

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 19      23 NOVEMBER 2012      PAGES 2008 TO 2129

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 23 NOVEMBER 2012]  
 2 [09:32] CHAIRPERSON: The commission resumes. I  
 3 was informed last night that the bishop has rearranged his  
 4 schedule, good morning, Bishop -  
 5 RT REV SEOKA: Yes.  
 6 CHAIRPERSON: - so that he can finish off  
 7 his evidence, to use the words that were much used  
 8 yesterday, to finish off his evidence today. Bishop, it is  
 9 not necessary but nevertheless I have to do it, to remind  
 10 you you're still under oath.  
 11 RT REV SEOKA: Yes.  
 12 CHAIRPERSON: Thank you. Mr Bizos, it is  
 13 your turn now to cross-examine. There were some things you  
 14 wanted to clarify, did you intend to clarify them outside  
 15 the auditorium, as it were?  
 16 MR BIZOS SC: Mr Chairman, I think that  
 17 what I said was that although there are matters disposed of  
 18 by the bishop, we would rather examine the persons that he  
 19 interacted with, rather than with the bishop.  
 20 CHAIRPERSON: Okay, I misunderstood you  
 21 but now you've removed my misunderstanding, thank you.  
 22 MR BIZOS SC: Thank you.  
 23 CHAIRPERSON: Is there anybody else who  
 24 wishes to cross-examine before I invite the evidence  
 25 leaders to do so?

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1 MR GUMBI: Yes, Chairperson, yesterday we  
 2 indicated that on the behalf of POPCRU we would like to -  
 3 CHAIRPERSON: Yes sorry, I'd forgotten  
 4 it, Mr Gumbi, you did indicate, forgive me for forgetting  
 5 it for the moment, thank you for reminding me. Please  
 6 proceed with your cross-examination.  
 7 CROSS-EXAMINATION BY MR GUMBI: Thank you  
 8 very much, Chairperson. Bishop, I hope you are in the  
 9 position to see where I am sitting?  
 10 CHAIRPERSON: You know it is probably a  
 11 good idea that he should be able to see you and you should  
 12 be able to see him directly. I see, well, Mr Tip isn't  
 13 here today, so perhaps you would like to sit in Mr Tip's  
 14 seat, also Mr Nkosi Thomas SC, so you can sit in the seat  
 15 of either of those absent SC's and cross-examine as if  
 16 you're an SC already. I see you followed my example, not  
 17 for my - but in the alternative form by sitting in Mr  
 18 Bruinders' SC seat.  
 19 CHAIRPERSON: Yes.  
 20 MR GUMBI: Thanks very much, Chairperson.  
 21 Bishop, let me start by introducing myself to you. My name  
 22 is Louis Gumbi and I am instructed by Mduduzi Attorneys and  
 23 I represent POPCRU in this proceeding.  
 24 RT REV SEOKA: Yes.  
 25 CROSS-EXAMINATION BY MR GUMBI: Yes,

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1 Bishop, my client was deeply shocked by the statement that  
 2 you made last week, which says that police officers can  
 3 never be trusted in this country, but before we could even  
 4 entertain that aspect, I wanted to you know very well in  
 5 the context of being a leader, thereafter I wanted to put  
 6 some few propositions to you and thereafter we can deal  
 7 with that statement you made last week. Are you with me?  
 8 Let me firstly deal with your leadership expertise. Is it  
 9 correct, Bishop, that you are president of the South  
 10 African Church Council of South Africa?  
 11 CHAIRPERSON: What is called the South  
 12 African Council of Churches.  
 13 MR GUMBI: Yes.  
 14 CHAIRPERSON: But I presume that's what  
 15 you mean?  
 16 MR GUMBI: Yes, yes, Chairperson, thanks  
 17 for that.  
 18 RT REV SEOKA: Yes, I am.  
 19 MR GUMBI: For how long have you been a  
 20 president of the South African Council of South Africa?  
 21 RT REV SEOKA: About two years.  
 22 MR GUMBI: Can I assume, Bishop, that  
 23 your position has certain responsibilities and duties  
 24 attached to it?  
 25 RT REV SEOKA: Yes.

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1 MR GUMBI: Can I assume that one of those  
 2 responsibilities as a leader is to lead by example?  
 3 RT REV SEOKA: Yes.  
 4 MR GUMBI: At all times you must be a  
 5 role model, you agree with me on that?  
 6 RT REV SEOKA: Yes.  
 7 MR GUMBI: Can I also assume that as a  
 8 leader you always solve problems and you always provide  
 9 solutions, in fact your organisation has a history of  
 10 fighting injustice in this country, you'll agree with me?  
 11 RT REV SEOKA: I agree.  
 12 MR GUMBI: As you are testifying here,  
 13 you are here to provide a solution?  
 14 RT REV SEOKA: Yes.  
 15 MR GUMBI: When you were asked by various  
 16 counsels in this proceeding, you kept on saying that you  
 17 learned through me that there was a problem in Marikana and  
 18 you drove there to intervene, do you still remember that?  
 19 RT REV SEOKA: I remember.  
 20 MR GUMBI: Based on that, Bishop, can I  
 21 assume that you read the newspapers on a daily basis, you  
 22 listen to the radio, you watch television to acquaint  
 23 yourself with current news?  
 24 RT REV SEOKA: Yes.  
 25 MR GUMBI: There are certain propositions

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1 that I wanted to put to you, you will agree or you will  
 2 disagree with me, thereafter we'll move on. As a church  
 3 leader will you agree with me that in South Africa police  
 4 officers, they are killed in the line of duty, that's the  
 5 public domain information, you can find it through a  
 6 newspaper or watching television and listening to radio,  
 7 you cannot deny that?  
 8 RT REV SEOKA: Yes.  
 9 MR GUMBI: Are you aware, Bishop, that  
 10 since 2005 up to date almost 690 police officers that have  
 11 been killed in the line of duty and the majority of those  
 12 police officers are POPCRU members, are you aware of that?  
 13 RT REV SEOKA: No, I am not aware of  
 14 that.  
 15 CHAIRPERSON: You were asked two  
 16 questions, perhaps the question should be broken up. The  
 17 first question is the statistic, the number, and the second  
 18 one was about the majority of POPCRU members. You said,  
 19 no, and I don't know, were you saying no to both  
 20 propositions? Are you aware of the fact, as it has been  
 21 put to you, that, I think he said 690, is that right?  
 22 MR GUMBI: Yes.  
 23 CHAIRPERSON: Approximately 690 police  
 24 officers, which I take it he means commissioned officers as  
 25 well as constables, sergeants and warrant officers,

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1 approximately 690 members of the South African Police  
 2 Service have been killed in the line of duty, he said from  
 3 2005 to date, is that correct?  
 4 MR GUMBI: Yes, Chairperson, thanks very  
 5 much.  
 6 CHAIRPERSON: That's the first question,  
 7 did you know that?  
 8 RT REV SEOKA: I didn't know of the  
 9 statistics.  
 10 CHAIRPERSON: I take it you knew that a  
 11 number of –  
 12 RT REV SEOKA: I know that –  
 13 CHAIRPERSON: - our members of the  
 14 service had been killed in the line of duty.  
 15 RT REV SEOKA: Yes.  
 16 CHAIRPERSON: It was just the statistic  
 17 you didn't know?  
 18 RT REV SEOKA: Yes.  
 19 CHAIRPERSON: The next question is, are  
 20 you aware of the fact that the majority of those who were  
 21 killed are members of Mr Gumbi's client, POPCRU? Is that –  
 22 MR GUMBI: Yes, yes, Chairperson, thanks  
 23 very much.  
 24 RT REV SEOKA: No, I was not aware.  
 25 MR GUMBI: And you cannot even dispute, -

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1 can you dispute the number I am putting to you, that there  
 2 are 690 police officers that had been killed in the line of  
 3 duty?  
 4 RT REV SEOKA: No, I cannot because I am  
 5 ignorant of it.  
 6 MR GUMBI: As a church leader, Bishop,  
 7 can I also assume that you know of widows whose husbands  
 8 were killed in the line of duty and you also know orphans  
 9 whose fathers were killed in the line of duty and those  
 10 people that are members of your church?  
 11 RT REV SEOKA: Ja, I am aware that there  
 12 are widows, I am aware that there are orphans.  
 13 MR GUMBI: Okay, can I move on to the  
 14 next proposition? As a church leader, Bishop, can I also  
 15 assume that you know that this country is facing a high  
 16 rate of crime? It is one of the major problems facing this  
 17 country, as a church leader you are aware of that, it is  
 18 public domain information.  
 19 RT REV SEOKA: Yes, I am aware of that.  
 20 MR GUMBI: And you are also aware that  
 21 one of the reasons why we are having such a high rate of  
 22 crime in this country, it is because the community, they  
 23 don't trust the police and the police, they don't trust the  
 24 community? Are you aware of that, one of the reasons?  
 25 RT REV SEOKA: No, I spoke for myself, I

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1 was not a representative of anybody, so I hear what you are  
 2 saying.  
 3 CHAIRPERSON: Bishop, that's not quite a  
 4 direct answer to the question. Mr Gumbi says, do you  
 5 accept or are you aware that one reason, one of the reasons  
 6 for the high rate of crime in South Africa is the fact that  
 7 the public, the community generally tend to distrust the  
 8 police, is that an accurate summary of your question?  
 9 MR GUMBI: Yes, Chairperson, thanks.  
 10 CHAIRPERSON: But he doesn't say that's  
 11 the only cause or even the main cause for the high crime  
 12 rate, but he suggests to you that is one of the causes and  
 13 he wants your comment on that.  
 14 RT REV SEOKA: It could be but I don't  
 15 see really how the mistrust contributes towards crime.  
 16 MR GUMBI: Can you dispute it, Bishop, if  
 17 I put it to you that you are one of the leaders who can  
 18 play an active role in the fight against crime in this  
 19 country?  
 20 RT REV SEOKA: Yes, that's true.  
 21 MR GUMBI: To sum up my propositions,  
 22 Bishop, are you aware again that most of those members who  
 23 are killed in the line of duty, they are breadwinners in  
 24 their home, are you aware of that?  
 25 RT REV SEOKA: Yes.

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1 MR GUMBI: And you are also aware that  
 2 the South African Police Services have a special fund for  
 3 widows and orphans of those members who are killed in the  
 4 line of duty? In fact the SAPS has gone beyond their  
 5 constitutional mandate and they are taking care of those  
 6 families of those members who are killed in the line of  
 7 duty, you are aware of that?  
 8 RT REV SEOKA: I am aware of that.  
 9 MR GUMBI: And you further testified in  
 10 this proceeding that before you went to Marikana you  
 11 weren't aware that there were two police officers that were  
 12 killed on the 13th of August 2012, do you remember that?  
 13 RT REV SEOKA: I remember.  
 14 MR GUMBI: Are you aware that those  
 15 widows of those police officers who are killed in the line  
 16 of duty, they are in this commission, they are attending  
 17 this commission and they want to know the circumstances  
 18 under which their husbands were killed, that's why they are  
 19 here, are you aware of that?  
 20 RT REV SEOKA: I would expect them to be  
 21 here.  
 22 MR GUMBI: Can I refer you to Exhibit L,  
 23 Bishop?  
 24 RT REV SEOKA: F?  
 25 MR GUMBI: Exhibit L, slide number 52, 53

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1 and 54? Exhibit L, slide number 52, 53 and 54, Exhibit L,  
 2 slide number 52, 53, 54 and slide number 55?  
 3 RT REV SEOKA: Yes.  
 4 MR GUMBI: Do you see the bodies of those  
 5 police officers depicted in those slides?  
 6 RT REV SEOKA: Yes.  
 7 MR GUMBI: And those police officers,  
 8 they were killed on the 13th of August 2012?  
 9 RT REV SEOKA: Yes.  
 10 MR GUMBI: And one of the police officers  
 11 who was there, who was attacked by this group of armed mine  
 12 strikers you saw yesterday, will come and testify before  
 13 this commission and he will tell this commission the  
 14 circumstances under which he was attacked by a group of  
 15 those striking miners. Okay, based on those propositions  
 16 that I've just canvassed with you, Bishop, don't you think  
 17 that the best way to get rid of these is to retract that  
 18 statement and apologise to those widows whose husbands were  
 19 killed in the line of duty and to those orphans whose  
 20 fathers were killed in the line of duty?  
 21 RT REV SEOKA: I have no problem with  
 22 that, but as I explained yesterday, it is not every police  
 23 that I referred to.  
 24 CHAIRPERSON: I take it what Mr Gumbi  
 25 means is, insofar as what you said, could it be interpreted

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1 as referring to the deceased breadwinners of his clients,  
 2 not his clients, the deceased breadwinners, members of the  
 3 South Africa Police Services who were killed on the 13th of  
 4 August, insofar as it could be interpreted as referring to  
 5 them, that's not what you intended and if it was so  
 6 interpreted, you wish to retract and withdraw, that's what  
 7 he is putting to you. How do you respond to that? Am I  
 8 putting your point correctly?  
 9 MR GUMBI: Yes, Chairperson.  
 10 RT REV SEOKA: Ja, if those were your  
 11 members, of I was not aware of, I would apologise to them.  
 12 MR GUMBI: Not only those police officers  
 13 who were killed on that day, I am referring to all the  
 14 police officers in this country who are killed in the line  
 15 of duty up to date.  
 16 RT REV SEOKA: Yes, if they died on the  
 17 line of duty doing their work as prescribed, I am sorry  
 18 about that.  
 19 [09:52] MR GUMBI: Okay, and I assume that as you  
 20 are testifying here, Bishop, you are quite aware that this  
 21 forum is not only a national forum, it is an international  
 22 forum, the whole world is looking at us right now, are you  
 23 aware of that?  
 24 RT REV SEOKA: I am aware of that.  
 25 MR GUMBI: So the statement you made last

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1 week, don't you think that it is the biggest setback in the  
 2 fight against crime in this country?  
 3 RT REV SEOKA: I actually don't think so,  
 4 if somebody said that to me I'll begin to try and prove  
 5 myself and show the person that what he/she believes about  
 6 me is actually not true. The question for me will be, why  
 7 is this person not trusting me and then deal with that.  
 8 MR GUMBI: It is not a question of your  
 9 trust, Bishop, it is a question, what I am putting to you  
 10 is that the statement you made last week, don't you think  
 11 that is the biggest setback in the fight against crime in  
 12 this country, yes or no?  
 13 RT REV SEOKA: No, I don't think so.  
 14 MR GUMBI: Thanks very much, Chairperson,  
 15 I don't have further questions.  
 16 CHAIRPERSON: Thank you. Do any other  
 17 representatives of any of the parties wish to ask questions  
 18 of the witness? Is -  
 19 MR MPOFU: He is not here, Chairperson.  
 20 CHAIRPERSON: - a chance to re-examine in  
 21 due course?  
 22 MR MPOFU: Well, I mean I am not sure,  
 23 Chairperson, whether I do that before -  
 24 CHAIRPERSON: Well, I just want to make  
 25 sure that everyone who wants to cross-examine has been

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1 given an opportunity.  
 2 MR MPOFU: Yes.  
 3 CHAIRPERSON: As is my duty.  
 4 MR MADLANGA SC: We have no questions for  
 5 the bishop, Chairman, Commissioners, thank you.  
 6 CHAIRPERSON: Mr Mpofu, do you have any  
 7 questions in re-examination?  
 8 RE-EXAMINATION BY MR MPOFU: Yes, thank  
 9 you, Chairperson. Bishop, I am just going to ask you a few  
 10 questions to clarify some of the issues that were raised  
 11 with you under cross-examination. You've just testified  
 12 just now that you are sorry effectively for any deaths that  
 13 would have occurred, is that correct?  
 14 RT REV SEOKA: Yes.  
 15 MR MPOFU: And that seems somehow to be  
 16 mixed up with this question of whether or not you, as a  
 17 person and how much you trust the police, of course with  
 18 the qualification that you've made that you were not  
 19 referring to all the police in this country. Maybe you can  
 20 just expand on the issues that have led to your mistrust,  
 21 qualified as it is.  
 22 RT REV SEOKA: I did allude to one  
 23 instance yesterday at Marikana Police Station. I think a  
 24 child could be arrested but he/she does not deserve to be  
 25 handcuffed. I have heard of an instance where a close

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1 person to me died. The IDT people and the locksmith people  
 2 came long before the actual police came when the first  
 3 message was to the police station. When ultimately they  
 4 came and talked to us and given all the evidence, until  
 5 today we are not getting an answer from the police,  
 6 something with the station commander who promised that  
 7 there will be no stone left unattended and actually later  
 8 said to me over the phone they are closing on the person  
 9 but they would not tell us who the suspect is. I've made  
 10 several attempts to try and get an answer from the police,  
 11 ultimately I went to the police station, the station  
 12 commander was ever absent and ultimately I got somebody  
 13 second in command and then I was told who the investigator  
 14 was, and I told them what the problem was and I was told,  
 15 be patient, he'll be with you and ultimately he did come.  
 16 MR MPOFU: Okay –  
 17 RT REV SEOKA: He came to my house, I  
 18 need to finish this one because I think it is very  
 19 critical, through you, Chairperson, and he comes with the  
 20 file and he shows the suspect and asked certain questions.  
 21 I said, but have you done the following? He says, well, I  
 22 am doing it. That was about a Friday. He said he was  
 23 going to come and see me sooner. On the Sunday I was here  
 24 in Rustenburg doing confirmation and that policeman called  
 25 me. He asked if I could borrow him R15 000 as a fact and I

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1 became very suspicious, I never trusted him again. At one,  
 2 even today there is no report of how the person died.  
 3 MR MPOFU: Thank you, Bishop –  
 4 RT REV SEOKA: And I've got many more  
 5 examples I can give you, but this is the one that is very  
 6 close to my heart.  
 7 MR MPOFU: Yes, I am sure you have other  
 8 examples, Bishop, and I just would like to capture all of  
 9 them by the following question, given what you told the  
 10 commissioner about your interactions with the police in the  
 11 past 30 years or so, would you say as an individual your  
 12 interactions with the police compared with the general  
 13 population are average, above average or below average?  
 14 RT REV SEOKA: I think it is above  
 15 average.  
 16 MR MPOFU: Thank you. You know the  
 17 police before 1994 at least, were known to have something  
 18 called a dirty tricks department, which among other things  
 19 is to dig up people's affairs as it were, and to your  
 20 knowledge and given some of the questions that were put to  
 21 you, would you say that everything has changed since 1994?  
 22 RT REV SEOKA: A lot has changed, but  
 23 there is still a lot of old elements of the old system that  
 24 we have inherited and that's probably where the problem is.  
 25 MR MPOFU: And seeing that somebody

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1 obviously went to dig up some statements that you must have  
 2 made to the police, could you clarify to the commission  
 3 under which conditions, as you said, that you would ask to  
 4 make the statement yourself and under which conditions you  
 5 would allow someone else to make the statement?  
 6 MR SEMENYA SC: Chair, I think Mr Mpofu  
 7 should retract the insinuation that the collection of cases  
 8 with reference to the bishop are a dirty trick of the  
 9 police prior to at least 1994, there is no correlation so  
 10 whatsoever that can be made like that.  
 11 CHAIRPERSON: I must say I don't quite  
 12 see how this really arises from the questions he was asked  
 13 in cross-examination and even there is some kind of a  
 14 connection, I am not sure it is sufficiently close to  
 15 enable this commission to decide the questions which have  
 16 been referred to for its findings, so –  
 17 MR MPOFU: No, thank you, Chairperson –  
 18 CHAIRPERSON: - I am inclined therefore,  
 19 subject to what you may have to say, to uphold the  
 20 objection but if you persist in it then I'll listen to you  
 21 and consider what you have to say.  
 22 MR MPOFU: No, Chair, - well, it is  
 23 equally relevant or irrelevant to whether the bishop made  
 24 statements or not.  
 25 CHAIRPERSON: Obviously the bishop has

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1 had an experience in the past –  
 2 MR MPOFU: Yes –  
 3 CHAIRPERSON: - or perhaps experiences  
 4 where statements he has made to the police weren't properly  
 5 recorded. All of us who have been involved in motor  
 6 accidents sometimes had similar experiences. I am not sure  
 7 that that particular aspect of matters is going to assist  
 8 us at all to answer the questions we have to answer.  
 9 MR MPOFU: Thank you, Chair.  
 10 CHAIRPERSON: So perhaps you're  
 11 exercising a wise discretion and not persisting with the  
 12 question.  
 13 MR MPOFU: I am not, I am not,  
 14 Chairperson. Okay, thank you, Chairperson. Let's just  
 15 move to something, from the cross-examination of the past  
 16 few days and I think even this morning, there has also been  
 17 a further subtext that would suggest that you cared less  
 18 about the ten deaths that occurred prior to the 16th. Now I  
 19 would like you to answer this question. Why did you go to  
 20 Marikana in the first place on the 16th?  
 21 RT REV SEOKA: Through you, Chair, I have  
 22 already addressed this issue that through media I became  
 23 aware that people had died. I didn't know who they were, I  
 24 was just concerned that people have died and that something  
 25 needed to be done to stop further deaths, I've said that.

