9 that up to, apparently, recently, before the 16th of August  
10 2012 the police also used rubber pellets which were  
11 effectively also described as rubber bullets, but they were  
12 then discontinued pursuant to a directive issued by the  
13 National Commissioner. Judging by recent press reports it  
14 would appear that some of the Metropolitan Police Forces in  
15 this province still use the rubber bullets but I think it  
16 is correct, is it not, that the South African Police  
17 Service have not used them, or are certainly not supposed to  
18 use them, since the National issued the directive  
19 Commissioner, which is an exhibit before us, that is correct,  
20 isn't it?

21 **BRIGADIER CALITZ:** Mr Chairperson,  
22 the only difference is, what you are referring to, the rubber  
23 pellets, never was rubber. We previously testified  
24 and it was the word that the  
25 advocate used just now, it was "birdshot".

1 It was, and I am speaking under correction,  
2 if I recall correctly, I was about  
3 15 to 20 years ago, it was a green round, consisting of  
4 birdshot. Birdshot consisted of about 270 granules,  
5 and consisted out of salt. The next one was the  
6 AAA that we referred to, it was red and consisted of 70, 76 or  
7 80 metal  
8 granules.

9 **[14:35]** Then we get SSG, the black round with a smaller  
10 load, I think it contains about 18 or 20, small metal balls,  
11 but I do talk under correction. That is the different steps.  
12 The rubber bullets we had at that stage was basically  
13 stoppers. It is a 37mm stopper gun,  
14 looking like a teargas grenade with a solid piece of  
15 rubber, almost like the bottle, maybe  
16 thinners, with a solid flat front and a solid  
17 back, – that is where we referred to the  
18 stoppers. At that stage, we used the rubber  
19 and shotgun rounds.

20 **CHAIRPERSON:** So the English word I think,  
21 is projectile. Is that correct? Rubber projectile.

22 **BRIGADIER CALITZ:** Yes, the shelf.

23 **CHAIRPERSON:** In any event, we have now had  
24 a little lecture on the matter, but does it help you to  
25 formulate your question with precision?

1 **MR NTSEBEZA SC:** Yes, it does. It does,  
2 Mr Chairman. I think I do understand the Brigadier. Now,  
3 Brigadier, birdshot pellets, now that is something different  
4 to everything else that we have been talking about.

5 Birdshot pellets are small rounded, small –

6 **BRIGADIER CALITZ:** May I assist, sir?

7 That is what I explained just now, “birdshot” and  
8 “pellets” are two different things. “Birdshot” will be  
9 salt, it is about 270 grains of fine salt, and  
10 “pellets” are metal, and that is what is currently used  
11 by security companies and if I am, understand it correctly,  
12 Lonmin said, they  
13 still use it. So  
14 it has a larger charge.

15 **CHAIRPERSON:** In fact can I cut this  
16 point short? We know that people were killed with pellets,  
17 with the details we had before lunch. Now there are, I  
18 would suspect, three possible sources of those who have got  
19 pellets. The one that you mentioned, you suggested some of  
20 the miners may well have been in possession of shotgun,  
21 pellet shotguns, because of the incident on the 12th when  
22 Lonmin security staff was killed and their shotguns were  
23 taken by a group presumably of strikers. Therefore, that would  
24 then indicate that some of the strikers may well have been  
25 in possession of shotguns, which they could have used on

1 the 16th.

2 **BRIGADIER CALITZ:** Correct, Mr

3 Chairperson.

4 **CHAIRPERSON:** Second possible source are

5 the Lonmin people. We saw a few days ago on the screen

6 video clips of Lonmin security staff in possession of

7 shotguns and it was admitted by a representative of Lonmin

8 that they were in possession of, their staff was in

9 possession of shotgun bullets, and then the third

10 possibility, which you discounted quite strongly, was that

11 some of the members of the police service who were in

12 possession of shotguns, which they were supposed to use for

13 firing stun grenades and teargas canisters and rubber

14 balls, might theoretically have been in possession also of

15 rubber bullets, but you discounted that and you gave

16 reasons why you were of the view that that was an unlikely

17 scenario. Is that a correct summary of your evidence?

18 Sorry, I get the terminology wrong; it is rubber pellets.

19 **BRIGADIER CALITZ:** I understood it

20 like that, Mr Chairperson.

21 **CHAIRPERSON:** This projectile actually.

22 **BRIGADIER CALITZ:** It is correct, Mr

23 Chairperson, the blue rounds.

24 **CHAIRPERSON:** So there were effectively

25 three possible sources of these pellets. The strikers are

1 the one that you preferred for reasons I think you gave.  
2 Of course we can't on the evidence before us eliminate the  
3 Lonmin security people, not on the evidence we have at the  
4 moment before us. That is a possibility. And the third  
5 one, there's also a possibility, that you gave your reasons  
6 for rejecting it as a reasonable possibility, that some of  
7 the members of the police service might surreptitiously, as  
8 it were, have obtained possession of rubber pellets and  
9 used them in their shotguns in addition to firing what they  
10 were supposed to fire. Is that a correct summary of your  
11 evidence? I've got my terminology wrong, but Adv. Hemraj  
12 will correct me; repeat what she just told me off  
13 microphone so that there is not any further confusion.

14 **COMMISSIONER HEMRAJ:** I think the  
15 evidence was that Lonmin said that their personnel had  
16 birdshot and that was one of the possibilities that was  
17 posed.

18 **BRIGADIER CALITZ:** I think it's in the  
19 same transcript –

20 **COMMISSIONER HEMRAJ:** Yes.

21 **BRIGADIER CALITZ:** - if we can – “I had  
22 pellets,” but I might be mistaken, but we can find it.

23 **COMMISSIONER HEMRAJ:** Yes, alright.

24 **CHAIRPERSON:** What I am saying to you,  
25 apparently there are three possible sources and you have

1 given your reasons for saying that only one of those  
2 sources is the one that one should take realistically. The  
3 question that immediately arises is it is not possible  
4 surely on the material before us at this stage to say that  
5 the Lonmin people didn't, definitely didn't fire the  
6 pellets. Isn't that so? It is a possibility, which will  
7 presumably be dealt with later in evidence, but one can't  
8 discard it at this stage without more. Is that right?

9 **BRIGADIER CALITZ:** Mr Chairperson, I think  
10 it was – I think it was Mr Budlender that referred  
11 thereto, the photos I saw and the  
12 people in uniform present at "scene" 2 and  
13 Lonmin admitted that it was their personnel and that they  
14 used shotguns with "pellets." That was the option,  
15 it is the second one that you –

16 **CHAIRPERSON:** Yes, that's a possibility.  
17 And there is the third one, which you don't like and you  
18 gave reasons for thinking we shouldn't take it seriously,  
19 was that there may have been some members of the police  
20 service who were surreptitiously in possession of pellets,  
21 which they shouldn't have had, and which they fired off in  
22 their shotguns. If they had been in possession of pellets,  
23 they could have done so with the weapons available to them.  
24 Is that correct too?

25 **BRIGADIER CALITZ:** Mr Chairperson, I

1 think I testified that it was withdrawn years back already –

2 **CHAIRPERSON:** No, no, no, I know you gave

3 your reasons –

4 **BRIGADIER CALITZ:** Okay, no I

5 agree.

6 **CHAIRPERSON:** I am not suggesting your

7 reasons are wrong. I have an open mind on that, but it's

8 a possible source of – right. Mr Ntsebeza, I hope that

9 helps you and does not hinder you.

10 **MR NTSEBEZA SC:** I don't think so, Mr

11 Chairman. It doesn't hinder me. KKK11, which is this new

12 exhibit we are referring to, I think page 13 thereof, can

13 you show up page – KKK11. Yes, now typically what would

14 cause those kinds of injuries or wounds? Is it pellets or

15 birdshot?

16 **BRIGADIER CALITZ:** Is that the question to

17 me?

18 **MR NTSEBEZA SC:** Yes, I'm sorry –

19 **BRIGADIER CALITZ:** I do not know

20 if you are making a statement, or asking a question, sorry.

21 **MR NTSEBEZA SC:** No, I was just seeking

22 to find out from you what kind of shot would that be.

23 Would it be birdshot, in the context of it is came from a

24 shotgun?

25 **BRIGADIER CALITZ:** Mr Chairperson, I

1 can only guess. I think "birdshot" is more  
2 refined, so it can be "pellets", but I do not know which.  
3 It may be – I am not an expert on wounds,  
4 I have no idea how it looks if a person is shot with "pellets," so  
5 no, but it is possible. My best evidence would be that it is  
6 possible.

7 **MR NTSEBEZA SC:** In your sort of limited  
8 knowledge, could it have been caused by rubber balls?

9 **BRIGADIER CALITZ:** No, Mr  
10 Chairperson.

11 **MR NTSEBEZA SC:** The rubber balls are  
12 those you referred to, there are about two of them that are  
13 in a casing?

14 **BRIGADIER CALITZ:** Yes, it will show quite a  
15 "distinct" and different mark from what we see here.