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1 So I went there because there were people who had died in  
 2 that violence and I was trying to find a way of helping,  
 3 stop the violence, to create a peaceful atmosphere so that  
 4 people can co-exist around the common cause that had  
 5 brought them to the koppie. In fact, Chairperson, you  
 6 could allow me to say that, for instance yesterday  
 7 afternoon, last night and this morning I've been thinking  
 8 seriously about the deaths that were reported in  
 9 Carletonville. Fortunately I know the leadership of the  
 10 sections and I was hoping that after this session I'll  
 11 probably be talking to the concerned union and see whether  
 12 we can intervene in that situation.  
 13 I think one of the questions that we should be  
 14 asking ourselves here, why our people have become so  
 15 destructive to property and life, something needs to be  
 16 done and the church is well placed to deal with such  
 17 behaviour and attitude, but we need to find out what is  
 18 going on that is causing so much pain to the nation. So if  
 19 the representatives of the people in Carletonville are  
 20 present here today, even though Chair, it is outside my  
 21 jurisdiction, I feel compelled to try and do something  
 22 about it.  
 23 [10:12] MR MPOFU: Yes, thank you, Bishop, and in  
 24 your statement in paragraph 5 you open your involvement in  
 25 Marikana Wonderkop, saying the following, after following

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1 the media reports on the growing tensions and loss of life  
 2 in Marikana, Wonderkop I decided to visit the area on 16  
 3 August 2012 to try and assist in averting further loss of  
 4 life. And then you also, paragraph 36, you say, "If this  
 5 tragedy can provide the platform from which long-term  
 6 solutions can be found to the ills of the mining industry,  
 7 in particular - and South African society in general, then  
 8 the approximately 46 lives of the deceased persons will not  
 9 have been lost in vain." Both those statements, in both  
 10 those statements where you talk about further loss of life  
 11 and where you talk about 46 persons who had lost their  
 12 lives, would those statements be consistent with a  
 13 discrimination between the depth that this commission is  
 14 concerned with.  
 15 RT REV SEOKA: I think for me it's  
 16 consistent in linking up the two. Death is death, and I  
 17 was motivated by death to move in and I moved in and I'm  
 18 hoping that this platform here would actually help us to  
 19 come together as a nation and see how we can deal with the  
 20 past in order to correct the future, to avoid this thing  
 21 happening. It's painful, it doesn't matter how you look at  
 22 it, people died. People have subsequently died in the  
 23 Western Cape, yesterday evening people died in  
 24 Carletonville, how many more must die before we do  
 25 something about it? The time is now, we have to act

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1 together as a nation. Enough is enough. One death is too  
 2 much.  
 3 MR MPOFU: Thank you, Bishop. It was  
 4 also suggested to you among other things that it was  
 5 reasonable, I think was the word that was used, for Lonmin  
 6 to adopt the attitude that it would not talk to what they  
 7 referred to as criminals in your testimony, because ten  
 8 people had been murdered. Now in your view, those ten  
 9 murders, would they have been the reason to talk or the  
 10 reason to refrain from talking?  
 11 RT REV SEOKA: I think my recollection is  
 12 that I said it was more the reason why we should have  
 13 allowed another opportunity of intervention and talk to  
 14 each other. As I said just now, one death is too much.  
 15 You cannot wait for another death before you do something.  
 16 So I think it was unreasonable, I think it was insensitive  
 17 because the further death of 34 people would have been  
 18 averted.  
 19 MR MPOFU: Thank you, Bishop. You also  
 20 were questioned about the necessity of patience. Did  
 21 anybody ever tell you why it was so urgent that the stand-  
 22 off had to be resolved on the 16th and not on the 17th or  
 23 the 18th, any other time.  
 24 RT REV SEOKA: If the question again  
 25 could be repeated, Sir, I'm not sure?

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1 MR MPOFU: Now I think the Bishop has  
 2 also asked about the element of patience and the ability to  
 3 let things take their time. Did anybody, either before or  
 4 after these tragic events ever explain to the Bishop why  
 5 this stand-off had to be resolved by the 15th, on the 15th  
 6 and not on the 17th and not on the 18th, not on the 19th?  
 7 RT REV SEOKA: No, nobody did.  
 8 MR MPOFU: And I take it you were not  
 9 aware that that morning the Provincial Commissioner had  
 10 made a statement to the effect that today was D-day?  
 11 RT REV SEOKA: No, I only got to know  
 12 about it when I saw it in the clipping here.  
 13 MR MPOFU: Thank you. It was also  
 14 suggested to you that the use of the words suggesting that  
 15 the mineworkers were criminals would be denied by Mr Kgotle  
 16 to whom you ascribe those words. Now when that is done,  
 17 that is just lawyer speak to say either that what you are  
 18 saying is not correct or that you might be making a  
 19 mistake. Could what you are saying about the use of those  
 20 words by Mr Kgotle be a result of either a deliberate  
 21 untruth on your part or a mistake?  
 22 RT REV SEOKA: I think the statement was  
 23 motivated by anger, I think there was a lot of anger there.  
 24 CHAIRPERSON: You're not answering Mr  
 25 Mpofu's question. Mr Mpofu says it's been suggested to you

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1 that your evidence on that point is not correct. He says  
 2 there are two possible explanations, either you  
 3 deliberately made it up or you're mistaken. Now he's  
 4 asking you to comment what you say about the allegation,  
 5 either that what you said in that regard was incorrect  
 6 because you made it up or it was incorrect because you were  
 7 mistaken. I think that's the question, Mr Mpofu.  
 8 MR MPOFU: That's exactly it, Chair. In  
 9 other words could you be mistaken or making it up that Mr  
 10 Kgotle said those words to you?  
 11 RT REV SEOKA: Those were his words. I  
 12 find it interesting that yesterday those words were  
 13 attributed to Kgotle's colleague, not him, but those were  
 14 his words, he was the one that spoke most, the other two  
 15 were almost on the quiet side.  
 16 MR MPOFU: Yes, in fact, ja, you  
 17 mentioned the issue of Mr Mokoena having used those exact  
 18 words on an SAFM programme as was revealed by my learned  
 19 friend, Mr Ntsebeza. The fact that Mr Mokoena used those  
 20 exact words that you ascribe to Mr Kgotle, does that  
 21 strengthen or weaken your –  
 22 CHAIRPERSON: Mr Mpofu, I don't know that  
 23 this is a question that's necessary to ask in re-  
 24 examination, it's a point you can raise in argument, and,  
 25 but I don't think you need any buttressing by the Bishop on

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1 whether that's good argument or not, it's an argument,  
 2 which you'll presumably advance at the proper time. I  
 3 don't think the point is strengthened by the fact that the  
 4 Bishop agrees with the argument. So I suggest you move on  
 5 to something.  
 6 MR MPOFU: Thank you, Chairperson. Thank  
 7 you, well actually Sir, can I then ask you that, the last,  
 8 to round off that point, can I simply say that evidence  
 9 will also be led later that that language –  
 10 CHAIRPERSON: I'm not sure it's helpful  
 11 to say evidence will possibly be led.  
 12 MR MPOFU: Not possibly?  
 13 CHAIRPERSON: Evidence will be led, I  
 14 presume, depending on what the evidence will be, it might  
 15 be appropriate to put it to the witness to get his comment  
 16 in anticipation, as it were, but I'm not sure that it's  
 17 appropriate to say evidence may be led. If that evidence  
 18 is led, what do you say, I don't know that –  
 19 MR MPOFU: That will, Chairperson.  
 20 CHAIRPERSON: You said possibly, if you  
 21 withdraw the word "possibly" I will let you carry on.  
 22 MR MPOFU: Yes, I withdraw it. Okay,  
 23 evidence will be led that this language of criminals and  
 24 dastardly acts and so on was prevalent within the  
 25 leadership of Lonmin and it went right up even to the board

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1 of that organisation, and that language was also  
 2 transmitted to the state organs. Is that, what would be  
 3 the effect of that in respect of what you ascribe to, Mr -  
 4 CHAIRPERSON: This sounds like a point on  
 5 which you're asking the Bishop's opinion and I'm not sure  
 6 that he's an expert to give evidence on the effect of  
 7 language of that kind. In his opinion, it's a matter  
 8 possibly in which we all can express opinions but I'm not  
 9 sure that he's got any special expertise to enable him to  
 10 give opinion evidence on the point. Again it's a point you  
 11 can argue, I'm not suggesting that you can't argue it, and  
 12 I'm not suggesting it's even a bad point because it may  
 13 well be a good point, once we've heard all the arguments.  
 14 But I don't know if the case is taken any further, with  
 15 respect by getting the Bishop to agree or not agree to the  
 16 point you are now putting.  
 17 MR MPOFU: Okay, Chairperson, I won't  
 18 push it much further, except to say that what I was asking  
 19 the Bishop is not exactly his opinion, I'm just asking him  
 20 in relation to his conviction that Kgotle said or did not  
 21 say the words that –  
 22 CHAIRPERSON: He said that's what was  
 23 said. You put it to him that it was suggested it wasn't  
 24 said, it's either a mistake or a fabrication on his part.  
 25 He said no, that's what was said, so his evidence on the

<p style="text-align: right;">Page 2032</p> <p>1 point is clear. I don't know if it's taking any further  2 re-examination by getting him to repeat it or to underline  3 it or anything of that kind. It's on record, that's what  4 he said. It apparently is disputed by the Lonmin witnesses  5 and we may or may not have to decide at the end of the day,  6 which of the two sets of witnesses on the point is correct,  7 but I don't know, if you're asking these questions to this  8 witness is going to help us.  9 MR MPOFU: Thanks, Chairperson. Alright,  10 going back to the issue of the ten deaths. Once again  11 there was an underlying assumption or a sub-text as I have  12 referred to it earlier that these ten deaths, as it were,  13 were on the one side, namely the employer and the state as  14 opposed to the other side, namely the employees. Now given  15 that, could it surprise you that actually of those ten  16 deaths, there were 5:5, given the configuration that I was  17 saying, in other words five deaths were on the side of the  18 employees and another five on the side of the –  19 CHAIRPERSON: No Mr Mpofu, I don't  20 understand the relevance of that question. Even if it was  21 only, ten deaths are ten deaths, ten too many, but even if  22 five of them were from one side and five were from another,  23 does it really assist us to take that point any further?  24 MR MPOFU: Ja, Chairperson, you know, it  25 only assists us, well if the next, if you can allow me for</p>	<p style="text-align: right;">Page 2034</p> <p>1 asked, all the members of his group, I can't remember the  2 word but clergy, social workers and medical personnel were  3 asked to be on standby.  4 [10:32] MR MPOFU: Yes, and given the fact that  5 this reason was one of the main reasons why you were  6 prevented from going back to the copy, what would your  7 comment be if I tell you that the evidence will be that the  8 Police allowed and escorted Mr Mathunjwa to address the  9 workers at the koppie at 15:35?  10 CHAIRPERSON: Sorry, Mr Mpofu, again I  11 don't understand how any comments that the Bishop may make  12 on that particular point are going to assist us to decide  13 the points that we have to decide at the end of the day.  14 MR MPOFU: Well Chairperson, with the  15 greatest respect, the Commission surely has to decide the  16 question of whether or when the area was cordoned off, and  17 I'm simply probing that point, whether if someone  18 subsequent to him being told that it was cordoned off was  19 actually allowed in there.  20 CHAIRPERSON: That is a point for  21 argument -  22 MR MPOFU: Well, it can't be but –  23 CHAIRPERSON: It's a point for argument.  24 You're simply trying to be able to say this is my argument  25 and the Bishop agrees with it. Well, even if the Bishop</p>
<p style="text-align: right;">Page 2033</p> <p>1 the next question, Chairperson, it will be clear.  2 CHAIRPERSON: I'll hear the next question  3 first before I give a ruling.  4 MR MPOFU: Yes, yes. Okay, given the  5 balance that I've just said to you, and the suggestion that  6 because of the deaths, it was reasonable not to want to  7 negotiate, the workers, who had lost an equal number of  8 people, what was their attitude to negotiations?  9 RT REV SEOKA: I think talking to the  10 management, I did say that the workers' report has lost  11 some of their members, but they were willing to talk,  12 whereas the other side had lost its members but not willing  13 to engage with the workers.  14 MR MPOFU: Then there was evidence about  15 time, which I'm not going to come right, whether you were  16 there at half past 1 or half past 2 and so on, but what was  17 important in that evidence was that you had testified, both  18 in chief and under cross-examination that you were told  19 that the area was cordoned off, when you made your request,  20 did you know if this was the truth or not, that the area  21 had been cordoned off?  22 RT REV SEOKA: I believe it was true  23 because of the atmosphere where we were and the take-off of  24 the helicopters towards the koppie. But also I did say  25 that the Chaplain alluded to something that they have been</p>	<p style="text-align: right;">Page 2035</p> <p>1 doesn't agree with it, if it's a good argument it's a good  2 argument, and if it's a bad argument the fact that the  3 Bishop agrees with it isn't going to help you. These are  4 argumentative points which you will be able to raise at the  5 appropriate time. You'll also be able to ask witnesses  6 directly involved with the matter about them, but just  7 putting the argument to the Bishop and saying what's your  8 comment on this, in the hope that he will say he agrees,  9 with respect isn't going to help us at all to answer the  10 questions that we've been asked to answer.  11 MR MPOFU: Okay.  12 CHAIRPERSON: So I don't think that  13 question can be allowed.  14 MR MPOFU: Chairperson, I respect your  15 ruling, but if I can make one more attempt. The only  16 relevance that I'm placing on this, Chairperson, is simply  17 that the Bishop, the most important thing about the  18 Bishop's evidence is him being stopped from going back and  19 I'm simply exploring whether given the fact that the place  20 may not even have been cordoned off, what impact that would  21 have on his attitude to him being stopped. This is the  22 most crucial aspect of his evidence.  23 CHAIRPERSON: My colleague, Commissioner  24 Tokota wishes to ask you a question.  25 MR MPOFU: Yes, I'm sorry.</p>



<p style="text-align: right;">Page 2036</p> <p>1 MR TOKOTA SC: Ja, given the purpose of 2 the re-examination, what point are you trying to clarify 3 here which is not clear, arising from the cross- 4 examination? 5 MR MPOFU: Yes, thank you. 6 MR TOKOTA SC: In other words, what would 7 – 8 MR MPOFU: Ja, I understand. 9 MR TOKOTA SC: In other words, which of 10 the parties here directed a question in regard to this 11 which the Bishop answered in a vague manner, which you 12 would now like to clarify for us to understand in the 13 proper perspective manner? Or are you trying to elicit 14 some opinions and comment from him? 15 MR MPOFU: No. No, well I didn't know 16 that was the purpose of re-examination, or the only purpose 17 – 18 MR TOKOTA SC: I'm telling you that is 19 the purpose. The purpose of re-examination is to clarify 20 matter arising out of cross-examination. 21 MR MPOFU: Yes. 22 MR TOKOTA SC: Not to try and elicit some 23 opinions and comments on other matters which you may have 24 to raise at a future stage or – 25 MR MPOFU: Alright, let me assist you</p>	<p style="text-align: right;">Page 2038</p> <p>1 opinion or eliciting comment and so on. That – 2 MR TOKOTA SC: But he has already 3 conceded that the placed was cordoned off. You asked him 4 if he believed it and he said yes - 5 RT REV SEOKA: No. No, no, no, - 6 MR MPOFU: No, no, please, he says, I 7 asked him whether what, did he believe it, and he says he 8 believes, he doesn't say it was cordoned off, he says he 9 saw helicopters, or what have you. That's fine. Now I'm 10 saying in respect of that answer, if I then told him that 11 someone else, that I went there, let's say, without being 12 stopped, what impact would that have on that issue. He 13 didn't say it was cordoned off, please. He says because 14 they stopped – 15 CHAIRPERSON: Okay, sorry, let me ask the 16 question. Bishop, you were told that the area was cordoned 17 off and you couldn't go, and therefore you went away. If 18 you had known that somebody else was allowed there after 19 you left, would you have gone? Would you have left, or 20 would you have stayed and made a further attempt to go back 21 to the area? 22 RT REV SEOKA: I would have actually 23 tried to persuade both management and Police to allow me to 24 go back. 25 MR MPOFU: I'm indebted to the</p>
<p style="text-align: right;">Page 2037</p> <p>1 then – 2 MR TOKOTA SC: If you can try and assist 3 us in that regard it will save us a lot of time. 4 MR MPOFU: Yes, I'll assist you and save 5 a lot of time, Commissioner. Yes, well in addition to what 6 you have said to the Chairperson, namely that the gravamen 7 really of the Bishop's evidence centres around this issue 8 of being disallowed to go back on the basis of this 9 cordoning off allegation, (1). (2), to answer your 10 question about which party raised it, Lonmin has said – in 11 fact the whole thesis of Lonmin's cross-examination of the 12 Archbishop was that he cannot – 13 CHAIRPERSON: Archbishop Makgoba isn't 14 here. The Bishop of the Diocese of Pretoria is at the 15 moment in the witness box. 16 MR MPOFU: I thought that if I promote 17 him you might allow the question, Chairman, but no, on a 18 serious note, what Lonmin's thesis of their cross- 19 examination of the Bishop was, was simply this, you can 20 reduce it to the following proposition. That you cannot 21 blame Lonmin for your non-return to the koppie simply 22 because it was the Police that had cordoned off the area. 23 Now if it turns out that the area was not cordoned off, 24 (1), or at least not inaccessible, such that Mathunjwa was 25 allowed to go there at 15:35, surely that is not what</p>	<p style="text-align: right;">Page 2039</p> <p>1 Chairperson. Finally, Bishop, there were two issues which 2 were also put to you, I think by Lonmin. One of them was a 3 suggestion that you were actually not stopped from going 4 back and I just wanted to refer you to paragraph 15 of your 5 statement. Well, firstly start at paragraph 14. It says, 6 you say Mr Mokoena said, "Bishop, you can no longer return 7 to the koppie. The place has been cordoned off and is now 8 a security risk zone, or words to that effect," and then at 9 15 you say, "At being stopped from returning to the 10 workers, I was very concerned that we would lose their 11 trust," and so on. So really I think the question is 12 simply whether from your subjective point of view you felt 13 that you had any choice of returning to the koppie. 14 RT REV SEOKA: I had a strong desire to 15 go back there, but I realised that I couldn't because I 16 understood Mokoena to be the senior officer of the mine on 17 whose property I was at, at the time, and therefore I would 18 not undermine or ignore or disobey what he was telling me. 19 MR MPOFU: Thank you. 20 RT REV SEOKA: But I must say, through 21 you, Chair, that I regretted having not gone back. It was 22 regrettable, especially when I received that call and when 23 I read and heard on the news what had happened, because I 24 was not allowed to go back. You see, Chair, if the 25 telephone that I received just after 4 came from the person</p>