16 **MR NTSEBEZA SC:** I see. And pellet  
17 cartridges, are they a different colour from rubber balls?  
18 Pellet cartridges.

19 **BRIGADIER CALITZ:** AS I testified,  
20 years ago the rubber bullets was blue,  
21 I think the "birdshot," was green,  
22 I am talking under correction. The pellets" –

23 **MR NTSEBEZA SC:** Was red.

24 **BRIGADIER CALITZ:** - The AAA was red and the  
25 SSG, - was black.

1 **MR NTSEBEZA SC:** Okay.

2 **BRIGADIER CALITZ:** You had black,

3 green and red, which was clearly visible from the

4 rubber bullets. What colour is used by the people still

5 using it, I do not know.

6 **MR NTSEBEZA SC:** I see. No, I think I –

7 I am still confused about these pellets, these, that, but

8 you know, I think I get a sense now. Now if you'll just

9 bear with me, Brigadier. Would it be fair to say that

10 birdshot rounds are also fired from a shotgun?

11 **BRIGADIER CALITZ:** It can be,

12 fired with a shotgun, if that is the question.

13 **MR NTSEBEZA SC:** And would it be

14 fair and safe to say also pellets can be fired from a

15 shotgun?

16 **BRIGADIER CALITZ:** Correct, Mr

17 Chairperson.

18 **MR NTSEBEZA SC:** Now I don't know whether

19 this is a matter of contestation. There were quite a

20 number of police officers from the SAPS at scene 1 who were

21 carrying shotguns. I think you said as much also.

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **MR NTSEBEZA SC:** Now I've looked at

25 exhibit L and I'm sure in the course of your exercise when

1 you were assisting me and the Commission last night just  
2 outlining what kind of weapons were found at scene 1 which  
3 were attributed to the mineworkers, it appears to me – and  
4 you'll correct me if I'm wrong here – that there were no  
5 shotguns, which were found among the strikers at scene 1.

6 **BRIGADIER CALITZ:** None that was confiscated,  
7 or found, no, Mr Chairperson.

8 **MR NTSEBEZA SC:** So to the extent that  
9 there was – no, your contestation is that there was no  
10 shotgun that was confiscated at scene 1.

11 **BRIGADIER CALITZ:** Correct, Mr  
12 Chairperson.

13 **MR NTSEBEZA SC:** Was there a shotgun that  
14 was confiscated at scene 2?

15 **BRIGADIER CALITZ:** Negative, Mr  
16 Chairperson.

17 **MR NTSEBEZA SC:** So can we safely say  
18 that no shotgun was confiscated from the miners neither at  
19 scene 1, nor at scene 2, on this day?

20 **BRIGADIER CALITZ:** Those that were there, no,  
21 Mr Chairperson, we did not get any.

22 **MR NTSEBEZA SC:** And therefore insofar as  
23 the miners could have injured themselves either in scene 1  
24 or scene 2 by way of shotguns, that is now no longer a  
25 proposition that stands scrutiny?

1 **BRIGADIER CALITZ:** Do you mean a

2 "proposition," or do you want me to agree?

3 **MR NTSEBEZA SC:** Well, in the evidence,

4 unless I understand your evidence well –

5 **BRIGADIER CALITZ:** No, I am just asking about the

6 word "proposition" –

7 **MR NTSEBEZA SC:** No, I'm simply saying

8 when you said to Mr Budlender the explanation of

9 mineworkers who had shotgun wounds in scene 1 and scene 2,

10 and you explained it on the basis that they may have shot

11 themselves, now if no shotguns were confiscated by the

12 police at scene 1 and at scene 2, can I suggest to you that

13 it is not possible for the miners to have shot themselves

14 at those two scenes?

15 **BRIGADIER CALITZ:** Mr Chairperson,

16 no, I do not agree with you.

17 **MR NTSEBEZA SC:** I'm listening. Why

18 don't you?

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 what we confiscated was from the people

21 that was there. The weapons we found at scene 1

22 from the group present there.

23 The people arrested at scene 2, and

24 hill 3, Mr Chairperson, we

25 also confiscated their weapons.

1 Sorry, Mr Chairperson, I just saw him talking –  
2 I just want to give you the answer. The people present at  
3 group 2 was at “scene” 2, hill 3, and that were the weapons  
4 we got there. There is still a possibility that  
5 2 to 3 000 people moved away from the  
6 hill. Therefore we cannot make the assumption that we  
7 found all the weapons at the scene.  
8 We know there will be evidence from the  
9 police officers that saw the people with long  
10 weapons. That evidence will also be leading.  
11 We also know about the media admitted to Captain  
12 Adriano, that they saw a long weapon,  
13 wrapped in a blanket, or some kind of material, that  
14 came from the media, and the “protesters”  
15 did not allow them to take the weapon, I already testified on this. Based on  
16 on the facts and the evidence given,  
17 I cannot agree with you,  
18 Mr Chairperson.

19 **MR NTSEBEZA SC:** Now I’m not very strong  
20 at weapons, but is it so that after a shot has been  
21 discharged from a weapon, there are, shells are ejected  
22 from the weapon? In fact I think there is a footage which  
23 we’ll show some time, which clearly shows one getting out of  
24 the firearm and being ejected. Now as far as I’m aware,  
25 there were no shotgun pellet shells, either used or unused,

1 which were found among the strikers at scene 1.

2 **BRIGADIER CALITZ:** As far as I know there were none at

3 g "scene" 1. Again, I am talking under correction; I will

4 have to refer back to "exhibit" L, but there were no such

5 shelf casing found.

6 **[14:54] CHAIRPERSON:** If that is so that would be

7 a pretty strong indication that the pellets fired at scene

8 1 weren't fired by the strikers. It is not necessarily

9 conclusive, but it is a strong indication, wouldn't it be,

10 that's right, isn't it?

11 **BRIGADIER CALITZ:** The strikers or the

12 police, Mr Chairperson, I –

13 **CHAIRPERSON:** I take it –

14 **BRIGADIER CALITZ:** - Said at scene 1.

15 **CHAIRPERSON:** I take it if a striker has

16 a shotgun and he fires off a pellet, the shelf will land

17 near where he was, alright?

18 **MR NTSEBEZA SC:** Hmm.

19 **CHAIRPERSON:** And if a police officer fires it

20 will land, the shelf will be near where he was and if a

21 Lonmin person does it, it will be near he was, is that

22 right?

23 **MR SEMENYA SC:** Well, Chairperson, it is only

24 if he reloads, if he doesn't reload it won't fall. It

25 stay inside the firearm.

1 **CHAIRPERSON:** Okay, so that point isn't a

2 good point, so we withdraw that.

3 **BRIGADIER CALITZ:** I just want to say that there were

4 other methods other than shotguns, like a pipe gun.

5 There is different ways to use this weapon or this

6 projectile.

7 **CHAIRPERSON:** If he used a pipe then you

8 almost certainly would have a cap.

9 **BRIGADIER CALITZ:** It will not pop

10 out, Mr Chairperson.

11 **CHAIRPERSON:** It won't pop out, it

12 won't jump out.

13 **BRIGADIER CALITZ:** What we call a pipe-gun is

14 two, I do not want to explain how it is made, but it is

15 public knowledge, but it does not pop out, no.

16 **CHAIRPERSON:** Alright, so you say there

17 are circumstances in which the shelf will not jump out?

18 **BRIGADIER CALITZ:** Definitely so.

19 **CHAIRPERSON:** So therefore, you will not find

20 a shelf on the ground in the vicinity where the shotgun

21 shots was, so the absence of shelves in the area where

22 the strikers were at scene 1 isn't necessarily an

23 indication that the shots didn't fire, I mean the strikers

24 didn't fire the pellets, is that what you're saying?

25 **BRIGADIER CALITZ:** It is a

1 possibility, Mr Chairperson.

2 **CHAIRPERSON:** Okay.

3 **MR SEMENYA SC:** Also -

4 **MR NTSEBEZA SC:** Well, apropos what my

5 learned friend was indicating, namely if he reloads then

6 the shell would fall. We know that there is more than one

7 striker who was shot at with shotgun ammunition. We said

8 there were six in scene 1 and 2 and you named them, so

9 there would have had to be more than one bullet, isn't that

10 right?

11 **BRIGADIER CALITZ:** If so many shots were

12 fired, there should be a shell casing for every

13 shot fired.

14 **MR NTSEBEZA SC:** Yes.

15 **BRIGADIER CALITZ:** If that is the statement,

16 it is correct.

17 **MR NTSEBEZA SC:** Unless it is going to be

18 suggested that all six were killed by one bullet from a

19 shotgun and that will take some imagination, don't you

20 agree?

21 **BRIGADIER CALITZ:** Mr Chairperson,

22 no, I cannot, I will have to refer to Exhibit L, to look at the

23 ratio of the shots, the shotgun fired against what

24 was found at the scene. Personally, I think there

25 is a huge difference between what was found and

1 what was fired, so it is a possibility,  
2 but I will have to go make sure about the  
3 facts, but I think the  
4 PKRS gave evidence to that, the enormity of the scene and on  
5 certain places there were shots fired, but nothing was  
6 found, so it can be that it was  
7 missed.