<p style="text-align: right;">Page 2040</p> <p>1 I suspect it came from, can anybody in this room imagine 2 what that is doing to me? I can hear that voice all the 3 time I think about what happened on the day. Sir, I still 4 hear the voice even as I testify here, and yesterday I did 5 approach Mr Madlanga to say to him they need to provide a 6 psychologist in this process because this is not a child's 7 play, it's a very heavy burden that some of us are 8 carrying. I have gone a step further by approaching the 9 chairperson or president of the Psychological Society of 10 South Africa, to see if they can provide services to this 11 Commission, even if it's for free. I'll be the first 12 patient of these people, but those widows seated there, 13 their children, their friends, their families, all those 14 workers who were affected, should be assisted by people who 15 can actually take this burden out of them.</p> <p>16 CHAIRPERSON: Bishop, would it be correct 17 if I were to say that you are in effect now making a 18 recommendation to this Commission that it should in its 19 report recommend that attempts should be made, or efforts 20 should be made to ensure that all those who are affected by 21 the tragic consequences of what happened should be given 22 the opportunity of receiving psychological counselling and 23 therapy?</p> <p>24 RT REV SEOKA: Yes, Sir, Chair, I would 25 have said that at the end of my testimony, but I felt</p>	<p style="text-align: right;">Page 2042</p> <p>1 RT REV SEOKA: Most of those who 2 survived, who were part of that grouping, some of them are 3 limping, you know, still nursing their, the wounds. They 4 are very traumatised. Yesterday about lunchtime – don't 5 ask me what time it was, but about lunchtime because we 6 were out there eating –</p> <p>7 MR MPOFU: People were eating.</p> <p>8 RT REV SEOKA: People were eating all 9 over the place. A man did approach me with his wife and a 10 daughter and he was not coherent, he was trying to speak to 11 me, asking if I could help with the problems they are still 12 faced with and I took his particulars and promised that 13 maybe when he's in a better state of mind I could call him 14 and see what his problem was. But he was devastated. He's 15 traumatised, confused, and looking for help, and that's the 16 kind of person that would have been referred to the 17 psychologist or such professional people to assist. I 18 don't think I have those skills myself. My skills are 19 different as a priest to those of a psychologist. Some of 20 them, Sir, have told me continuously they live in fear 21 because of that day's experience.</p> <p>22 [10:52] MR MPOFU: Yes, thank you. Your 23 activities after the 16th in making peace at the, in this 24 conflict will form part of the second phase of the 25 Commission. But if you can just round off this point by,</p>
<p style="text-align: right;">Page 2041</p> <p>1 compelled by what senior counsel is saying to bring it up 2 now, because it hurts.</p> <p>3 CHAIRPERSON: Yes, well he's not yet 4 senior counsel, but he won't object to you trying to give 5 him the promotion that he tried to give you.</p> <p>6 MR MPOFU: According to the Bar Council I 7 am, Chairperson. But thank you –</p> <p>8 CHAIRPERSON: That recommendation you've 9 made, we will seriously consider when we compile our final 10 report in the matter. Mr Mpofo, do you have any further 11 questions?</p> <p>12 MR MPOFU: Just one, Chair. Thank you, 13 Bishop, and I take it that would go to all the victims of 14 this tragedy.</p> <p>15 RT REV SEOKA: Indeed, but I also want to 16 include all those clergy persons who were there subsequent 17 to the massacre because I know that some of them were 18 affected by what they experienced as they engaged, trying 19 to counsel some of those workers.</p> <p>20 MR MPOFU: And in that similar vein, and 21 given your experience even subsequent to the events and 22 your interactions with most of the affected persons, what 23 impact did you observe on those survivors who did not lose 24 their lives but were merely injured and witnessed their 25 fellow workers being killed in front of their eyes?</p>	<p style="text-align: right;">Page 2043</p> <p>1 given your interactions with the players, about what other 2 you might have had to deal with in addition to what you've 3 just said, in respect of the fact that those survivors, or 4 some of them, were subsequently charged with the murder of 5 their own –</p> <p>6 CHAIRPERSON: No, no, Mr Mpofo, I don't 7 know that this arises at this stage.</p> <p>8 MR MPOFU: Fellow employees – sorry, Sir.</p> <p>9 CHAIRPERSON: And the answer is going to 10 give is going to give on this point aren't going to help us 11 in regard to the particular questions we're busy with at 12 the moment, so I'm not going to allow the question, but –</p> <p>13 MR MPOFU: Okay, Chairperson. No, I was 14 just asking in terms of the level of –</p> <p>15 CHAIRPERSON: No, no, I understand why 16 you were tempted to ask the question. I sympathise a lot, 17 but I must try to keep things in check.</p> <p>18 MR MPOFU: Yes, thank you, Chairperson.</p> <p>19 CHAIRPERSON: Any more questions?</p> <p>20 MR MPOFU: Yes, one more.</p> <p>21 CHAIRPERSON: Finally and in conclusion.</p> <p>22 MR MPOFU: Seriously one more, 23 Chairperson. There was also a suggestion which was made, I 24 think by Mr Semanya, that when you spoke to the Provincial 25 Commissioner, you did not, as it were, say to her what you</p>

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1 wanted. Something, if I'm misrepresenting him, then I'm  
 2 sure he'll say so, but I'm not saying it word for word, and  
 3 in respect of that, I'd like to refer you to paragraph 11  
 4 of your statement and then ask you to clarify the last  
 5 sentence there.

6 That sentence says, "We were then asked, probably  
 7 by Mr Mokoena, to accompany them to the Provincial Police  
 8 Commissioner, and put our proposals, since the company was  
 9 not prepared to meet with the workers." Now, assuming  
 10 that you then went to the commissioner for this reason, to  
 11 put your proposals, what proposals, if any, did you put to  
 12 the commissioner in respect to what you wanted to happen?

13 RT REV SEOKA: When we got there, and of  
 14 course I told you that she was in a troubled state, and  
 15 when she asked about our mission, we said we have been  
 16 asked by the workers at the koppie to request that Mkashe  
 17 she must come and address them on their demands.

18 I don't know whether understood what we were  
 19 saying, because she then answers by saying, "You can  
 20 negotiate with management whatever you want to negotiate,  
 21 but security is our concern and it's non-negotiable."

22 All we were wanting to persuade her to do is to  
 23 provide security for the management to go back with us and  
 24 address the workers, because that is what we had asked. If  
 25 Mr Farmer was not available, somebody senior should have

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1 been available and Mokwena appeared to be such a person.

2 MR MPOFU: Bishop, I want to thank you  
 3 very much and also, in particular, thank you for allowing  
 4 me to twist your arm to come this morning, despite your  
 5 schedule, but that will be all I'll be putting. Thank very  
 6 much, Chairperson.

7 CHAIRPERSON: Yes, thank you, Bishop, for  
 8 coming and giving us your evidence and for coming back  
 9 today especially to assist us to deal with this aspect of  
 10 the matter. You are excused, but – I beg your pardon, Mr  
 11 Bizos, you did indicate, forgive me.

12 MR BIZOS SC: No, it's just question.  
 13 Bishop, the question has got nothing to do with everything  
 14 that you said, except on one question. You have said that  
 15 the land belongs to Lonmin. I think that you may have  
 16 knowledge, or whether you have knowledge or not, I must ask  
 17 you the question, do you know that an organisation called  
 18 Bapo Ba Mogale claims that the land it belongs to them and  
 19 not to Lonmin? I don't know if anything is going to turn  
 20 on it, but I don't want to leave the question open. Have  
 21 you any knowledge of it?

22 RT REV SEOKA: When I was here the first  
 23 time, the legal person representing those people did speak  
 24 to that, and I became aware that in actual fact this is the  
 25 people's land, not Lonmin's land.

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1 MR BIZOS SC: Yes. Bishop, thank you,  
 2 the Commission has enough matters to decide, and not this  
 3 one, but I thought it advisable that to put it on record,  
 4 lest we be accused that we kept quiet about it, while  
 5 knowing about it.

6 CHAIRPERSON: It may be relevant in the  
 7 second phase when we consider the position of Lonmin and  
 8 their policies, and so on, to what extent they are the  
 9 owners or the lessees of the land, or rightful owners, but  
 10 it's not a matter that need detain us at this stage.

11 MR BIZOS SC: Yes, but I didn't want,  
 12 because of the LOC's involvement, I didn't want to be  
 13 accused eventually that, of keeping it back.

14 CHAIRPERSON: Well, if any such  
 15 accusations are made against you, you'll be able to refute  
 16 them very shortly and sharply.

17 MR BIZOS SC: Thank you, Mr Chairman,  
 18 that's all I have.

19 CHAIRPERSON: We'll now take the  
 20 adjournment, before we do, you said – there's something I  
 21 want to say too, but you say you're thing first and I'll  
 22 say mine.

23 RT REV SEOKA: Thank you very much.  
 24 Chair, I just want to express my gratitude for the  
 25 opportunity provided for the Church to make its

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1 presentation. I would like to ask that this tragedy of  
 2 Marikana help us to create a platform to seek long term  
 3 solutions, as I say in my statement, that will make our  
 4 country a better place for all.

5 CHAIRPERSON: Yes.

6 RT REV SEOKA: Secondly, I would like to  
 7 suggest and recommend that the koppie be declared a  
 8 monument as a gesture for healing of memories, because it  
 9 is, according to the African culture and beliefs, Mr  
 10 Semenya, a sacred space now, because so many lives were  
 11 lost there and their spirits are believed to be in that  
 12 situation, and so that will be a critical gesture to help  
 13 with the healing of those that have been affected, and the  
 14 whole nation really.

15 Having said that, also the psychological  
 16 provision that I've said, but thank you so much for  
 17 entrusting – those who have entrusted this responsibility  
 18 of representing the working poor of our country at this  
 19 Commission, and I want to thank you also for handling this  
 20 hearing the way you have done, but it will be mistake if we  
 21 don't convey our appreciation to the Labour Department, to  
 22 the Minister of Labour, to CCMA, to the unions, themselves,  
 23 who allowed us and provided us with a space to be part of  
 24 the solution, and more so the workers that really entrusted  
 25 us with the responsibility of journeying with them, and for

<p style="text-align: right;">Page 2048</p> <p>1 that I thank you.</p> <p>2 CHAIRPERSON: Thank you, Bishop, for that</p> <p>3 comment. I want to make – I said I was going to say</p> <p>4 something myself, it's really in addition to the thanks</p> <p>5 that you expressed to various people, and that's, I think</p> <p>6 it's also appropriate to place on record, in the light of</p> <p>7 what you've said, that the Department of Social Development</p> <p>8 has also played a role from the very beginning of the</p> <p>9 sessions of this Commission, in giving assistance to the</p> <p>10 family members and others who have been in attendance and</p> <p>11 arranged for them to receive counselling and therapy and</p> <p>12 so, and it's only – whether they also need assistance from</p> <p>13 psychologists, and whether the Department Services go as</p> <p>14 far as that is something I don't know at this stage, but</p> <p>15 certainly it's appropriate I think at this stage, in the</p> <p>16 context, to pay tribute and express our gratitude to the</p> <p>17 Department for all that that have done in making it</p> <p>18 possible for the family members to, not only come here to</p> <p>19 be in attendance, but giving them counselling and</p> <p>20 assistance during, what has sometimes been a very harrowing</p> <p>21 and unpleasant aspect for them, namely seeing the slide</p> <p>22 that have been seen the videos that have been seen, which</p> <p>23 brought back very sad and heart rendering memories to them.</p> <p>24 On that note, we will take the tea adjournment.</p> <p>25 RT REV SEOKA: On that note, I would like</p>	<p style="text-align: right;">Page 2050</p> <p>1 If a cross-examiner intends to refer in cross-</p> <p>2 examination to documents which are in one or other of the</p> <p>3 hard drives or to some other document that isn't even in</p> <p>4 the hard drive, the appropriate way to do it so have copies</p> <p>5 prepared in advance and then when the appropriate moment</p> <p>6 arrives, to give the documents to the witness and also to</p> <p>7 the commission and if it is not in the hard drive, to the</p> <p>8 other parties as well and I would expect in future all</p> <p>9 cross-examiners who are going to refer to documents to</p> <p>10 follow that practice. Mr Madlanga, I think the next</p> <p>11 witness is to be called by Mr Semenya, is that correct?</p> <p>12 MR SEMENYA SC: That's indeed correct,</p> <p>13 Chair, we beg leave to call Warrant Officer Wessels. His</p> <p>14 names in full, Albert Olckers Wessels, Olckers spelt O-L-C-</p> <p>15 K-E-R-S, Wessels, W-E-S-S-E-L-S and Albert, A-L-B-E-R-T,</p> <p>16 Warrant Officer.</p> <p>17 CHAIRPERSON: Sorry, I think at this</p> <p>18 stage we're at Exhibit HH, I think that's correct. We have</p> <p>19 got what amounts to a CV of Warrant Officer Wessels, which</p> <p>20 was given to us. It isn't really a summary of his</p> <p>21 evidence, it is more a summary of his CV, I don't know</p> <p>22 whether there is a statement you're going to hand in, or</p> <p>23 are you just going to hand in his CV but in any event, his</p> <p>24 CV, I take it, will be Exhibit II, double I.</p> <p>25 MR SEMENYA SC: That's correct, Chair.</p>
<p style="text-align: right;">Page 2049</p> <p>1 to ask, because I don't recall that we have ever respected</p> <p>2 those who lost their lives, just to stand for a second in</p> <p>3 respect of the miners who died.</p> <p>4 CHAIRPERSON: A leader of the church for</p> <p>5 us to do it again, let's have a have one minute silence.</p> <p>6 May their souls rest in peace.</p> <p>7 RT REV SEOKA: Amen.</p> <p>8 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>9 [11:28] CHAIRPERSON: The commission resumes.</p> <p>10 Yesterday at some stage in the cross-examination various</p> <p>11 documents were referred to which were in either the police</p> <p>12 hard drive or the Lonmin hard drive and I said we would</p> <p>13 have a housekeeping session this morning, getting those</p> <p>14 documents, marking them and having them handed in formally</p> <p>15 as exhibits, but Ms Pillay who had taken upon herself the</p> <p>16 onerous task of being the clerk of the papers is not with</p> <p>17 us today, but I understand from her leader, Mr Madlanga,</p> <p>18 that she will be here on Monday. So I've asked him to ask</p> <p>19 her to take that matter in hand, so we will deal with it as</p> <p>20 first business on Monday. We will be starting on Monday at</p> <p>21 ten o'clock, but in order to make up for the lost time we</p> <p>22 will only have a half hour lunch break and we'll resume at</p> <p>23 half past one, as we will today, but I want to say this,</p> <p>24 that Mr Burger showed us, with respect, how this thing is</p> <p>25 done.</p>	<p style="text-align: right;">Page 2051</p> <p>1 CHAIRPERSON: I don't know, the swearing</p> <p>2 has to be on the record. Are you prepared to take the oath</p> <p>3 or do you wish to affirm?</p> <p>4 W/O WESSELS: I can take the oath, Mr</p> <p>5 Chairperson.</p> <p>6 CHAIRPERSON: Do you swear that the</p> <p>7 evidence you will give before this commission will be the</p> <p>8 truth, the whole truth and nothing but the truth, please</p> <p>9 raise your right hand and say, I swear, so help me God?</p> <p>10 ALBERT OLCKERS WESSELS: I swear so help</p> <p>11 me God.</p> <p>12 CHAIRPERSON: Thank you, you may be</p> <p>13 seated. Mr Semenya?</p> <p>14 EXAMINATION BY MR SEMENYA SC: Thank you,</p> <p>15 Chair. You are a warrant officer in the South African</p> <p>16 Police Service, Mr Wessels, aren't you?</p> <p>17 W/O WESSELS: That is correct.</p> <p>18 MR SEMENYA SC: In what area of</p> <p>19 specialisation do you work in?</p> <p>20 W/O WESSELS: I am employed at the</p> <p>21 Forensic Science Laboratory at the Ballistic Section.</p> <p>22 MR SEMENYA SC: And at the very outset</p> <p>23 can we just explain whether that area includes expertise in</p> <p>24 matters like pyrotechnics and tear gasses or is it a</p> <p>25 separate area?</p>

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1 W/O WESSELS: The scope of the Ballistic  
 2 Section unfortunately does not include pyrotechnics or  
 3 teargas or any of those.  
 4 MR SEMENYA SC: And Warrant Officer,  
 5 Exhibit II which happens to be your CV, is that correct?  
 6 W/O WESSELS: That is correct,  
 7 Chairperson.  
 8 MR SEMENYA SC: And you say that you  
 9 joined the Ballistic Section since 2000 as an examiner of  
 10 Forensic Ballistic related cases?  
 11 W/O WESSELS: That is correct.  
 12 MR SEMENYA SC: Did you do any in-service  
 13 training?  
 14 W/O WESSELS: I did receive a three year  
 15 in-service training course at the Ballistic Section.  
 16 MR SEMENYA SC: And what did that entail?  
 17 W/O WESSELS: It entailed everything as  
 18 stated on my CV, it is quite a lengthy document, but I can  
 19 work through it if you would like me to.  
 20 MR SEMENYA SC: Chair, if we –  
 21 CHAIRPERSON: I take it we can take the  
 22 document as read, there may be certain paragraphs you wish  
 23 to highlight and refer to specifically, but he has already  
 24 confirmed it is correct, so I take it you don't have to go  
 25 through it line by line.