8 **MR SEMENYA SC:** Chairperson, it just occurs to  
9 me that, to assist the Commission, I realised that this  
10 gentleman was not fatally wounded. Maybe Mr Mpofo can help  
11 us. With this evidence, he will tell us where he was and what are  
12 the possibilities to clarify this aspect.

13 **CHAIRPERSON:** On page, well, of course  
14 this is hearsay but on page 14 and 15 we see what's  
15 described as the position of number 3. So even without  
16 number 3 coming to tell us where he was we can see. Now it  
17 is now nearly three o'clock, Mr Ntsebeza, I'm worried about  
18 your clients and their bus.

19 **MR NTSEBEZA SC:** Thank you, Mr Chairman,  
20 I was going to suggest that, it is now three o'clock, it is  
21 probably the time for us to adjourn.

22 **CHAIRPERSON:** Well, I'll take the comfort  
23 adjournment now or in fact I'll take the tea adjournment  
24 now.

25 **MR NTSEBEZA SC:** Yes?

1 **CHAIRPERSON:** But before I do so, I want  
2 to say to the members of the family who are here, we  
3 understand are leaving now, going back home for the  
4 Christmas break, we understand, I think you'll be back, I  
5 were told around about the 22<sup>nd</sup> of January. We of course are  
6 starting earlier than that, two weeks earlier than that but  
7 I take it you'll be informed, you will either be able to  
8 find out while you're back home what's happening or you'll  
9 be informed when you get back here, but we wish you a safe  
10 journey home and we hope that you'll have a blessed  
11 Christmas and a happy New Year, despite all the problems  
12 that you have to deal with and that you will return  
13 safely in the New Year, so go well and we'll see you next  
14 year. We'll take the tea adjournment now.

15 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

16 **[15:33] CHAIRPERSON:** The Commission resumes.

17 Brigadier, you're still under oath.

18 **BRIGADIER CALITZ:** Thank you, Mr

19 Chairperson.

20 **CHAIRPERSON:** Mr Ntsebeza.

21 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

22 Thank you, Mr Chairperson. Brigadier, let me just, there is some

23 question that I also want to clear my mind about. Now when

24 one fires a shotgun with shotgun pellets, is it so that

25 smoke comes out of the barrel of the gun? Or not

1 necessarily?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 no, I will not be able to say for sure. I think we must

4 arrange for a demonstration and then hand in a video of

5 such. I am not able to tell you now, no.

6 **CHAIRPERSON:** Do you undertake then to

7 organise – perhaps I'll just ask Mr Semenya, a

8 demonstration and he can take a video of it and show it to

9 us?

10 **MR SEMENYA SC:** I'll have it –

11 **CHAIRPERSON:** - the time probably.

12 **MR SEMENYA SC:** I'll have it arranged,

13 Chairperson.

14 **CHAIRPERSON:** Thank you.

15 **MR NTSEBEZA SC:** Further point of

16 clarification for me, Brigadier, now if a shotgun is loaded

17 with rubber balls, does it give a different sound than it

18 would if it were loaded with pellets?

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 again, we do not use "pellets". I am talking of 19

21 years, 15 years back. I cannot recall precisely. I think the

22 rubber bullets might sound – I am talking under correction – softer, but

23 I think we will see with the demonstration. I think the

24 rubber bullets might make a softer sound, but I might be

25 corrected.

1 **MR NTSEBEZA SC:** Now are you saying from  
2 your experience you don't recall whether the sound is  
3 different when, in the sense that even if you are no longer  
4 using it, you might recall from your experience?

5 **BRIGADIER CALITZ:** Mr Chairperson,  
6 no, I am under oath and I am not going to try and put 10 years of  
7 recollections into words. Let me rather say I will put it  
8 under correction, we did say that we are going to demonstrate it.  
9 Maybe we will see it then. No.

10 **MR NTSEBEZA SC:** No, that will be  
11 arranged then, like –

12 **BRIGADIER CALITZ:** Thank you, sir.

13 **MR NTSEBEZA SC:** Yes. I'm not promising  
14 it, but I'm sure if it be necessary we can prevail on my  
15 learned friend to arrange that as well. Now –

16 **CHAIRPERSON:** Is it possible that we  
17 should have a demonstration which we attend and then that  
18 can be videotaped so that that could form part of the

19 record, but perhaps we should be there when that happens.

20 But anyway, that's something you can discuss outside the  
21 chamber with Mr Semanya.

22 **MR NTSEBEZA SC:** Yes. Now let me just  
23 make sure that we did cover this. I was putting to you  
24 that if the mineworkers had used any shotguns at either  
25 scene, there would have been shotgun shells which would

1 has been found in their possession. Now you do not know

2 if any shells were found with any of the miners?

3 **CHAIRPERSON:** I understood him to say he

4 were not aware of any having been found. Am I correct? And

5 it was suggested that if you didn't reload the shotgun the

6 shells would not be ejected. But obviously if a fair number

7 were fired and it was reloaded then you would expect

8 shells, and shells were not found. That's his evidence.

9 **MR NTSEBEZA SC:** Yes, thank you. Thank

10 you, Mr Chairman. I just wanted to – now either at your

11 instruction or generally as part of the process of mopping

12 up, all the victims were thoroughly searched for dangerous

13 weapons, I take it? All the people who fell on the –

14 **BRIGADIER CALITZ:** I just want to make sure,

15 did you say something in the beginning regarding, "your instruction." I just

16 want to understand that part, what was the question?

17 **MR NTSEBEZA SC:** No, I say all the

18 victims either at your instruction as the operational

19 commander, or as a routine all the victims were thoroughly

20 search for dangerous weapons at either scene.

21 **BRIGADIER CALITZ:** Mr Chairperson,

22 again, in "hindsight" I can tell you what I

23 saw on TV, regarding scene 1 and scene 2, I saw

24 a bit when I arrived at the scene while the medical

25 staff were busy, that I observed myself –

1 **MR NTSEBEZA SC:** Yes.

2 **CHAIRPERSON:** As a matter of high

3 probability the victims who were arrested, the so-called

4 victims who were arrested, they all would have been search,

5 wouldn't they? Therefore, we can accept that if a shotgun had been

6 found we'd have heard about it. Isn't that so?

7 **BRIGADIER CALITZ:** Definitely, Mr

8 Chairperson.

9 **MR NTSEBEZA SC:** And I'm sure since the

10 events of the 16th of August to date, as a high-ranking

11 officer you are quite familiar with the processes around

12 what happened here. Have you been told by any officer that

13 any shotgun has been retrieved from any of the mineworkers

14 since these events? And we are talking about a year and

15 some half year ago now.

16 **BRIGADIER CALITZ:** As I have it at this stage,

17 there is still weapons missing at this

18 stage.

19 **MR NTSEBEZA SC:** Now if we could go to

20 KKK11 -

21 **CHAIRPERSON:** What page do you want to

22 look at?

23 **MR NTSEBEZA SC:** We will just look at the

24 presentation, Mr Chairman.

25 **CHAIRPERSON:** They're numbered.

1 **MR NTSEBEZA SC:** They are numbered, from  
2 what I've been told. What we have is page 13, but I would  
3 like us to start at page 2. Now what I – you see that,  
4 Brigadier?

5 **BRIGADIER CALITZ:** I am on page 2, Mr  
6 Chairperson.

7 **MR NTSEBEZA SC:** Yes, and generally you  
8 know I don't want to spend more time here than is  
9 necessary. You have heard this over the last  
10 two days or so, and if we accept what is in that document,  
11 the observation here that I want to make is the fact that  
12 the injuries from the shotgun pellets are on the chest and  
13 on the left upper arm, and according to the State  
14 pathologist this was a fatal wound. Do you see –?

15 **CHAIRPERSON:** According to the private  
16 pathologist, or was it the State pathologist?

17 **MR NTSEBEZA SC:** Oh, private.

18 **CHAIRPERSON:** There's a mistake  
19 somewhere; either it was –

20 **MR NTSEBEZA SC:** No, private. Private.

21 **CHAIRPERSON:** It may be the State one,  
22 because in brackets after this –

23 **MR NTSEBEZA SC:** "State PM report."

24 **CHAIRPERSON:** - it says "State PM  
25 report."

1 **MR NTSEBEZA SC:** Yes.

2 **CHAIRPERSON:** So maybe, we won't waste  
3 time on it now, you can go into it and by tomorrow  
4 morning –

5 **MR NTSEBEZA SC:** Yes.

6 **CHAIRPERSON:** - you can tell us which is  
7 correct.

8 **MR NTSEBEZA SC:** Yes, that's why I was  
9 saying if we accept the documents to be saying what they  
10 are saying until they are contested. It would appear from  
11 this that Mr Yona died of shotgun pellet wounds that were  
12 inflicted on his chest and left upper arm. You see that?