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1 MR SEMENYA SC: Thank you, Chair, we will  
 2 consider the document as having been read, but Warrant  
 3 Officer, can I invite that they place before you their  
 4 Exhibit B? Do you have the document, Exhibit B in front of  
 5 you? Yes, that's the one.  
 6 W/O WESSELS: Yes, I do.  
 7 MR SEMENYA SC: Can I invite you to go to  
 8 page 59 of that exhibit? There is an array of firearms and  
 9 ammunition displayed on that page, do you see it, Warrant  
 10 Officer?  
 11 W/O WESSELS: I do, thank you, Sir.  
 12 MR SEMENYA SC: Based on your area of  
 13 expertise can you tell us what appears there and what are  
 14 the capabilities of the various firearms on B59?  
 15 W/O WESSELS: In order of appearance and  
 16 as numbered on this page, firstly there is a pistol, a semi  
 17 automatic pistol, secondly a revolver, third a pump action  
 18 shotgun –  
 19 MR SEMENYA SC: Let's just take them in  
 20 turn, in relation to a pistol normally that type of firearm  
 21 is capable of what? How many magazines would it carry?  
 22 W/O WESSELS: The amount of magazines,  
 23 normally the pistol only takes one magazine at a time.  
 24 MR SEMENYA SC: And how big would a  
 25 magazine be?

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1 W/O WESSELS: The capacity of the  
 2 magazine would depend on the specific make and specific  
 3 model of firearm. In this case it appears to be a Beretta  
 4 92SB.  
 5 MR SEMENYA SC: Okay, let's get –  
 6 CHAIRPERSON: I am sorry to interrupt,  
 7 you said a copy of this page, of Exhibit B in slide form  
 8 which can be put up for people in the auditorium to see, if  
 9 there isn't there isn't, but if there is it would, I think  
 10 be helpful.  
 11 MR SEMENYA SC: Mr Chairperson, perhaps  
 12 the solution would be to quickly have it taken up there and  
 13 set up, when I met the crimes scene experts it was ready  
 14 and it could be shown by means of a projector, now no  
 15 arrangement was made for that.  
 16 CHAIRPERSON: I see Mr Wesley is on his  
 17 way, so I take it if we give him a minute or two we can  
 18 then have this picture screened for the benefit of those in  
 19 the auditorium –  
 20 MR SEMENYA SC: Yes –  
 21 CHAIRPERSON: - so that they can follow  
 22 you. Thank you, Mr Wesley, perhaps you should go back  
 23 again then to the first –  
 24 MR SEMENYA SC: Warrant Officer, we have  
 25 on the screen at the top left corner what you referred to

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1 as a pistol, is that correct?  
 2 W/O WESSELS: That is correct, Mr  
 3 Chairperson.  
 4 MR SEMENYA SC: And you explained that a  
 5 pistol would have a magazine, correct?  
 6 W/O WESSELS: That is correct, Mr  
 7 Chairperson.  
 8 MR SEMENYA SC: And depending on what  
 9 magazines, they contain different quantities of ammunition.  
 10 W/O WESSELS: That is correct, in this  
 11 particular case this magazine that comes standard with this  
 12 particular firearm would contain 15 rounds, but there are  
 13 also extended or larger capacity magazines available.  
 14 MR SEMENYA SC: Can you just tell us, in  
 15 short that is, the functionality of this firearm?  
 16 W/O WESSELS: The pistol on the screen  
 17 depicted there is a semi automatic pistol.  
 18 MR SEMENYA SC: Meaning?  
 19 W/O WESSELS: What it means, Sir, is that  
 20 it is only able to fire a single shot for each deliberate  
 21 pull of the trigger.  
 22 MR SEMENYA SC: And when one pulls the  
 23 trigger what is the firearm able to do?  
 24 W/O WESSELS: The normal firing sequence  
 25 for a semi automatic pistol would start with the magazine

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1 inserted into the handgrip, the slide cocked to the rear to  
 2 feed around into the chamber. This movement of cocking the  
 3 slide would also then cock the hammer towards the rear.  
 4 Upon applying pressure on the trigger the hammer will move  
 5 forward and strike the firing pin situated in the slide of  
 6 the pistol. The force imparted by the hammer towards the  
 7 firing pin will drive the firing pin forward which in turn  
 8 will strike the primer of the chamber cartridge. When the  
 9 firing pin strikes the primer the primer will ignite with  
 10 the priming compound, which will then in turn ignite the  
 11 propellant charge situated inside the cartridge case. This  
 12 propellant gas that is formed by the burning propellant  
 13 will then drive the bullet from the cartridge case down the  
 14 barrel of the firearm and out towards the target. Also  
 15 during this process some of the resultant gas will be used  
 16 and act upon the cartridge case inside the chamber to drive  
 17 the slide and the barrel backwards for a short distance.  
 18 MR SEMENYA SC: Is that what explains the  
 19 jacking movement of the firearm?  
 20 W/O WESSELS: That is correct, Sir, it is  
 21 part of it.  
 22 MR SEMENYA SC: What happens to the  
 23 cartridge?  
 24 W/O WESSELS: After the short period of  
 25 travel the barrel unlocks, mechanically unlocks from the

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1 slide, the barrel then stops and the slide on its own  
 2 continues the rearward movement. During this movement the  
 3 slide will cock the hammer to the fully cocked position,  
 4 towards the rear. It will also then by the use of the  
 5 extractor that's situated in the slide, will drag or pull  
 6 the fired cartridge case from the chamber of the barrel and  
 7 move it, holds it while it moves rearward with the slide.  
 8 This will then pull the fired cartridge case along, out of  
 9 the chamber until it strikes the ejector also situated on  
 10 the frame. This will in turn eject the fired cartridge  
 11 case from the pistol.  
 12 MR SEMENYA SC: And to which side of the  
 13 firearm would the cartridge be ejected?  
 14 W/O WESSELS: In this particular model,  
 15 Sir, the cartridge case will be ejected towards the right  
 16 and slightly to the rear. During the rest of the movement  
 17 of the slide or during the rearward movement of the slide,  
 18 the recoil spring underneath the slide is compressed. Once  
 19 the slide reaches the utmost or the rearmost position of  
 20 its travel, the recoil spring will then force the slide  
 21 forward again, it will strip the next round from the  
 22 magazine, the extractor will take hold of the rim of the  
 23 cartridge case and feed it into the chamber. As the slide  
 24 and the barrel connects, it again moves forward for a short  
 25 period until it returns to battery in the ready-to-fire

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1 position.  
 2 [11:48] MR SEMENYA SC: Then the fire-arm will be  
 3 ready for, to discharge another bullet, if the trigger is  
 4 pulled.  
 5 W/O WESSELS: It can only fire the next  
 6 shot on another application of force towards on the trigger  
 7 or pulling of the trigger.  
 8 MR SEMENYA SC: Are you able to tell us  
 9 what factors would influence what direction of the  
 10 cartridge and what distance?  
 11 W/O WESSELS: There are various factors  
 12 that can play a role in the ejection of the particular  
 13 cartridge case. Firstly the direction and the area where  
 14 it is ejected to is determined by the position of firstly  
 15 the extractor and also then very importantly, of the  
 16 ejector. On this particular firearm the extractor is on  
 17 the right hand side, if you're standing behind the weapon,  
 18 the extractor is on the right hand side of the slide and  
 19 the ejector is on the left. When the slide pulls the  
 20 cartridge case from ejector, pulls the cartridge case from  
 21 the chamber, it strikes the ejector on the left hand side  
 22 and it's in turn thrown towards the right out of the  
 23 pistol. Factors that might influence the distance and  
 24 direction would be whether or not the firearm is correctly  
 25 maintained, if it's well-oiled or not. This will determine

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1 the slide velocity or the way, the quickness of the  
 2 movement towards the rear. Another factor would be the  
 3 velocity of the cartridge case or determined by the amount  
 4 of propellant or the charge used for the manufacture of the  
 5 ammunition.  
 6 MR SEMENYA SC: If the firearm is well-  
 7 oiled, how far would the cartridge be ejected?  
 8 W/O WESSELS: Sir again, this is, even  
 9 though it might be well-oiled, the other factors we will  
 10 still come to will also play a role. I would expect though  
 11 that a well-maintained and a well-oiled firearm where the  
 12 slide would be moving easier on the frame, if we can call  
 13 it, or more smoothly on the frame, we can call it that way,  
 14 would eject the cartridge case in a longer distance than a  
 15 frame that, or a slide that was dry and sticking and not  
 16 moving smoothly across the frame of the pistol.  
 17 MR SEMENYA SC: A pistol like this, when  
 18 fired, what happens with residue?  
 19 W/O WESSELS: The residue that is  
 20 developed during the firing process, most of it is during  
 21 the cycling action of the slide, some of, or most of the  
 22 action or the residue will be blown out of the action, but  
 23 some of it will still adhere towards, or on the slide and  
 24 on the working surfaces of the firearm. It would however,  
 25 with my experience in these matters, it would take a

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1 multitude of rounds before it would really start affecting  
 2 a well and properly functioning firearm.  
 3 MR SEMENYA SC: Should the evidence get  
 4 there, Warrant Officer, what would happen to the person  
 5 discharging the firearm in relation to the residue?  
 6 W/O WESSELS: Some of the residue would  
 7 be deposited on the hands or on the arms of the firearm, of  
 8 the person holding the firearm.  
 9 MR SEMENYA SC: There is also elements  
 10 like tattooing, can you explain that to us?  
 11 W/O WESSELS: Sir, tattooing is actually  
 12 found only in wound ballistics. This is when the firearm  
 13 was in such close proximity to the wound or to the person  
 14 or the target that some of the unburnt and partially burnt  
 15 propellant power particles is actually blown into or onto  
 16 the target, and in the case of a human victim will create  
 17 small secondary wounds around the main entrance wound.  
 18 This would however only be found in very close contact  
 19 shots.  
 20 MR SEMENYA SC: With a pistol is the  
 21 distance determinable where a tattooing would occur? Are  
 22 we able to determine?  
 23 W/O WESSELS: It is possible to determine  
 24 to a certain extent within a bracket, not direct, down to  
 25 the last centimetre but within a reliable bracket, we can

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1 determine how far the pistol with that particular ammo, or  
 2 ammunition would create that pattern of tattooing.  
 3 MR SEMENYA SC: What would be the average  
 4 distance?  
 5 W/O WESSELS: I would expect tattooing to  
 6 be, occur in a bracket from about one or two centimetres  
 7 from the target up to a maximum distance, again depending  
 8 on the firearm ammunition used of maximum 15 to 20  
 9 centimetres.  
 10 MR SEMENYA SC: Is there anything you  
 11 can, you wish to add in relation to a pistol?  
 12 W/O WESSELS: I would just like to add  
 13 that another factor that will affect the distance of  
 14 ejection of the cartridge case will be the way that the  
 15 pistol was held. If there is enough support towards the  
 16 rear of the pistol, and the pistol is held in a firm grip,  
 17 then the cartridge case should be ejected further than when  
 18 it's not supported completely and the cycling of the slide  
 19 is not completed in a satisfactory manner.  
 20 MR SEMENYA SC: It may be what distance,  
 21 if the grip is firm?  
 22 W/O WESSELS: Normally, it would depend  
 23 on, again like I said the specific firearm and the specific  
 24 ammunition used. All these factors will play a part. It  
 25 is difficult to say exactly how far it would go. Again we

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1 can make a distance bracket where we would expect to find  
 2 the ejection of the cartridge cases. I would say that in a  
 3 pistol of this type as depicted by the picture, I would  
 4 expect it at about a 3 o'clock facing towards the front,  
 5 and towards the right of the shooter and a distance of  
 6 about 1 to maybe five metres maximum.  
 7 MR SEMENYA SC: And the effective range  
 8 of the bullet discharged out of a pistol would be in what  
 9 bracket range?  
 10 W/O WESSELS: Sir, the cartridge is  
 11 capable of being fired accurately at quite a distance. The  
 12 biggest problem, and what is normally used is 50 metres.  
 13 It is however much further effective and can be lethal much  
 14 further than that. Normally the biggest problem found with  
 15 the effectiveness of the firearm is the interface between  
 16 the person doing the shooting and the firearm itself. So  
 17 the cartridge is capable of lethality, much further than 50  
 18 metres, but the effective use depends on the skill of the  
 19 operators.  
 20 MR SEMENYA SC: The second example,  
 21 Warrant Officer, we have there is a revolver.  
 22 W/O WESSELS: That is correct,  
 23 Chairperson.  
 24 MR SEMENYA SC: Can you in summary tell  
 25 us the functionality of a revolver?

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1 W/O WESSELS: The revolver differs from  
 2 the pistol in that it does not eject the cartridge cases by  
 3 itself. It's normally a manual ejection of the cartridge  
 4 cases. It also does not use a magazine in the sense of the  
 5 word of the pistol, but rather has a cylindrical cylinder  
 6 which contains between five, up to a maximum of about eight  
 7 rounds.  
 8 MR SEMENYA SC: It too will fire one  
 9 bullet per pressing of the trigger, would it, Warrant  
 10 Officer?  
 11 W/O WESSELS: It is the same as the  
 12 pistol there, Mr Chairperson, it will only discharge one  
 13 round for each separate pull of the trigger.  
 14 MR SEMENYA SC: Subject to the skill of  
 15 the person discharging it, what would be the bracket range  
 16 of effectiveness with a revolver?  
 17 W/O WESSELS: It would be much the same  
 18 as a pistol, Mr Chairperson, around 50 metres for effective  
 19 use.  
 20 MR SEMENYA SC: Anything more you would  
 21 want to tell us about the revolver, Warrant Officer?  
 22 W/O WESSELS: There are though some  
 23 smaller sub-calibre revolvers which have larger cylinder  
 24 capacities. These would be in the small calibre such as  
 25 the 22 long rifle and they can contain up to 10 or 12

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1 rounds even in a single cylinder. Most commonly found  
 2 though are six shot and five shot revolvers.  
 3 MR SEMENYA SC: And at the top right  
 4 corner of this slide there, we have a shotgun, is that  
 5 right, Warrant Officer?  
 6 W/O WESSELS: That is correct. It  
 7 appears to be a pump action shotgun.  
 8 MR SEMENYA SC: How does that work?  
 9 W/O WESSELS: Again the pump action  
 10 shotgun will only fire or discharge a single shot for every  
 11 single deliberate pull on the trigger. The mechanism of  
 12 the pump action shotgun as depicted here requires that the  
 13 round be fed from the magazine which is the tube under the  
 14 barrel. I don't know if it's clearly visible to everybody.  
 15 The picture actually depicts the shotgun, what looks like  
 16 two barrels, one on top of each other, two cylindrical  
 17 objects. The bottom cylindrical object is a tube magazine  
 18 which contains the rounds. By working or pumping the fore-  
 19 end, that is the wood, what appears to be wood and with the  
 20 little lines across it, halfway between the action and the  
 21 barrel by manipulating the front handgrip towards the rear,  
 22 that will eject, dispense cartridge, cartridge case from  
 23 the action and eject it through the ejection port which is  
 24 situated on the, which is the white area on the slide.  
 25 MR SEMENYA SC: And what type of

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1 ammunition does this fire?  
 2 W/O WESSELS: There are various calibres  
 3 for this specific shotgun, Mr Chairperson. They range from  
 4 the smallest, which is the 410 up to quite large ones.  
 5 What we most specifically see in South Africa is the 12  
 6 gauge.  
 7 MR SEMENYA SC: We will later speak about  
 8 the ammunition. In relation to the shotgun though, what  
 9 side of the firearm would a cartridge be ejected?  
 10 W/O WESSELS: In most cases, Sir,  
 11 depending on the specific shotgun and the shotgun depicted  
 12 in this picture, ejection will be towards the right and  
 13 then slightly towards the rear, depending on how quick or  
 14 how hard the action is manipulated by the operator.  
 15 [12:08] ADV SEMENYA SC: Subject to the state of  
 16 maintenance of the shotgun and the used, what would be the  
 17 bracket range of the cartridge when it's ejected?  
 18 W/O WESSELS: I would expect it to be  
 19 from, anywhere from one, not really further than two metres  
 20 away from the shooter, or the position that he was standing  
 21 at.  
 22 MR SEMENYA SC: Depending on the  
 23 ammunition used, how far is its effective range?  
 24 W/O WESSELS: I would say the maximum  
 25 effective range, again as you said, depending on

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1 ammunition, would be 100 metres.  
 2 MR SEMENYA SC: Is there anything else  
 3 you would like to testify about a shotgun?  
 4 W/O WESSELS: I think this will do for  
 5 now.  
 6 MR SEMENYA SC: Can we now talk about the  
 7 example appearing at the second column on the left, the  
 8 assault rifle.  
 9 W/O WESSELS: We can continue.  
 10 MR SEMENYA SC: Can you explain how this  
 11 one functions?  
 12 W/O WESSELS: The basic premises of the  
 13 assault rifle in semi-automatic mode is very close to that  
 14 of the semi-automatic pistol. If we can define an assault  
 15 rifle, the definition of an assault rifle is a rifle  
 16 capable of fully automatic fire or selective fire,  
 17 chambered for an intermediate cartridge.  
 18 MR SEMENYA SC: Warrant Officer, let us  
 19 at least try and anticipate the evidence here. There will  
 20 be mentioned made of an R5, of an R1, and can you tell us  
 21 what we're looking at now?  
 22 W/O WESSELS: The firearm depicted in  
 23 this slide, in this photo, is what appears to be a Vector  
 24 made R4 rifle. This is the slightly bigger brother in the  
 25 sense that, of the R5, and when I say slightly bigger it

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1 means that the barrel is longer, slightly longer than that  
 2 of the R5, but in other respects it is very similar to the  
 3 R5 rifle.  
 4 MR SEMENYA SC: And an assault rifle of  
 5 this type would have a magazine contained what amount of  
 6 ammunition?  
 7 W/O WESSELS: For the R4 and the R5  
 8 rifles there are two magazines available. Most commonly  
 9 found is a 35-round magazine, taking 35 rounds. There is  
 10 also a 50-round magazine available, but it's not  
 11 encountered as much.  
 12 MR SEMENYA SC: And can you tell us more  
 13 about how it functions, what would happen, you said it is  
 14 automatic. You would mean what by that?  
 15 W/O WESSELS: It is capable of both semi-  
 16 automatic fire, which is the same as we described with the  
 17 pistol. Basically it means that a single shot will be  
 18 discharged for every single deliberate pull on the trigger.  
 19 The fully automatic capability means that the firearm will  
 20 continue to discharge ammunition, or fire rounds in that  
 21 sense of the word, as long as the trigger is held back.  
 22 Upon release of the trigger, it will stop firing, but as  
 23 long as the trigger is held towards the rear it will  
 24 continue firing rounds as long as there are rounds  
 25 remaining in the magazine.



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1 MR SEMENYA SC: And would it emit  
 2 cartridges, and if so, in what direction?  
 3 W/O WESSELS: It will eject the cartridge  
 4 cases as the firing process continues. Normally with the  
 5 R4 and the R5 family of assault rifles the cartridge case  
 6 is ejected slightly towards the front and towards the right  
 7 of the shooter.  
 8 MR SEMENYA SC: And the bracket range  
 9 where the cartridge would fall would be what?  
 10 W/O WESSELS: If we can first start with  
 11 the direction, it would be in the bracket, if we're facing  
 12 12 o'clock, I would place the ejection of the cartridge  
 13 cases from about 1 o'clock up to about 3 o'clock and  
 14 sometimes even 4, depending on the factors that we  
 15 mentioned with the pistol, which also plays a part here.  
 16 Again the ejection, or the distance of ejection could be  
 17 from about two metres up to a distance of 20 metres,  
 18 depending on various factors.  
 19 MR SEMENYA SC: And the effective range  
 20 of the bullet fired from this firearm?  
 21 W/O WESSELS: Again as is the case with  
 22 the pistol and the revolver, the cartridge, or the bullet  
 23 remains lethal for a much longer distance than what we  
 24 would call the effective range. Again depending on the  
 25 training and the skill of the operator, the effective range

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1 would be 3 to 400 metres.  
 2 MR SEMENYA SC: Anything more you can  
 3 tell us about the assault rifle?  
 4 W/O WESSELS: Maybe not so much on the  
 5 assault rifle, but just a slight clarification on ejection  
 6 patterns, if I may. The position of the cartridge cases  
 7 can indicate to an extent where the shooter was standing.  
 8 However, there are other factors that should always be  
 9 taken into account, which may affect where the cartridge  
 10 case comes to a stop. Firstly, these cartridge cases are  
 11 cylindrical. That must mean that they can roll if there is  
 12 a slight slope. There is also other interfering objects  
 13 which may influence where the cartridge case comes to a  
 14 stop. If I may use the example of throwing a tennis ball  
 15 in a room, if I throw it towards one corner of the room it  
 16 can bounce off something, completely change its direction,  
 17 hit another wall and completely change the direction again,  
 18 coming to a stop which is out of all proportion of where it  
 19 was initially started from. This may also be a factor in  
 20 where cartridge cases are found. Another factor which can  
 21 also happen is cartridge cases being kicked around  
 22 inadvertently by people on the crime scene or on a scene.  
 23 Yes, that's basically what could influence the landing, or  
 24 the position where a fired cartridge case ends up.  
 25 MR SEMENYA SC: And the example 5 of a

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1 rifle?  
 2 W/O WESSELS: The example shown here is a  
 3 bolt-action rifle, fitted with a telescopic sight. This  
 4 also fired only a single shot for every single depression  
 5 of the trigger. It's also manually operated in the sense  
 6 that none, the workings of the action is not influenced by  
 7 the working mechanism or the gas used during the discharge  
 8 of the firearm, but is manually performed by the person  
 9 operating the firearm. It's thus necessary for the person  
 10 to manually lift and open the bolt, pulling, by pulling the  
 11 bolt towards the rear it extracts the fired cartridge case.  
 12 By pushing the bolt forward, it will then again strip a  
 13 round from the magazine and load that round into the  
 14 chamber. These mechanisms, or motions are all performed by  
 15 the shooter himself.  
 16 MR SEMENYA SC: Just for my edification,  
 17 the R1 would fall in which of these two?  
 18 W/O WESSELS: The R1 will be the same and  
 19 the operation will be very similar to that of the assault  
 20 rifle, which is the one on the left, number 4.  
 21 MR SEMENYA SC: I don't think there will  
 22 be much evidence on the rifle on 5. Shall we then talk  
 23 about, in short though, example number 6, the submachine  
 24 gun?  
 25 W/O WESSELS: The submachine gun is

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1 classified again as very much the same as an assault rifle,  
 2 except that it must be capable of selective fire, which  
 3 means semi-automatic or automatic fire, and it must be  
 4 chambered for a pistol calibre cartridge. It is thus the  
 5 same as an assault rifle, capable of firing more than a  
 6 single shot with a single depression of the trigger as, in  
 7 full automatic mode, or in semi-automatic mode will only  
 8 fire a single shot for a single depression of the trigger.  
 9 It normally has a selector as the, same as the assault  
 10 rifle, which can be selected to which mode it is adjusted.  
 11 MR SEMENYA SC: Warrant Officer, I also  
 12 do not expect any evidence of the use of a submachine gun.  
 13 Can we talk about the example of a homemade firearm, number  
 14 7, as an example.  
 15 W/O WESSELS: Homemade firearms come in  
 16 all shapes and sizes, depending on the ingenuity of the  
 17 person manufacturing them. The one depicted here is one  
 18 commonly encountered. It is made in a backyard workshop or  
 19 in, by somebody with limited amount of knowledge and a  
 20 limited amount of tools. They are mostly crudely made and  
 21 they use some type of mechanical action to discharge a  
 22 single shot.  
 23 MR SEMENYA SC: Yes, Warrant Officer,  
 24 that's what we have on the screen now.  
 25 W/O WESSELS: That is correct, Mr

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1 Chairperson. In this particular instance it appears to be  
 2 a simple piece of water pipe, which will accept any number  
 3 of cartridges, attached to a block of wood and everything  
 4 wrapped together by simple tyre, or the inside inner tube  
 5 of a tyre to keep it together. It appears to have a nail  
 6 used as a firing pin. This would probably be either struck  
 7 with an object or propelled forward by use of a spring.  
 8 This is, however, only one example of a vast array of  
 9 homemade firearms that's commonly encountered.  
 10 MR SEMENYA SC: What would happen with  
 11 the cartridge fired from a homemade firearm like that?  
 12 W/O WESSELS: Normally because the  
 13 cartridge is not, there's no extractor or ejector  
 14 mechanism, it's simply a basic pipe, the cartridge case  
 15 also does not fit precisely as in the case of a chamber.  
 16 Normally the fired cartridge case will get stuck in the end  
 17 of the pipe and will remain there until forcefully,  
 18 normally forcefully or manually removed by the person doing  
 19 the shooting.  
 20 CHAIRPERSON: Mr Semenya, am I correct in  
 21 thinking that judging what appears at slide 261 and 263 of  
 22 exhibit L, there's no mention of homemade firearms being  
 23 retrieved by LCRC? Am I correct?  
 24 MR SEMENYA SC: Well Chair, there is only  
 25 evidence, looking at the post mortem reports, of somebody

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1 who would have died of pellet wounds. What type of  
 2 ammunition would be fired from a homemade firearm?  
 3 [12:28] W/O WESSELS: Just about anything, any  
 4 calibre that can be fitted into the specific device can be  
 5 fired from it or will be attempted to fire from it. What  
 6 is commonly mostly found in my experience is the 12-gauge  
 7 shotgun as it is easy to manufacture a firearm, or home-  
 8 made firearm that fits around the cartridge and it's easily  
 9 found as well.  
 10 MR SEMENYE SC: What's a 12-gauge, we  
 11 have been using that word now for the second time, what's a  
 12 12-gauge?  
 13 W/O WESSELS: The 12-gauge, Sir would be  
 14 the same cartridge or a similar cartridge than the one  
 15 discharged by, most commonly found shotguns.  
 16 MR SEMENYE SC: Pellets will be  
 17 discharged out of what type of ammunition?  
 18 W/O WESSELS: Pellets would be discharged  
 19 or would be expected to be discharged from shotgun type  
 20 shells.  
 21 MR SEMENYE SC: And things like teargas  
 22 that would be fired out of what type of firearm?  
 23 W/O WESSELS: Teargas would be fired from  
 24 especially adapted launcher, either a 40 millimetre or a  
 25 special adaption made towards a shotgun cartridge. I

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1 however do not know if they are still in use, I have not  
 2 had enough experience with those kinds of things and it  
 3 actually falls out of my area of expertise.  
 4 MR SEMENYE SC: Can we now talk about  
 5 cartridges that appear on the next section of the slide,  
 6 number 8.  
 7 W/O WESSELS: The slide shows some of the  
 8 most commonly encountered cartridges. It depicts from, if  
 9 we start from the left hand side of the slide, what appears  
 10 to be a 12-gauge shotgun cartridge.  
 11 MR SEMENYE SC: That is the one which  
 12 would contain pellets?  
 13 W/O WESSELS: That is correct.  
 14 MR SEMENYE SC: The second from the left.  
 15 W/O WESSELS: The next two cartridges are  
 16 normally what we consider as bottleneck cartridges and  
 17 mostly found to be used in rifles. This could be found in  
 18 either fully automatic or semi-automatic rifles as well as  
 19 bolt action rifles.  
 20 MR SEMENYE SC: There will also be  
 21 evidence of the use of rubber bullets, those would be  
 22 contained in what type of cartridge?  
 23 W/O WESSELS: They are normally contained  
 24 in a shotgun or a 12-gauge shotgun cartridge.  
 25 MR SEMENYE SC: And the example would be

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1 the first one?  
 2 W/O WESSELS: That is correct.  
 3 MR SEMENYE SC: To the left, okay. The  
 4 other cartridges?  
 5 W/O WESSELS: The other cartridges are  
 6 all examples of what I would consider handgun calibre  
 7 cartridges, which would mostly be found in firearms such as  
 8 pistols and revolvers.  
 9 MR SEMENYE SC: The next section of the  
 10 slide deals with cartridge cases, number 9, Warrant  
 11 Officer.  
 12 W/O WESSELS: That is correct, Mr  
 13 Chairman. That also depicts the fired cartridge cases in  
 14 most cases. As can be seen from the circular one on, I  
 15 would call it about 9 o'clock, which shows the indentation  
 16 on the primer in the centre of the cartridge case. Also  
 17 these cartridge cases do not contain any bullets which  
 18 differentiate them from being cartridges. The cartridge  
 19 would contain a bullet propellant and a primer.  
 20 MR SEMENYE SC: These are sometimes  
 21 called spent cartridges?  
 22 W/O WESSELS: That is a commonly misused  
 23 term.  
 24 MR SEMENYE SC: And the next section  
 25 number 10 would be bullets, Warrant Officer?

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1 W/O WESSELS: That is correct, Mr  
 2 Chairperson. It shows what appears to be fired bullets.  
 3 CHAIRPERSON: Are these ones sometimes  
 4 referred to as projectiles?  
 5 W/O WESSELS: That is correct, Mr  
 6 Chairman.  
 7 CHAIRPERSON: So you have, normally you  
 8 have a cartridge which is the cartridge case plus the  
 9 projectile. Once it's been fired, the projectile has been  
 10 ejected, the case remains or is sometimes ejected from the  
 11 firing ones you've explained?  
 12 W/O WESSELS: That is correct, Mr  
 13 Chairperson.  
 14 CHAIRPERSON: Thank you.  
 15 MR SEMENYE SC: And the next section,  
 16 number 11, would be examples of pellets?  
 17 W/O WESSELS: That is correct. These  
 18 pellets are normally found, or what appears to be found in  
 19 the 12-guage or a shotgun type cartridge.  
 20 MR SEMENYE SC: And the next section,  
 21 number 12, called fragments, what are those, Warrant  
 22 Officer?  
 23 W/O WESSELS: Fragments are normally  
 24 referred to as small pieces of the bullet that has broken  
 25 up. This could be pieces of either the core or the jacket

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1 of the bullet. Once the bullet actually strikes its  
 2 intended target, the forces exerted by the bullet on the  
 3 target and also by the target on the bullet can create the  
 4 bullet to break up into several smaller pieces. These  
 5 pieces are normally referred to as fragments.  
 6 MR SEMENYE SC: That is the evidence-in-  
 7 chief of the witness, Chair.  
 8 CHAIRPERSON: Thank you. Mr Madlanga, do  
 9 you wish to cross-examine?  
 10 CROSS-EXAMINATION BY MR MADLANGA SC:  
 11 Yes, thank you Mr Chairman. Warrant Officer, you said that  
 12 the firearm on the top right hand corner is a Beretta, did  
 13 you say so, the pistol?  
 14 W/O WESSELS: The Beretta, it appears to  
 15 be a Beretta.  
 16 CHAIRPERSON: The top left hand corner.  
 17 MR MADLANGA SC: Top left hand, yes, top  
 18 left hand, I'm sorry, sorry Chairperson, thank you. Can  
 19 you tell us what type or types of pistols are issued to the  
 20 South African Police? Is it Berettas or is it different  
 21 types? If it's different types, what types?  
 22 W/O WESSELS: At this moment in time,  
 23 there's several different firearms issued to the police  
 24 force or the police service. Among them is the Beretta and  
 25 some of its variations. The models have adapted as the

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1 times went on. As far as I know there are, the models are  
 2 all from the 92 family but have several variations in the  
 3 family which starts with the normal model 92. These  
 4 variations, if I might quickly clarify, depends on where  
 5 the magazine release is situated, where the safety levers  
 6 on the pistol is situated as well as additional safety  
 7 features that was added to the range of pistols as  
 8 technology improved. Currently we will find the normal 92,  
 9 original 92, the 92S, the 92SB and just about the newest  
 10 version which is the 92FS currently in use. It is very  
 11 similar to the Vector Z88 pistol. In appearance they are  
 12 both the same. They function basically the same and all  
 13 the safety features from one, from the 92 FS are mostly  
 14 incorporated into the locally manufactured Vector Z88.  
 15 MR SEMENYE SC: So as not to deal with  
 16 each one of those different types of pistols that are  
 17 police issue, would you say that there are any marked  
 18 differences in terms of the direction and distance of  
 19 ejection of cartridges, differences with the Beretta that  
 20 you dealt with?  
 21 W/O WESSELS: There is actually another  
 22 model of Beretta also currently issued which is the PX4.  
 23 This completely differs from the 92 series in that it uses  
 24 a rotating barrel lock-up and also a polymer framer. It's  
 25 the newest generation of Beretta pistols currently

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1 developed.  
 2 MR SEMENYE SC: Before you deal with  
 3 that, you itemised the whole range of them before my  
 4 question. So what I'm trying to establish is with the ones  
 5 that you itemised are there any differences in terms of  
 6 distance and direction of ejection of cartridge cases?  
 7 W/O WESSELS: In the 92 family and Z88  
 8 pistol, it would be very similar. As described before, the  
 9 same principles will apply, also the same effects of how  
 10 the firearm is maintained, how it is held and intervening  
 11 objects would play the same role in all of them.  
 12 MR SEMENYE SC: Are they also similar in  
 13 terms of effectiveness when it comes to being capable of  
 14 killing a person, at distance that is?  
 15 W/O WESSELS: They are all in the same  
 16 calibre, so yes, the effective range and will be close,  
 17 very much the same.  
 18 MR SEMENYE SC: Before I interjected, you  
 19 had just begun to mention a new type of pistol. Are there  
 20 any differences with that one or in terms of direction of  
 21 ejection, distance of ejection and effectiveness?  
 22 W/O WESSELS: Effectiveness will remain  
 23 the same as the calibre remains the same. The range of  
 24 ejection and the area of ejection is very similar in my  
 25 experience and it would not really cause a marked effect.

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1 It would fall in the same bracket as the 92 series.  
 2 MR SEMENYE SC: You mentioned that the  
 3 powder, I may not use the correct technical terminology,  
 4 the residue, yes, that is discharged, it may show on the  
 5 victim. And you mentioned a distance of 1 centimetre to 20  
 6 centimetres, I want to understand that, what exactly does  
 7 the 1 centimetre relate to?  
 8 W/O WESSELS: We actually spoke about the  
 9 effect of tattooing and at what distance with this would be  
 10 found. Tattooing as I said before is when partially or  
 11 unburnt powder particles are deposited as small wounds  
 12 around the entrance wound. 1 centimetre from, would in  
 13 this instance describe that the barrel, the front of the  
 14 barrel would be within 1 centimetre of the entrance hole or  
 15 from the target.  
 16 MR SEMENYE SC: Oh, so if you say within  
 17 1 centimetre, that means even if it's held right against  
 18 the flesh of the victim –  
 19 W/O WESSELS: It would need at least 1  
 20 centimetre.  
 21 MR SEMENYE SC: Okay, so you don't mean  
 22 if it's 1 centimetre away from the victim. So even if it's  
 23 held right against.  
 24 W/O WESSELS: No, it would need to be 1  
 25 centimetre away.

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1 MR SEMENYE SC: Away, away, okay.  
 2 CHAIRPERSON: Sorry, can I interpose my  
 3 question?  
 4 MR SEMENYE SC: Yes, yes.  
 5 CHAIRPERSON: Am I correct in thinking  
 6 it's 10 millimetres to 1 centimetre, is that right?  
 7 W/O WESSELS: That is correct.  
 8 CHAIRPERSON: So if a pistol were held 5  
 9 millimetres, in other words half a centimetre away from the  
 10 victim and fired, will you expect to find residue?  
 11 W/O WESSELS: I would still expect to  
 12 find residue but I would not necessarily expect to find  
 13 tattooing as there would not be enough time for the unburnt  
 14 particles to actually spread enough to create a circular  
 15 tack or indicate tattooing.  
 16 MR SEMENYE SC: Can you please just  
 17 explain, Warrant Officer, the rate of fire of the R4 and  
 18 the R5 say per minute, per second?  
 19 W/O WESSELS: On both the R4 and the R5  
 20 as well as the R1, the rate of fire is between 600 to 700  
 21 rounds per minute.  
 22 MR SEMENYE SC: No further questions,  
 23 Commissioners, thank you.  
 24 CHAIRPERSON: Any questions from Lonmin?  
 25 MR MOTAU SC: Thank you, Mr Chairman,

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1 it's Terry Motau. Chairman, we've only received a copy of  
 2 the ballistic reports which we would like to consider. May  
 3 we defer our cross-examination?  
 4 [12:48] CHAIRPERSON: I understand this witness  
 5 isn't testifying to the ballistic reports, he is simply  
 6 explaining how, the different kinds of firearms and how  
 7 they work, so I think if you're going to ask questions  
 8 based on the ballistic reports you probably have to ask it  
 9 of another witness. The question is, do you want to ask  
 10 this witness anything about the evidence he has given in  
 11 chief?  
 12 MR MOTAU SC: No, Chair.  
 13 CHAIRPERSON: Any questions from the AMCU  
 14 side?  
 15 MR NTSEBEZA SC: No questions, Chair.  
 16 CHAIRPERSON: Any questions, Mr Bizos?  
 17 CROSS-EXAMINATION BY MR BIZOS SC: Thank  
 18 you, Chair. I would like to start off with the firearm  
 19 number 3, the shotgun. The ammunition used in the  
 20 cartridges, on the left slide in Annexure A, am I correct?  
 21 W/O WESSELS: It appears to be the same,  
 22 yes.  
 23 MR BIZOS SC: Yes, and the contents of  
 24 the cartridge, are they pellets as an attempt is made in  
 25 paragraph, in square 11 to depict them pictorially?