13 **BRIGADIER CALITZ:** I can see what is  
14 on the page, Mr Chairperson.

15 **MR NTSEBEZA SC:** Yes, and then I think  
16 that what follows are then the pictures and I've no desire  
17 for us to spend more time there. Page 2, page 3, page 4,  
18 page 5 and page 6 just shows the same person in the  
19 position in which he was found. Then we go to page 7.  
20 Page 7 deals with Mr Yona. Now again, and this is just the  
21 observation which I want to make, is that this wound which  
22 apparently is – this wound C, now it appears that both  
23 State PM report and private PM report are ad idem that  
24 wound C was a consequence of 11 birdshot-type shotgun  
25 pellet injuries. Now what I want you to note is that they

1 were also on the left side of the face, in the same way as

2 Bonginkosi Yona's injuries were on the left side of his

3 body. Do you see that, Brigadier?

4 **BRIGADIER CALITZ:** I see the report,

5 Mr Chairperson.

6 **MR NTSEBEZA SC:** Wound D is also on the

7 left upper arm, and it looks like both in terms of the

8 State post mortem report and the private post mortem report

9 multiple birdshot-type shotgun pellet injuries on the

10 lateral aspect of the left upper arm. Then we go through

11 the identification process, page 8. Page 9, page 10, and

12 that's page 10, locating him in relation to where they were

13 found. Then we go to number 3, and I don't intend to spend

14 much time here because this person was injured, but on

15 current information – now the one thing that I would remark

16 about this, if you are able to agree with me, is that again

17 if one looks at page 12 and page 13, those injuries are on

18 his left side of his body, more pronounced on page 12. You

19 see that?

20 **BRIGADIER CALITZ:** I see the two

21 photos, Mr Chairperson.

22 **MR NTSEBEZA SC:** Page 15 shows the

23 position of number 3 against the wall of the kraal. Now Mr

24 Bongani Mdze - if you will just bear with me, Mr Chairman.

25 Now, I do not know whether you are in a position of agreeing

1 with this process of identification. Now number 4 there is

2 Mr Bongani Mdze –

3 **CHAIRPERSON:** Page 16.

4 **MR NTSEBEZA SC:** - and it starts on page

5 16, yes, Mr Chairman. Now you will recall that I indicated

6 that he's one of those who died on his way to hospital and

7 the narrative there says it all, one shotgun pellet in his

8 head, and again it were on the left-hand side. Now I'm just

9 checking, Mr Chairman, whether it was the left or the back

10 side of the head.

11 **MR CHASKALSON SC:** Chairperson, I may be

12 able to help here because there were apparently two

13 separate shots to Mr Mdze. There were six shotgun entry

14 wounds in the right lower back, not the left, although the

15 direction of the shot is not identified by the post mortem

16 doctor. That's in paragraph, on page 4 of the post mortem

17 report. There was a separate shotgun shot in which, also

18 in the lumbar region, in which the post mortem doctor

19 recorded "The approach of this pellet was from the left and

20 to the back of the deceased." And a third shotgun injury

21 to the back of the head, says "right occipital."

22 **[15:53] MR NTSEBEZA SC:** I'm indebted to my

23 learned friend there. Now I think the purpose also of the

24 pages 16, 17, 18, 19, is to identify positively that Mr

25 Mdze died at or was shot at scene 1 and the rest of the

1 pictures from page 20 to 24, which records that, his left  
2 hand was badly injured, that process, Mr Chairperson?

3 **CHAIRPERSON:** - to the left hand appears  
4 to be a bullet wound if one looks at page 31 of your  
5 Exhibit KKK10.

6 **MR NTSEBEZA SC:** Yes, so the information,  
7 if you can see that, in general about Mr Mdze and how he  
8 was injured and where the presentation takes you up to page  
9 26 -

10 **CHAIRPERSON:** Then you have information  
11 on page 32 which indicates that Mr Mooketsi, I take it who  
12 is one of Mr Mpofo's clients, had a pellet in his left eye,  
13 Mr Tswana had injuries to his lower lip and left eye.

14 **MR NTSEBEZA SC:** Yes.

15 **CHAIRPERSON:** Mr Tuki Mano had shotgun  
16 wounds in his left foot and lower leg, so there appears to  
17 be something of a preponderance of injuries on the left  
18 side of the people concerned.

19 **MR NTSEBEZA SC:** That's the point we are  
20 making.