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1 W/O WESSELS: The shotgun cartridge can  
 2 contain either rubber balls, it can contain pellets as  
 3 depicted in number 11, it could also contain a solid bullet  
 4 commonly known as a slug.  
 5 MR BIZOS SC: Yes, I want for the  
 6 purposes of my questions now to deal with pellets. Am I  
 7 correct in saying that there is birdshot with approximately  
 8 70 pellets in the cartridge, am I correct in that?  
 9 W/O WESSELS: According to my knowledge,  
 10 Sir, that is still with these different types of cartridges  
 11 –  
 12 MR BIZOS SC: Yes, but let's start with  
 13 birdshot?  
 14 W/O WESSELS: With birdshot I would  
 15 expect more than 70 pellets –  
 16 MR BIZOS SC: How much more?  
 17 W/O WESSELS: Well, in my knowledge or my  
 18 experience I would consider birdshot going down from about  
 19 number 4, in the size of the pellets, towards number 7,  
 20 that would be anywhere in number from about 260 to 400.  
 21 MR BIZOS SC: Yes, but the 70 is the  
 22 minimum.  
 23 W/O WESSELS: Depending on which  
 24 reference you use, it could still be seen as birdshot  
 25 depending on –

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1 MR BIZOS SC: Yes, for comparative  
 2 purposes –  
 3 CHAIRPERSON: The interpreter hasn't had  
 4 a chance to interpret this.  
 5 MR BIZOS SC: Pardon?  
 6 CHAIRPERSON: The interpret –  
 7 MR BIZOS SC: Oh, I am sorry. The other  
 8 shot in hunter's terms is buckshot, is that correct?  
 9 W/O WESSELS: That is correct.  
 10 MR BIZOS SC: How many pellets more or  
 11 less, sorry? How many pellets more or less are in the  
 12 cartridge if it is buckshot?  
 13 W/O WESSELS: Again there is a variety of  
 14 cartridges that all fall within a spectrum of buckshot. It  
 15 could be as little as 9 or 8 pellets per cartridge up to 44  
 16 or up to 70, as you stated earlier.  
 17 MR BIZOS SC: Well, let us say that they  
 18 are bigger than birdshot, but do you know of pellets that  
 19 are called SSG?  
 20 W/O WESSELS: Yes, Sir, I am familiar  
 21 with them.  
 22 MR BIZOS SC: How many pellets are there  
 23 in SSG shot?  
 24 W/O WESSELS: I must admit it eludes me  
 25 at this stage, I would expect in the region of about 28.

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1 MR BIZOS SC: Well, there may be  
 2 differences, but generally speaking we have birdshot,  
 3 buckshot, SSG. Which pellets would be the most dangerous  
 4 if used against, as we are concerned with human beings  
 5 here, would be the most dangerous to direct at human  
 6 beings?  
 7 W/O WESSELS: The larger shot, this  
 8 would, as the size of the balls increase or as the –  
 9 MR BIZOS SC: Yes –  
 10 W/O WESSELS: There is also less space  
 11 for them, so the viewer balls actually or shot pellets fit  
 12 inside –  
 13 MR BIZOS SC: The more dangerous?  
 14 W/O WESSELS: Of course being bigger they  
 15 have a bigger –  
 16 MR BIZOS SC: Yes –  
 17 W/O WESSELS: - availability or –  
 18 MR BIZOS SC: Now with birdshot how much  
 19 damage, if any, is done to a human being if shot with  
 20 birdshot, say at 20 to 50 metres, how much damage would the  
 21 birdshot do?  
 22 W/O WESSELS: That is difficult to  
 23 explain.  
 24 MR BIZOS SC: More or less, and for  
 25 comparative purposes?

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1 W/O WESSELS: Birdshot can still remain  
 2 lethal at that distance, it depends on the area of the  
 3 target that it strikes.  
 4 MR BIZOS SC: Yes.  
 5 W/O WESSELS: It also depends on whether  
 6 it still has enough retained velocity, but mostly will be  
 7 dependent on the area that it strikes. It would be less  
 8 than the bigger amount or the bigger shot, such as the  
 9 buckshot or the SSG, but it is still in the right  
 10 circumstances completely capable of being fatal.  
 11 MR BIZOS SC: The further it travels the  
 12 more it spreads and the less and less damage it can do to  
 13 the body of a human being?  
 14 W/O WESSELS: That is what would be  
 15 expected, however –  
 16 MR BIZOS SC: Is that so?  
 17 W/O WESSELS: That is what would be  
 18 expected, Sir, I have personally witnessed a small pellet  
 19 travelling from a ricocheted, from a steal plate, coming  
 20 back a distance exceeding 50 metres and still lodging with  
 21 a wound track of up to about 6 centimetres in the upper arm  
 22 of one of the spectators. It is thus clearly dangerous to  
 23 a much further extent and I think we should always remember  
 24 that there is no non lethal ammunition. There is lethal  
 25 ammunition and less lethal ammunition but there is no none

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1 lethal ammunition.  
 2 MR BIZOS SC: Would you consider, leaving  
 3 aside the special case that you mentioned of the ricochet,  
 4 can we as a general principle agree on this, that birdshot  
 5 is the least dangerous of the other gauges that may be shot  
 6 from a shotgun?  
 7 W/O WESSELS: I will agree that the  
 8 birdshot would be less likely to inflict a lethal wound.  
 9 MR BIZOS SC: Yes.  
 10 W/O WESSELS: But it is still capable of  
 11 doing that.  
 12 MR BIZOS SC: Yes, as a theoretical  
 13 possibility that may be possible, I am asking you that if  
 14 we have to take a choice, is birdshot the least harmful?  
 15 W/O WESSELS: I would expect the ball,  
 16 the rubber ball to be less harmful than birdshot.  
 17 MR BIZOS SC: You would expect what?  
 18 W/O WESSELS: The rubber balls.  
 19 MR BIZOS SC: I am not talking about  
 20 rubber, I am talking about metal, the three that we have  
 21 mentioned, we'll come to the rubber shots.  
 22 CHAIRPERSON: Mr Bizos, will it be  
 23 convenient if we come to the rubber shots after lunch, or  
 24 would you like to round this point off before we take the  
 25 lunch adjournment?

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1 MR BIZOS SC: No, we can take the  
 2 adjournment now, Mr Chairman, thank you.  
 3 CHAIRPERSON: We will adjourn until 1:30  
 4 today.  
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 6 [13:34] CHAIRPERSON: The commission resumes.  
 7 MR BIZOS SC: Warrant Officer Wessels, I  
 8 think that we have agreed that the least damaging shooting  
 9 that may be directed by members of the police force at a  
 10 crowd are, is the use of birdshot, would you agree?  
 11 W/O WESSELS: When we're talking about  
 12 shot pellets, then it would be less likely to cause a  
 13 serious wound than the larger pellets, Mr Chair.  
 14 MR BIZOS SC: You would agree, subject to  
 15 that minor modification that you are making?  
 16 W/O WESSELS: Yes I will.  
 17 MR BIZOS SC: Yes. Where were you on the  
 18 16th August?  
 19 W/O WESSELS: Which year?  
 20 MR BIZOS SC: This year.  
 21 W/O WESSELS: If I remember correctly, Mr  
 22 Chairman, I was actually on leave.  
 23 MR BIZOS SC: You were on leave, you were  
 24 not in Marikana?  
 25 W/O WESSELS: No, I was never at the

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1 scene. As a matter of fact, I do not even know where it  
 2 is.  
 3 MR BIZOS SC: I want you to accept an  
 4 assumption for the purposes of subsequent questions, that  
 5 34 people were killed and over 80 were seriously wounded on  
 6 that day as a result of police action. Although we haven't  
 7 got a complete report from the ballistics department, from  
 8 the post mortem reports that we have in our possession and  
 9 the information that we have received from those that have  
 10 reports of the persons wounded, not a single one with a  
 11 possible exception of one, which is not very clear, was  
 12 injured by birdshot. If you accept that as the facts,  
 13 would you agree that the police did not appear to have used  
 14 the safest way in which to control people that they wanted  
 15 to disperse from a gathering?  
 16 MR SEMENYA SC: Chairperson, the  
 17 proposition is not accurate. There was lots of rubber  
 18 used.  
 19 MR BIZOS SC: Birdshot.  
 20 MR SEMENYA SC: No, but rubber is less –  
 21 MR BIZOS SC: No, birdshot, birdshot is  
 22 not rubber. We're going to come to the rubber, if the use  
 23 of rubber bullets, I've said, I hope the clarification  
 24 deals with the objection, Mr Chairman.  
 25 CHAIRPERSON: Let the witness answer the

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1 question as you formulated it, as long as you promise me  
 2 you'll carry on and deal with the rubber balls as well.  
 3 MR BIZOS SC: Yes, I will deal with them.  
 4 There isn't a single victim of birdshot, either in death or  
 5 serious wounding, except of a possibility where the post  
 6 mortem report is not very clear and we make that  
 7 concession. What is the answer to the question or do you  
 8 want me to repeat it?  
 9 W/O WESSELS: Sir, it would be very  
 10 difficult for me to agree with the assumption since I did  
 11 not see what cartridges were taken up or what wounds were  
 12 caused or what ammunition was used at the day. I cannot, I  
 13 do not feel comfortable expressing whether the wounds were  
 14 caused by birdshot or by anything else if I do not have  
 15 those particular facts and I do not have the knowledge of  
 16 them.  
 17 CHAIRPERSON: I think you were asked to  
 18 make an assumption that no one was killed by birdshot,  
 19 although Mr Bizos did say there's one possible exception.  
 20 So let's put the exception aside. Apart from the  
 21 exception, he says there were no, it's quite clear that no  
 22 one else, no one was killed by birdshot, that's the premise  
 23 upon which the question is based. So we understand you  
 24 weren't there, we understand you haven't seen the PM  
 25 reports, we understand you're speaking from a position of

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1 considerable disadvantage. But nevertheless the question's  
 2 been put to you, I think you understand it, and Mr Bizos,  
 3 perhaps you could repeat the relevant part again for the  
 4 witness so he can give us a focused answer.  
 5 MR BIZOS SC: Yes.  
 6 CHAIRPERSON: We must also give the  
 7 interpreter a chance to interpret it all.  
 8 MR BIZOS SC: May I just say before I  
 9 repeat the question, you come from a scientific background,  
 10 Warrant Officer Wessels, you're accustomed to make an  
 11 assumptions and express an opinion on the correctness or  
 12 otherwise the assumption. Please do not be reluctant to  
 13 express a view as an expert that you are if you are asked  
 14 to make assumptions, please. I put the question again. If  
 15 in fact there is no evidence except for one instance  
 16 possibly that anybody was killed or seriously injured as a  
 17 result of the birdshot firing, will you agree that it is  
 18 apparent that the police did not use birdshot in order to  
 19 disperse the crowd that they wanted to disperse on the 16th  
 20 August this year?  
 21 W/O WESSELS: If there's no evidence of  
 22 birdshot being used or anybody injured then I agree that it  
 23 appears that no birdshot was used on the day.  
 24 MR BIZOS SC: Warrant Officer Wessels,  
 25 you're avoiding part of the question, that it would then

<p style="text-align: right;">Page 2092</p> <p>1 appear that the police did not use one of the safer ways of 2 dismantling or dispersing the crowd, what do you say to 3 that? 4 W/O WESSELS: It would appear that no 5 birdshot was used, it is a safer option than buckshot but I 6 cannot say whether there was any other thing that were not 7 safe to use or less lethal. 8 MR BIZOS SC: Why don't you answer the 9 question? 10 W/O WESSELS: I have a bit of difficulty 11 in understanding your question, Sir. I agree that it 12 appeared that no buckshot was used. Having no experience 13 in riot control or ways of dispersing a crowd, it is 14 difficult for me to say which would be the – and not being 15 on the scene at that day – would be difficult for me to 16 make a statement about what would be the best. I can agree 17 with you that it appears that no buckshot was used but 18 that's how far I can go. 19 MR BIZOS SC: I will not repeat the 20 question, Warrant Officer, but we will argue that you are 21 reluctant to express an opinion in the field in which you 22 are an expert about the conduct of your colleagues. 23 CHAIRPERSON: Mr Bizos, you could argue 24 it later, but when you argue it you have to bear in mind 25 evidence is given that he's not an expert in this</p>	<p style="text-align: right;">Page 2094</p> <p>1 reference somewhere in the SAPS presentation to justify 2 the, what you've just put to the witness. In other words 3 I'm not disallowing the question at this stage, but I'm 4 saying to you if I'm going to allow it, you must, in 5 fairness to what Mr Semenya said, give us the page or the 6 slide where that appears. 7 MR BIZOS SC: Well, Mr Chairman, I can't 8 put my finger on the precise page or the two exhibits 9 produced by the police as to what they're going to contend 10 the events of the 16th August were. I thought that it was 11 common cause, both in their reports and in the, some of the 12 videos that we have seen, that there were shots at people. 13 What is the objection, that – 14 CHAIRPERSON: There's no problem about 15 that, it's quite clear, they shot at people, they killed 16 them. 17 MR BIZOS SC: Yes. 18 CHAIRPERSON: Mr Noki has got about eight 19 fatal wounds, as far as I can see. 20 MR BIZOS SC: Yes. 21 CHAIRPERSON: But the question that you 22 asked is premised on the assumption that it's the police's 23 version that they fired those powerful rifles at people 24 simply to disperse them, and that I think is the basis of 25 Mr Semenya's objection. As far as I can remember from the</p>
<p style="text-align: right;">Page 2093</p> <p>1 particular field of public order policing and crowd 2 control. In the light of that you can still argue the 3 matter at the appropriate time. 4 MR BIZOS SC: I'll leave it at that, Mr 5 Chairman, thank you. I want to ask you what you say about 6 R4 and R5? They are very powerful weapons, are they not? 7 W/O WESSELS: Yes they are. 8 MR BIZOS SC: Discharged against human 9 beings in a crowd, can hardly be for the purposes of 10 disturbing them. If they were discharged against them, it 11 was for the purpose of killing them. 12 W/O WESSELS: It's a difficult question 13 for me to answer, Sir. I do not pretend to know what was 14 the purpose of discharging the firearm. I do know that 15 discharging a firearm of that calibre at anybody can create 16 a lethal wound. 17 MR BIZOS SC: Again, I will ask you to 18 make the assumption that the reason given by your 19 colleagues in the police force was that they fired in order 20 to disperse the crowd and disarm them. 21 MR SEMENYA SC: Objection. Nowhere in 22 the SAPS evidence is that R5s were fired to disperse the 23 crowd. 24 CHAIRPERSON: Mr Bizos, if you want to 25 persist in asking the question, you'll have to give us a</p>	<p style="text-align: right;">Page 2095</p> <p>1 opening statement, it was said that these weapons were 2 fired by the policemen concerned on the basis of private 3 defence, in other words either defending themselves or 4 defending their colleagues. It was not suggested, as I 5 remember it, that it was, that those powerful rifles were 6 used simply for purposes of crowd dispersal, but if I'm 7 wrong, Mr Semenya will correct me. 8 MR SEMENYA SC: At no stage is there a 9 version on the part of the police that an R5 rifle was 10 fired for dispersing the crowd, nowhere. 11 MR BIZOS SC: Mr Chairman, do the police 12 - do not admit that on scene 1 these weapons were used and 13 discharged against people? Whether it was self-defence or 14 not is another matter, we can argue about that at the end 15 of the case. Are they denying that they discharged these 16 powerful arms against the crowd? 17 CHAIRPERSON: Mr Bizos, I think the 18 answer to the question that you've addressed to Mr Semenya, 19 which isn't really for me to answer, but I think the answer 20 may be found in slide 283 of exhibit L. You remember the 21 shots were fired, as I understand it, in stage 3 and what 22 is said in the second bullet in slide 283 is as follows, 23 "Even when stage 3 of the operational plan was implemented, 24 the use of live ammunition was never an option and the use 25 of minimum force if negotiation is not successful, with the</p>

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1 next alternative. Where encirclement and dispersion would  
 2 be executed by using, if necessary, water cannons, stun  
 3 grenades, tear grenades and rubber bullets." And then comes  
 4 this sentence, "The unfortunate reality was that the  
 5 aggression of the crowd left the SAPS with no other choice  
 6 than to act in private defence, defending their own lives  
 7 and the lives of others." Now that appears to be their  
 8 case. Whether that's correct or not, is one of the matters  
 9 we have to decide. Whether the plan, operation plan was  
 10 flawed for various reasons, then the situation should never  
 11 have arisen is another question, but, which we'll have to  
 12 come to. But the case of the police on this point as I  
 13 read it, is what I read you, that they acted not to  
 14 disperse the people, but in private defence, defending  
 15 their own lives and the lives of others. If there's  
 16 something else that I've left or I've misread it, I hope Mr  
 17 Semenya will correct me.

18 MR SEMENYA SC: That is indeed our case,  
 19 Chair.

20 MR BIZOS SC: I'll defer the question in  
 21 view of the objection and put something else to you, and I  
 22 may return after your answers to the question. Now R4, is  
 23 it a military weapon or not?

24 W/O WESSELS: It is currently in use by  
 25 the South African National Defence Force.

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1 MR BIZOS SC: South African?  
 2 W/O WESSELS: National Defence Force.  
 3 MR BIZOS SC: Is it a military weapon?  
 4 W/O WESSELS: It is, it's main purpose  
 5 was designed for military use.  
 6 MR BIZOS SC: Why don't you just answer  
 7 the question? Is it a military weapon? Why are you so  
 8 afraid to admit the obvious?  
 9 CHAIRPERSON: Just let him answer the  
 10 question. If he prevaricates and is evasive, leave it to  
 11 me to give him a go, don't take it upon -  
 12 MR BIZOS SC: I'm sorry.  
 13 CHAIRPERSON: I understand one gets  
 14 excited sometimes and it's difficult not to be. I'm not  
 15 criticising you, but just carry on quietly.  
 16 MR BIZOS SC: Thank you.  
 17 CHAIRPERSON: [Latin].  
 18 MR BIZOS SC: Yes.  
 19 [13:54] MR BIZOS SC: Yes, and what is R5, is it  
 20 a military weapon?  
 21 W/O WESSELS: The term military weapon is  
 22 what I am having trouble to define, Mr Chairperson. If it  
 23 means that it is in use by a military organisation or  
 24 institution, then yes, but I do not have a clear  
 25 clarification of what a military weapon is for myself.