21 **CHAIRPERSON:** And if one looks at page  
22 31, the shotgun, the position of the shotgun victims  
23 appears to be very close to the corner of the little kraal  
24 opposite the corner where the shack is, which would seem to  
25 indicate prima facie that only one or two shotguns may be

1 involved in the infliction of these injuries and if there  
2 is a preponderance on the left then it may be, I don't  
3 know, it's too early to say, but it may be an indication  
4 that the shots were fired, not from where the strikers were  
5 but from the vicinity of perhaps one or other of those  
6 vehicles we see, P4, P5, P19 which is also Pappa10, but I  
7 don't know whether that helps to expedite matters a bit,  
8 but it may be that the points that I focussed on are not  
9 correct.

10 **MR NTSEBEZA SC:** I couldn't have put it  
11 better myself, Mr Chairman. Brigadier, do you have any  
12 comment to what the chairman is indicating as a  
13 possibility?

14 **MR SEMENYA SC:** Did you go that far?

15 **CHAIRPERSON:** Sorry?

16 **MR SEMENYA SC:** Did you go that far of  
17 indicating possibilities?

18 **CHAIRPERSON:** It may, the language, -

19 **MR NTSEBEZA SC:** Well, maybe it is not  
20 even, it is a probability.

21 **CHAIRPERSON:** No, I didn't say a  
22 probability, you can't say that, that's going too far. The  
23 indication is that it may be, I'm just trying to speed  
24 things up a bit, that's all, but I did indicate that prima  
25 facie it may be incorrect.

1 **MR NTSEBEZA SC:** I couldn't put it higher  
2 than just being a prima facie point, Mr Chairman, and I was  
3 also indicating as much, perhaps, - we'll be taking it step  
4 by step. Would you accept, Brigadier, on the strength of  
5 this presentation that the prima facie probability is that  
6 those who were killed by shotgun fire were injured on the  
7 left hand side of their bodies, shot from the left?

8 **BRIGADIER CALITZ:** I'm not sure which one  
9 of those are, the one you are referring to, but if the post  
10 mortem report said he person was shot on his left-hand side,  
11 then that be it.

12 **MR NTSEBEZA SC:** Now given the number of

13 -

14 **CHAIRPERSON:** I don't know whether we've  
15 got evidence supporting the statement at this stage, there  
16 may be later, supporting the statements on page 32  
17 indicating that some of the survivors appear to be injured  
18 on the left, Mr Mooketsi with a pellet in his left eye and  
19 Mr Tswana with injuries to the lower lip and left eye and -

20 **MR NTSEBEZA SC:** There are -

21 **CHAIRPERSON:** Mr Tuki Mano injuries to  
22 the left foot and lower leg, that's not evidence yet but  
23 presumably, unless -

24 **MR NTSEBEZA SC:** There are -

25 **CHAIRPERSON:** Unless the reports of the

1 examination of the injured parties are already before us in  
2 which case I'm wrong and it is before us, but anyway I just  
3 mention that, that it may not be properly before us yet but  
4 it doesn't mean that it won't be before us before the end  
5 of the hearing.

6 **MR NTSEBEZA SC:** Mr Chairman, I'm  
7 instructed that that evidence is not before you yet but  
8 there are hospital records that would be made available to  
9 the Commission which would show that. I believe we can  
10 make them available tomorrow.

11 **CHAIRPERSON:** It is pointed out –

12 **MR NTSEBEZA SC:** And we will send those  
13 to –

14 **CHAIRPERSON:** Well, if you can hand them  
15 in as exhibits from the bar, because one mustn't over  
16 simplify and I may be doing that, because some of the  
17 injuries of course weren't on the left, they were at the  
18 back and that sort of the thing and the right, but if there  
19 is a sufficient preponderance of injuries on the left and  
20 if that can be established to be the case, then that might  
21 have some evidential value in regard to the issue that's  
22 being debated.

23 **MR NTSEBEZA SC:** We'll endeavour, Mr  
24 Chairman, to get evidence to everybody before we can  
25 authoritatively make that as the basis of our argument.

1 **CHAIRPERSON:** It is now four o'clock,

2 shall we, is it a suitable time for us to adjourn, Mr

3 Ntsebeza, -

4 **MR NTSEBEZA SC:** It is -

5 **CHAIRPERSON:** - until nine o'clock

6 tomorrow morning?

7 **MR NTSEBEZA SC:** It is indeed, Mr

8 Chairman.

9 **CHAIRPERSON:** Alright, we will take the

10 adjournment and we will resume the hearing tomorrow morning

11 at nine o'clock.

12 **[COMMISSION ADJOURNED]**