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1 CHAIRPERSON: Sorry to interrupt you,  
 2 isn't the expression assault rifle? Have you ever come  
 3 across that expression, assault rifle?  
 4 W/O WESSELS: Assault rifle is the  
 5 correct -  
 6 CHAIRPERSON: Now R4s and R5s assault  
 7 rifles?  
 8 W/O WESSELS: They conform to the  
 9 description of an assault rifle.  
 10 CHAIRPERSON: You use them on the  
 11 battlefield to kill the enemy, don't you?  
 12 W/O WESSELS: That is correct.  
 13 CHAIRPERSON: Ja, I think that's what you  
 14 wanted to know, Mr Bizos, now we know.  
 15 MR BIZOS SC: Thank you, Mr Chairperson.  
 16 Would you agree that because of their rapidity of fire and  
 17 the devastating results that they may have if they're  
 18 directed against human beings, make them weapons that ought  
 19 not to be used for public policing, would you agree with  
 20 that?  
 21 W/O WESSELS: I do believe that, I cannot  
 22 completely agree with your statement, I do believe that  
 23 there is certain specific instances where the use of these  
 24 firearms is necessitated for public order policing or for  
 25 policing the general public. They do have certain specific

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1 niche that they need to be used in.  
 2 MR BIZOS SC: Are you aware of the  
 3 function, the proper function of public order policing?  
 4 W/O WESSELS: Only what I can, or know  
 5 from experience and seeing what they do from the television  
 6 and other -  
 7 MR BIZOS SC: Please let us have -  
 8 W/O WESSELS: - such cases.  
 9 MR BIZOS SC: Please let us have your  
 10 knowledge on the matter?  
 11 W/O WESSELS: I have not been trained in  
 12 public order policing or in their work, so I do not have,  
 13 barely but the basics knowledge of what they perform.  
 14 MR BIZOS SC: What do you know about  
 15 public policing, tell us, if a warrant officer in the  
 16 police doesn't know what public policing are supposed to  
 17 do, who do you suggest we should ask to inform the  
 18 commission about what their precise role is? Try and help  
 19 us?  
 20 W/O WESSELS: As much as there are  
 21 specific divisions or sections in the police, my main daily  
 22 duties are considering the examination of ballistic  
 23 firearms and ballistic cases in casework. I have not  
 24 received training in any such thing as public order police.  
 25 I know what happens in my work environment, I don't



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1 necessarily get to work with as many people from public  
 2 order police or from the POP's units, if that is what you  
 3 mean.  
 4 MR BIZOS SC: Have you got any friends in  
 5 the public policing order?  
 6 W/O WESSELS: Not anybody that I can call  
 7 a close friend or that I see regularly, maybe a passing  
 8 acquaintance.  
 9 MR BIZOS SC: Is there any requirement  
 10 amongst police officers to wear blinkers?  
 11 MR SEMENYA SC: Chair really, I mean  
 12 should ask for the witness to be protected.  
 13 MR BIZOS SC: No, with respect –  
 14 CHAIRPERSON: I was waiting for you to  
 15 see if you objected because I didn't want to object mero  
 16 moto. Mr Bizos, that's a sarcastic question which is not  
 17 worthy of you, I suggest you withdraw it and proceed to the  
 18 next one. You're making a point which is really a point  
 19 for argument.  
 20 MR BIZOS SC: Yes.  
 21 CHAIRPERSON: By mocking the witness –  
 22 MR BIZOS SC: Well –  
 23 CHAIRPERSON: - and that's not nice, so  
 24 ask your next question.  
 25 MR BIZOS SC: I didn't intend to mock

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1 him, I hoped that he would, because I have similar  
 2 questions to ask him about other branches of the police,  
 3 that he may be forthcoming. What do the specialised task  
 4 force do in the police?  
 5 W/O WESSELS: As far as I have knowledge,  
 6 Sir, they resolve more advanced or more dangerous type  
 7 incidents which might not be able to be handled correctly  
 8 by the normal policeman on the street who might not have  
 9 the experience or the training for such an event.  
 10 MR BIZOS SC: Is this hijacking, bank  
 11 robberies, hostage taking, that's the sort of work that  
 12 they -  
 13 W/O WESSELS: That would include those  
 14 types of tasks, yes.  
 15 MR BIZOS SC: We know that they were  
 16 there on the 16th of August this year, armed with either R4s  
 17 or R5s. Would you like to answer the question, what were  
 18 they doing in an area where there was a labour dispute and  
 19 the intention was to disperse and disarm some of the people  
 20 of the 3 000 that were there?  
 21 CHAIRPERSON: But the witness has told us  
 22 he wasn't there, he was on leave. He is not an expert in  
 23 the functions of the special task force or the national  
 24 intervention unit or the tactical response team, I would  
 25 suggest that these questions can more profitably be asked

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1 of subsequent witnesses who come who have knowledge. I  
 2 understand sometimes one asks questions of the first  
 3 witness to get answers to embarrass later witnesses, but I  
 4 don't think that this witness is of a kind to give you the  
 5 sort of meaningful answers with which you can embarrass any  
 6 of the later witnesses, so I don't know if there is a  
 7 profitable line, but you must obviously follow your own  
 8 course.  
 9 MR BIZOS SC: Thank you, Mr Chairman,  
 10 I'll just put the other, what do the tactical response team  
 11 do in the police?  
 12 W/O WESSELS: As far as I am aware of,  
 13 the tactical response team was instituted to assist with  
 14 medium risk or high risk operations. Since there is only  
 15 one task force unit they might not always be quick enough  
 16 to respond to a scene and at least there will be somebody  
 17 there to take charge in the meantime and provide a more  
 18 experienced level of knowledge that the normal policemen on  
 19 the ground might not have.  
 20 MR BIZOS SC: And do they use R4 and R5s?  
 21 W/O WESSELS: As far as I am aware of,  
 22 yes.  
 23 MR BIZOS SC: And what about a national  
 24 interaction unit? I beg your pardon, yes, intervention, I  
 25 misread it, sorry. The national intervention unit, what do

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1 they do?  
 2 W/O WESSELS: Again as far as I know, as  
 3 far as I have knowledge, that they are again slightly a  
 4 step up from the tactical response team members, slightly  
 5 more advanced training, again to assist with high risk or  
 6 higher risk than again the people in the street who have  
 7 knowledge about.  
 8 MR BIZOS SC: And what does the K9 unit  
 9 do?  
 10 W/O WESSELS: K9 unit again, it makes use  
 11 of dogs with the tracking of suspects, finding of various  
 12 materials and assist with any K9 operations that might be  
 13 needed.  
 14 MR BIZOS SC: Yes. Now the rifle number  
 15 5 on Exhibit B, what is that used for?  
 16 W/O WESSELS: It appears to most common  
 17 usage, it is for hunting purposes and sporting purposes.  
 18 MR BIZOS SC: I beg your pardon, I didn't  
 19 hear that?  
 20 W/O WESSELS: In most common usage as it  
 21 appears there, it would be for hunting or sporting  
 22 purposes.  
 23 MR BIZOS SC: Would it also be used if  
 24 there was a need for it to be used by sharp shooter to take  
 25 out, if I may use the expression, any particularly

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1 dangerously armed individual in a crowd?  
 2 W/O WESSELS: Yes, that would also be  
 3 another usage of it.  
 4 MR BIZOS SC: Yes, and the submachine gun  
 5 on paragraph 6 what is that used for?  
 6 W/O WESSELS: Submachine guns are  
 7 normally used for very close quarter operations where the  
 8 reduced fires of the firearm would make it a more  
 9 manoeuvrable in confine spaces in a situation where there  
 10 is may be, where people need to penetrate in a house or  
 11 where there is a lot of work around confined spaces in and  
 12 out of a vehicle, those kinds of operations.  
 13 MR BIZOS SC: And in square number 8, the  
 14 second and third, will you call them bullets?  
 15 W/O WESSELS: Cartridges, Sir.  
 16 MR BIZOS SC: Cartridges, are they used  
 17 in R4 and R5?  
 18 W/O WESSELS: I cannot from this view  
 19 determine the calibre, the R4 and R5 rifles are 5,56 by 45  
 20 millimetre calibre rifles. Looking at a picture like this  
 21 it is difficult to determine but I can say they are similar  
 22 in shape than that of a 5,56 which the R4 and the R5 are,  
 23 chambered -  
 24 MR BIZOS SC: The ammunition used in R4  
 25 and R5 is it certainly lethal?

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1 W/O WESSELS: Yes, Sir, it is certainly  
 2 lethal.  
 3 MR BIZOS SC: Not only do they wound but  
 4 they are specially designed to do damage, particularly to  
 5 internal organs so that death must almost of necessity  
 6 follow.  
 7 W/O WESSELS: The 5,56 by 45 millimetre  
 8 cartridge was developed by the US, USA for the military  
 9 operations in due to the fact that it creates a severe  
 10 wound and has the capability to inflict serious damage, so  
 11 yes, it was designed to inflict damage.  
 12 MR BIZOS SC: Why are you afraid to use  
 13 the word death?  
 14 W/O WESSELS: Sir, a serious wound can  
 15 certainly cause death, there is however a theory from the  
 16 military from the US which states that the cartridge was  
 17 also designed to such a state that it would inflict such a  
 18 wound that it would take two or three soldiers from the  
 19 battlefield to carry the wounded soldier to the back, thus  
 20 making less soldiers available on the front line and also  
 21 having an effect of inducing fright to the enemy's soldier.  
 22 If someone – in my instance, in my point of view, if it's  
 23 just designed to kill and not just incapacitate, then it  
 24 would not have the same effect.  
 25 [14:14] MR BIZOS SC: Are there any fundamental

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1 differences between the R4 and R5 and the AK47's?  
 2 W/O WESSELS: The basic method of  
 3 operation are very much the same. The biggest difference  
 4 between them, Sir, is the calibre.  
 5 MR BIZOS SC: They have one thing in  
 6 common, to cause death?  
 7 W/O WESSELS: Ja, they are certainly both  
 8 capable of causing death, yes.  
 9 MR BIZOS SC: Now, in connection with  
 10 rubber bullets, do you know whether the courts in our  
 11 country have expressed any view about the use of rubber  
 12 bullets?  
 13 W/O WESSELS: No, I'm not aware of any  
 14 specific instance.  
 15 MR BIZOS SC: Are you aware whether our  
 16 courts have expressed any view about the use of lethal  
 17 force?  
 18 W/O WESSELS: I'm aware that it has been  
 19 stated that lethal force should be a last resort, and there  
 20 should be levels of escalating force and it should be used  
 21 last.  
 22 MR BIZOS SC: In your training, have you  
 23 been referred to any of the passages in the Law Reports or  
 24 in the Statutes of what lethal force means, what self-  
 25 defence means? Have you been trained in that at all?

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1 W/O WESSELS: I am stated to go and  
 2 perform my firearms competency within the next week or two,  
 3 Sir, where I do believe that these subjects will be handled  
 4 and be better explained to me.  
 5 MR BIZOS SC: Are you aware whether there  
 6 has been any controversy among lawyers, or among the police  
 7 in the recent past, about the use of rubber bullets and  
 8 under what circumstances they should be used?  
 9 W/O WESSELS: I'm aware of a letter  
 10 stating that – circulated amongst the nodal point emails,  
 11 that, as far as I can remember correctly, and I'm speaking  
 12 under – I might be wrong, that the use of rubber bullets  
 13 should be stopped until further notice.  
 14 MR BIZOS SC: Can you remember whether  
 15 that was directed, if my memory serves me correctly, by the  
 16 minister before or after the 16th of August?  
 17 W/O WESSELS: As far as I can remember,  
 18 the letter also stated, if I can just continue with me  
 19 previous statement, that the use of rubber bullets should  
 20 be –  
 21 MR BIZOS SC: I'll help you at least  
 22 revisit it.  
 23 W/O WESSELS: And also it should be –  
 24 sorry, my English escapes me, should be authorised by the –  
 25 CHAIRPERSON: - Offisier, u mag u

<p style="text-align: right;">Page 2108</p> <p>1 getuienis in Afrikaans gee, as u wil, of as daar enige deel 2 van u getuienis is waar u onseker is oor die korrekte 3 Engelse uitdrukking, jy kan maar in Afrikaans oorslaan en 4 die tolk sal dan vir u vertolk. Biskop Seoka, toe hy 5 getuig het, op 'n stadium het gevra of hy in Zulu kon 6 voortgaan en ek het toe verlof vir hom gegee. Ek gee 7 dieselfde verlof vir u wat Afrikaans betref.</p> <p>8 W/O WESSELS: Baie dankie, Mnr die 9 Voorsitter. As far as I can remember, Sir, I cannot really 10 recollect when the letter was stated. I do remember 11 working through it. Unfortunately there are many emails 12 coming through, as far as I can remember, as I say, it 13 needs to be authorised by the commander on site, and if I 14 remember correctly, it did mention something of that it 15 needs to be revisited.</p> <p>16 MR SEMENYA SC: Chair, for the 17 correctness of the record, it is not the minister. The 18 documents regarding the use of rubber bullets are by the 19 Divisional Commissioner Operational Response Services, 20 General Mawela.</p> <p>21 CHAIRPERSON: I think that that's the 22 letter which was referred to, which we haven't got yet. 23 The letter of the 20th December 2011, I think I'm correct, 24 which Adv Pillay, in her capacity as clerk of the papers, 25 is going to give us on Monday.</p>	<p style="text-align: right;">Page 2110</p> <p>1 the 20th of December 2011, which we're going to get on 2 Monday.</p> <p>3 MR BIZOS SC: Yes.</p> <p>4 CHAIRPERSON: It was qualified by a 5 subsequent letter, which is before us, Exhibit S, which was 6 dated the 20th of July 2012, whereas I understand, it was 7 explained rubber was stopped altogether in December 2011 8 and then it was subsequently qualified and rubber came back 9 in the form, not of rubber bullets, but of rubber balls in 10 terms of this letter of the 20th of July 2012, which was 11 just under a month before the 16th of August. Now, that 12 information is already before us. Now I don't know what 13 point, with respect, is served by asking this witness, 14 who's not in that division, doesn't know anything about it, 15 these questions. It doesn't –</p> <p>16 MR BIZOS SC: I accept that.</p> <p>17 CHAIRPERSON: - Mr Bizos, I'm sorry.</p> <p>18 MR BIZOS SC: I accept that.</p> <p>19 CHAIRPERSON: But I'm not saying that in 20 a critical sense, but I'm just pointing out to you my 21 approach to the point.</p> <p>22 MR BIZOS SC: Yes, no I raised it because 23 the witness wanted the matter of the rubber bullets in one 24 of his previous answers, and that is why I raised it. How 25 reliable are R4's and R5's? Do they often jam?</p>
<p style="text-align: right;">Page 2109</p> <p>1 MR BIZOS SC: Yes, I'm sorry that I got 2 the author wrong, but –</p> <p>3 CHAIRPERSON: In Nkosi Thomas' absence 4 you shouldn't put questions like that, particularly when 5 you're not referring to her client really, but to somebody 6 else.</p> <p>7 MR BIZOS SC: Yes.</p> <p>8 SPEAKER: Sorry, Mr Chair, in her 9 absence, I am available to deal with certainly concern –</p> <p>10 CHAIRPERSON: - still represented, but 11 anyway carry on.</p> <p>12 MR BIZOS SC: Thank you. It was clearly, 13 whoever, we know now in fact Mr – so maybe I'm drawing our 14 attention as to who signed it, but it was before the 16th of 15 August wasn't it?</p> <p>16 W/O WESSELS: I must admit I cannot 17 recollect, Sir. I cannot recollect a full date.</p> <p>18 MR BIZOS SC: Yes. Can we just put the 19 date on record, with Mr Semenya's – I haven't got it handy.</p> <p>20 CHAIRPERSON: Mr Bizos, I don't want to 21 interrupt you unnecessarily, but you know, I don't know 22 that you're asking questions of someone who's really able 23 to answer them, but it relates to matters that are already 24 before us. We've already got the – well, we've been 25 promised and full reference has been made to the letter of</p>	<p style="text-align: right;">Page 2111</p> <p>1 W/O WESSELS: They were designed to work 2 under adverse conditions, and in that case they certainly 3 are very reliable. Given proper maintenance, they are 4 probably one of the most reliable rifles, or assault rifles 5 on the market.</p> <p>6 MR BIZOS SC: And not likely to jam?</p> <p>7 W/O WESSELS: Not given – not likely to 8 jam given correct operation and correct maintenance.</p> <p>9 MR BIZOS SC: Can you give us some idea 10 of how many bullets can be discharged by an R4 or R5 in 11 eight seconds, more or less?</p> <p>12 W/O WESSELS: I can quickly try and work 13 it out.</p> <p>14 MR BIZOS SC: Please try.</p> <p>15 W/O WESSELS: I would expect it anywhere 16 in the region of about in eight seconds, on full automatic 17 fire, anywhere between 30 to 70 rounds.</p> <p>18 MR BIZOS SC: 30 to 70, yes. I just want 19 to go through the notes that I have not left anything out, 20 Mr Chairman. You don't know much about the water canons, 21 presumably, nor about gas or –</p> <p>22 W/O WESSELS: No, that's not my area of 23 expertise, unfortunately.</p> <p>24 MR BIZOS SC: I think I'll leave it 25 there, Mr Chairman, thank you.</p>

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1 CHAIRPERSON: Thank you, Mr Bizos. Mr  
 2 Mmusi, are you standing – are you junior to Mr Mpfu? Have  
 3 you got any questions?  
 4 CROSS-EXAMINATION BY MR MMUSI: That is  
 5 so, Mr Chairman, I've got a few questions.  
 6 CHAIRPERSON: Alright, proceed.  
 7 MR MMUSI: Sir, you referred to residue  
 8 that would be left on a person when a gun is fired, do you  
 9 recall that?  
 10 W/O WESSELS: Yes, I do.  
 11 MR MMUSI: Now, does that apply to all  
 12 the firearms that were referred to in the document earlier?  
 13 W/O WESSELS: It applies to all of them,  
 14 yes.  
 15 MR MMUSI: Now, the residue, how do you  
 16 obtain or get hold of the residue that is left on a person?  
 17 W/O WESSELS: The residue is collected by  
 18 use of a residue or a PR collection kit. Unfortunately,  
 19 again, that falls under the scientific analysis unit, and  
 20 we have a basic knowledge of how it is collected, I do not  
 21 unfortunately know how it is analysed as it falls out of my  
 22 expertise, again.  
 23 MR MMUSI: So you're able to obtain that  
 24 residue within a period of how long?  
 25 W/O WESSELS: As far as I have received

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1 instruction in this, it depends on a couple of factors.  
 2 The residue is very fine. It is easily lost by wiping the  
 3 hands against clothing, or by washing the hands. Even  
 4 factors such as wind can determine how much can be found  
 5 and for how long it can be found. So it's normally  
 6 necessary to, as quickly as possible, as far as my  
 7 knowledge goes, to try and test for this.  
 8 MR MMUSI: Is it possible to obtain  
 9 residue on the following day?  
 10 W/O WESSELS: As far as my knowledge  
 11 goes, it would highly unlikely to find enough.  
 12 CHAIRPERSON: No, I'm not clear on the  
 13 question. Are you referring to residue on the hands of the  
 14 person who fired, or residue on the body of the victim who  
 15 was fired at?  
 16 MR MMUSI: I'm referring to residue that  
 17 you would find on the body of the person who was firing?  
 18 CHAIRPERSON: Firing?  
 19 MR MMUSI: Firing.  
 20 CHAIRPERSON: The user of firearms?  
 21 MR MMUSI: Yes.  
 22 CHAIRPERSON: Okay.  
 23 MR MMUSI: Now, you also referred to  
 24 tattooing, permit my ignorance, I don't know what is  
 25 tattooing. Now, were you involved – let me start there,

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1 were you involved in the investigation in the activities of  
 2 the 16th at any stage after the incident?  
 3 W/O WESSELS: Not at all, no.  
 4 MR MMUSI: Now, you also explained  
 5 tattooing, now if there was any evidence – I'm just talking  
 6 if, there was any evidence of tattooing on the body of a  
 7 person, would I be correct to assume that that would mean  
 8 that the person would have been fired at, at a close range?  
 9 W/O WESSELS: That would be correct.  
 10 [14:34] MR MMUSI: Now if you could explain  
 11 tattooing in like simple language so that we understand  
 12 what would be the evidence of tattooing?  
 13 W/O WESSELS: Tattooing, or the term  
 14 tattooing, refers to small irregular shaped wounds around  
 15 the entrance wound on a body. These wounds are caused by  
 16 partially burned and unburned powder particles that exit  
 17 the barrel of the firearm. It does not always means that  
 18 all of the powder charge, or the propellant charge in the  
 19 cartridge case is completely burned up during the firing  
 20 process. Some of it is also expelled from the barrel.  
 21 Some of them are partially burned, some are not completely  
 22 burned or have not started to burn at all. As you can  
 23 imagine, these particles are very light and as they come  
 24 into contact with the air they tend to have a billiard ball  
 25 effect and scatter. That is why it can only be found at a

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1 very close range shot. They produce small reddish brown  
 2 wounds around the entrance hole in a dispersion patter.  
 3 MR MMUSI: Now I've had sight at exhibit  
 4 II, your CV. Now in that exhibit II you say, "I have  
 5 received in-service training in the following aspects of  
 6 forensic ballistic science." Now when you go to 2.1.12,  
 7 you say, "Shot range determination," and then 2.1.13 you  
 8 say, "Crime scene investigation and examination  
 9 techniques," and then 2.1.14, "Taking of photographs and  
 10 documentation of the results during an investigation." Now  
 11 if I can just fast-forward, I just need to put this before  
 12 I ask my question. At 2.5 you say, "Terminal forensic  
 13 ballistics, the wounding effect that the bullet has on a  
 14 tissue (wound ballistics), the effect that the bullet has  
 15 on the target, the effect that the target has on the  
 16 bullet," and there you then proceed to say you visited the  
 17 different places. Now what I want to probe with you is  
 18 that if you look at the target that has been hit by a  
 19 bullet, are you able to make a determination as to from  
 20 which firearm the bullet would have been fired?  
 21 W/O WESSELS: Sir, yes, both yes and no,  
 22 in two statements. It's difficult to determine from an  
 23 entrance hole itself, to determine a calibre. The reasons  
 24 for this is because the skin is elastic and although the  
 25 bullet tears a certain hole through it, the skin stretches.

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1 Also that we as humans are three-dimensional; we have  
 2 curves and protrusions and angles which may affect even a  
 3 straight-on looking shot to have elongated area as it  
 4 passes through a roundness on the body. It would be  
 5 possible to say whether a high velocity bullet, such as a  
 6 rifle bullet, caused a particular type of wound, versus  
 7 whether a handgun or a shotgun pellet or a handgun bullet  
 8 caused a certain wound, but it would be very difficult to  
 9 determine a specific calibre from looking at a wound.  
 10 MR MMUSI: So you would be able to make a  
 11 determination whether it would have been fired from a  
 12 shotgun or maybe assault rifle? Do I understand you to –  
 13 W/O WESSELS: It would be easy to, or  
 14 not, I wouldn't call it easy, but it would give a relative  
 15 accurate indication of whether it was a high velocity, like  
 16 a rifle bullet, or a lower velocity, like a shotgun pellet  
 17 or a handgun bullet.  
 18 MR MMUSI: Mr Chairman, I wish to refer  
 19 the witness to several photographs, three of them.  
 20 However, these photographs are not nice, so it's just a  
 21 wish that, a warning be given to. Yes, the interpreter  
 22 will interpret. At this stage we're going to refer to  
 23 several photographs and those photographs include those of  
 24 Mr Noki and two other bodies that I could not identify, but  
 25 those bodies that passed on, on the 16th. So the

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1 photographs are not nice, so the families of those that  
 2 passed on, on the 16th, if they could, we would give them a  
 3 minute to leave the room.  
 4 CHAIRPERSON: If they wish, and of  
 5 course, can you identify them to this extent, can you say  
 6 whether they were bodies found at scene 1 or scene 2?  
 7 Because –  
 8 MR MMUSI: It's bodies found on scene 1.  
 9 CHAIRPERSON: Anyone who thinks that he  
 10 or she will be distressed by these pictures, will be given  
 11 an opportunity to leave the auditorium. It will be for a  
 12 minute, starting now. – is up since the Interpreter  
 13 stopped interpreting. So I take it anyone who wanted to go  
 14 has gone. So you may now proceed with your cross-  
 15 examination.  
 16 MR MMUSI: I'm indebted to you, Mr  
 17 Chairman. Can you show the witness photo number 2735?  
 18 These photos come from the SAPS hard drive, under folder  
 19 LCRC and then they're titled "Scene 2." Photo number 2735.  
 20 CHAIRPERSON: You said they were scene 1.  
 21 This sounds like it –  
 22 MR MMUSI: No, that is how they are  
 23 described on the hard drive, but these are photos of scene  
 24 1.  
 25 CHAIRPERSON: I see.

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1 MR MMUSI: When you look at that  
 2 particular photo, are you able to tell amongst the other  
 3 the velocity of the bullet or bullets that hit the body and  
 4 from which firearms they could have been fired from?  
 5 W/O WESSELS: If I may request, it's a  
 6 bit difficult to see from this angle.  
 7 MR MMUSI: Yes.  
 8 W/O WESSELS: If we can maybe just,  
 9 because at this stage I'm having difficulty orientating the  
 10 wound on the body.  
 11 MR MMUSI: Yes, if we can show the same  
 12 photo –  
 13 CHAIRPERSON: Warrant Officer, if you  
 14 want to get out of your chair for a moment and go and have  
 15 a look at the screen and come back, or perhaps it might be  
 16 an idea, you're going to also save time if you're going to  
 17 show a number of photographs –  
 18 MR MMUSI: That's what I'm doing –  
 19 CHAIRPERSON: Perhaps if you go and stand  
 20 near the screen, look at them and then when you've shown  
 21 the photographs, he can then return to the witness seat and  
 22 proceed to give his answers.  
 23 MR MMUSI: Yes. In fact, in order to  
 24 save time, we can show the witness photo number 2736.  
 25 Perhaps maybe before you respond, just for the benefit of

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1 all of us, if you can be shown photo number 2739, so that  
 2 you've got a broader perspective of these photos.  
 3 W/O WESSELS: Is that the same person?  
 4 MR MMUSI: No, that photo is not the same  
 5 person, Brigadier.  
 6 CHAIRPERSON: May I interrupt for a  
 7 moment? These photographs are not yet before us, are they?  
 8 They're just in the hard drive.  
 9 MS PILLAY: Yes.  
 10 CHAIRPERSON: So would you please arrange  
 11 between now and Monday to have copies made from the hard  
 12 drive of the photographs to which you are referring, and  
 13 then speak to Ms Pillay and she can arrange exhibit  
 14 numbers, so as part of the housekeeping exercise on Monday  
 15 they can be handed in as exhibits and duly lettered, so  
 16 that at a later stage when we revisit the evidence and read  
 17 the transcript we'll know what exactly we're referring to.  
 18 MR MMUSI: I'll do so, Mr Chairman.  
 19 MR SEMENYA SC: Chair, I don't know  
 20 whether we need to go this graphic because the post-mortem  
 21 reports do indicate whether these were high velocity wounds  
 22 or not. We have that evidence.  
 23 CHAIRPERSON: I'm inclined to agree with  
 24 you, but the cross-examiner is entitled to ask questions if  
 25 he wants to. You know the point Mr Semenya makes, it's not

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1 disputed that the injuries to the people in the photographs  
 2 you are now showing were caused by high-velocity assault  
 3 rifles. That's not in issue in the case, as I understand  
 4 it, but if you have a reason other than just getting that  
 5 on record, showing these photographs to the witness and ask  
 6 him for his views, I can't stop you, but it may well be  
 7 that what you want to achieve is in fact common cause and  
 8 will be readily admitted by Mr Semenya.  
 9 MR MMUSI: Mr Chairman, I appreciate what  
 10 Mr Semenya is saying, but the witness that is before us is  
 11 an expert. So if there was anyone who could give us better  
 12 clarity, it's this witness.  
 13 CHAIRPERSON: That can't be a good point.  
 14 You can have a most difficult point which is the subject of  
 15 debate, only a highly qualified expert can give evidence on  
 16 that point, but if the other side get up and say, we admit  
 17 that fact, then you don't need the highly qualified expert  
 18 to confirm that the admission made is correct. Now in this  
 19 case, though this is not a court case, the party concerned  
 20 on this part of the case is the Police Service. The Police  
 21 Service counsel said the facts you want to establish from  
 22 this witness by these photographs, we are prepared to  
 23 admit. That is I understand his case. So as I said to  
 24 you, if there's some reason other than simply establishing  
 25 that facts, and it's something that this witness can help

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1 us on, I won't disallow the question, but if the only  
 2 purpose is to establish as a fact that which Mr Semenya is  
 3 prepared to admit, then I fear that the valuable time of  
 4 this Commission is being unnecessarily used up.  
 5 MR MMUSI: Yes, Mr Chairman, I'll move to  
 6 the next aspect.  
 7 CHAIRPERSON: - exercising a wise  
 8 discretion.  
 9 MR MMUSI: Now if I can take you a step  
 10 back, earlier on you were asked how many shots could be  
 11 fired from the assault rifle in the space of eight seconds.  
 12 Now are you in a position to tell us in an estimated form  
 13 how many shots would be fired from the assault rifle in a  
 14 second if it is in fully automated mode?  
 15 W/O WESSELS: I would say in a second,  
 16 due to experiments that I have done myself, I have seen  
 17 that it's possible to fire about between four and seven  
 18 rounds per second.  
 19 MR MMUSI: Just one last aspect. I want  
 20 you to identify one rifle, or firearm which was not  
 21 identified. So I'd ask that you'd be shown a photo, which  
 22 appears to have been carried by the STF. If you can just  
 23 play the photos. If we can start with this one, are you  
 24 able to –  
 25 CHAIRPERSON: Can you identify the

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1 picture for us, or will you be able to identify it for Ms  
 2 Pillay so that she can add it into the –  
 3 MR MMUSI: Yes, Mr Chairman, these photos  
 4 come out of a folder, they're on the SAPS hard drive. They  
 5 come out of a folder called "BBC South Africa,  
 6 Lonmin/Marikana clashes." So I would arrange, I have  
 7 already arranged them to be put on a separate folder."  
 8 W/O WESSELS: I'm sorry, Sir, are you  
 9 referring to the pistol screen fired, or the rifle?  
 10 MR MMUSI: No, this one. You'll be shown  
 11 two other photos.  
 12 CHAIRPERSON: On the photographs there's  
 13 someone holding a pistol.  
 14 W/O WESSELS: Yes.  
 15 [14:54] CHAIRPERSON: There's someone behind him  
 16 holding a rifle, the witness wants to know from you, are  
 17 you asking me about the pistol or the rifle?  
 18 MR MMUSI: I am asking about the pistol,  
 19 I am asking about the pistol.  
 20 W/O WESSELS: The image is slightly  
 21 small.  
 22 MR MMUSI: Maybe just to save time I  
 23 would request that the witness be shown two other  
 24 photographs so that he is able to identify that and then we  
 25 can respond, because that's my final question. Can you

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1 play the next photo?  
 2 [VIDEO SHOWN]  
 3 And then the last photo?  
 4 [VIDEO SHOWN]  
 5 W/O WESSELS: The first firearm appears  
 6 to be a Beretta Px4 pistol.  
 7 MR MMUSI: I take it would be the one  
 8 that you indicated in your evidence in chief that, that is  
 9 one of the latest?  
 10 W/O WESSELS: That is correct.  
 11 MR MMUSI: Does it appear in the document  
 12 that we referred to in B59 where we saw several firearms,  
 13 does it appear there?  
 14 W/O WESSELS: No, there is no photograph  
 15 of that particular firearm.  
 16 MR MMUSI: Thank you. Now the second  
 17 firearm on photo number 2 that you were shown, were you  
 18 able to identify which firearm is that?  
 19 W/O WESSELS: That appears to be an R5  
 20 rifle.  
 21 MR MMUSI: And then the firearm on photo  
 22 number 3?  
 23 W/O WESSELS: Sir, unfortunately that is  
 24 beyond my expertise, the Ballistic Section only works up to  
 25 a 12.7 millimetre. I unfortunately do not know a specific

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1 name for it, it appears to be a full automatic canon of  
 2 some sort. I also cannot really determine the calibre of  
 3 the rounds from this particular angle, unfortunately it  
 4 falls out of my scope of work again.

5 CHAIRPERSON: May I enquire whether it is  
 6 suggested that that canon like firearm was used at Marikana  
 7 during the period covered by this inquiry, namely, the  
 8 space of the inquiry, from the 9th to the 16th of August  
 9 this year?

10 MR MMUSI: No, that is not the evidence,  
 11 Mr Chairman, and that concludes my cross-examination.

12 MR SEMENYA SC: Then, Chair, my objection  
 13 must be a very strong one, why are we being shown an item  
 14 of this type when it bears no relevance to the issues we're  
 15 dealing with?

16 MR MMUSI: Mr Chairman, the evidence was  
 17 shown for two reasons, that, - no, no, I am saying the  
 18 photographs were shown for two reasons. First, we earlier  
 19 on referred to B59 and took a considerable amount of time.  
 20 Now the first photograph which depicts the firearm Px4 does  
 21 not appear in B59. Now during the period of the 9th to the  
 22 16th the firearm or the machine, I don't know what it is,  
 23 which appears to have been carried by the members of the  
 24 FPF, is also not on B59. It is not for the purposes of  
 25 saying that it was used. Now that would tell you that B59

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1 is incomplete.

2 CHAIRPERSON: I think the objection of Mr  
 3 Semenya relates to the canon like firearm, and I understand  
 4 the point about the other firearms which were allegedly  
 5 used, admittedly used, I understand that and I don't think  
 6 the objection relates to them, the objection relates to the  
 7 picture we're now seeing which has a caption, please open  
 8 fire to South African miners and there are people in, what  
 9 looks like kaki uniforms, camouflage uniforms standing on,  
 10 what I think is the back of a vehicle of some sort, with a  
 11 vehicle that looks like some kind of K canon. You are  
 12 asked, is it suggested that a weapon of that kind was used  
 13 or a canon of that kind was used at Marikana from the 9th to  
 14 the 16th of August and you say, no. So Mr Semenya says,  
 15 well, what's the point of that? It might create a  
 16 misleading impression in the media but it certainly doesn't  
 17 take the case any further as far as the inquiry in which  
 18 we're engaged. He didn't quite say that but I think that  
 19 is what he was suggesting. Now do you wish to answer that  
 20 point?

21 MR MMUSI: Mr Chairman, I thought I  
 22 understood the evidence of the witness to be about weapons  
 23 that are being used by the South African Police Service,  
 24 because he is an expert. Now that would have in my view  
 25 included that particular firearm, not that it was used

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1 during that particular period to say, in our possession  
 2 these are the firearms that we possess. Now you would know  
 3 that Px4 is not on –

4 CHAIRPERSON: That canon like firearm,  
 5 what, - has it got anything to do with the inquiry on which  
 6 we are presently engaged with regard to the questions to  
 7 which we are asked to answer relating to what happened  
 8 between the 9th and the 16th at Marikana?

9 MR MMUSI: Mr Chairman, I would not take  
 10 it any further.

11 CHAIRPERSON: No, we haven't – can you  
 12 take it any distance at all? Is it proper to try to take  
 13 it any distance at all if it creates a thoroughly  
 14 misleading impression?

15 MR MMUSI: Mr Chairman, I've been very  
 16 clear to say that it is not our suggestion that the firearm  
 17 was used to kill the protestors. We are not saying that.  
 18 We are saying –

19 CHAIRPERSON: What are you saying then?

20 MR MMUSI: What we are saying is that  
 21 during the, if I can put it in a proper context, during the  
 22 period of the 9th to the 16th, as it is Mr Semenya's case,  
 23 the police put certain preparations or they put certain  
 24 arrangement in place and one of those would have been that  
 25 weapon that is created by STF, it is not a photograph that

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1 was taken elsewhere other than at the scenes of Marikana.  
 2 Now I wouldn't understand –

3 CHAIRPERSON: It has a caption that says,  
 4 police open fire on South African miners, not that the  
 5 police put a weapon in place or some kind of defensive  
 6 weapon, the suggestion is, police open fire on South  
 7 African miners, that's what it says and that creates an  
 8 impression which I understand to be not an impression which  
 9 you intend to create. You hasten to ensure us that that's  
 10 not so, so the question is, what's that doing before us?

11 MR MMUSI: Mr Chairman, I believe Mr  
 12 Semenya's case is going to be that we put certain, we made  
 13 certain arrangements, we called different units and one of  
 14 the units would be the STF and when they were called, that  
 15 is what they came carrying and it does not take our case  
 16 anywhere, but it is a fact that during the said period,  
 17 when that photo was taken they were there. I mean I don't  
 18 understand Mr Semenya's objection really. That is all, Mr  
 19 Chairman.

20 CHAIRPERSON: Mr Semenya, what do you say  
 21 in response to what is now being put?

22 MR SEMENYA SC: Chair, in that event I  
 23 request a direction from the commission, that this  
 24 photograph must not be published in the media conveying the  
 25 connotation that it was used at all. It is inflammatory

1 and it is irrelevant to the proceedings.

2 CHAIRPERSON: I am not sure that I have

3 power to issue directions to the media as to how they are

4 to report, but what I can do is, I can say to them that we

5 expect them to maintain the high standards which we

6 normally enjoy from the media, and that a picture of that

7 kind with that caption if published would create, without

8 any further comment, would create a misleading impression

9 and I can say that if that were to be done, that would be

10 improper journalism and would fall far short of the

11 standards which one has come to expect from the media in

12 matters of this kind. Does anyone want to add to that?

13 MR SEMENYA SC: Nothing beyond –

14 CHAIRPERSON: Did I overstate the case?

15 MR SEMENYA SC: It can still be

16 overstated.

17 CHAIRPERSON: Sorry?

18 MR SEMENYA SC: It can still be

19 overstated.

20 CHAIRPERSON: No, no, overstated is like

21 I go too far, you mean I could have gone further, is that

22 what you say? Alright, the media representatives have

23 heard what I had to say. I trust you won't disappoint us.

24 Before we adjourn I just want to ask, is there anyone who

25 wants to cross-examine? You already had a chance. You

1 didn't cross-examine but you were afforded the opportunity.

2 Anyway the reason I asked the question is if no one else

3 wants to cross-examine and there is no re-examination we

4 can excuse the witness. If someone wants to cross-examine

5 it can stand over until Monday.

6 MR NTSEBEZA SC: Mr Chairman, I want to

7 cross-examine on behalf of the families, I was asked –

8 CHAIRPERSON: Normally counsel who

9 appears for two parties, even temporarily, only has one

10 bite of the cherry, but if you overlooked that I wouldn't

11 want the families to be prejudiced. We'll adjourn until

12 09:30, - no sorry, we'll adjourn until ten o'clock on

13 Monday and you can then cross-examine the witness, you'll

14 be back then, Warrant Officer? Thank you, the commission

15 adjourns.

16 [COMMISSION ADJOURNED]

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