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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 275

18 AUGUST 2014

PAGES 35113 TO 35216



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<p style="text-align: right;">Page 35113</p> <p>1 [PROCEEDINGS ON 18 AUGUST 2014] 2 [09:47] CHAIRPERSON: The Commission resumes. 3 I'm sorry we're starting later than the scheduled time, but 4 there were unforeseeable problems that we had to deal with 5 which caused the delay. Before we start with the evidence 6 of the witness who Mr Mpofo is going to call I think it's 7 necessary for us to do something else that's very 8 important. I'm going to ask you all please to stand to 9 observe a minute silence. Before we do that my colleague, 10 Commissioner Tokota, will read out the names of the 34 11 people who were killed two years ago last Saturday and we 12 will then observe a minute silence to honour their memory 13 and those who wish to do so may pray that their souls rest 14 in peace and also that the families and loved ones of those 15 deceased may receive help and consolation [inaudible, 16 speaking simultaneously with interpreter] took place on the 17 16th of August 2012. So please stand. Oh sorry, yes, I 18 think let the names be read out while we stand. 19 COMMISSIONER TOKOTA: These are the 20 names. Molefi Osiel Ntsoele, Modisaotsile Van Wyk 21 Sagalala, Nkosiyabo Xalabile, Babalo Mtshazi, John Kutlwano 22 Lendingoane, Bongani Nqongophele, Cebisile Yawa, 23 Mongezeleli Ntenetya, Henry Mvuyisi Pato, Ntandazo Nokamba, 24 Bongani Mdze, Bonginkosi Yona, Makhosandile Mkhonjwa, 25 Stelega Merrick Gadlela, Telang Vitalis Mohai, Mafolisi</p>	<p style="text-align: right;">Page 35115</p> <p>1 CHAIRPERSON: Yes, I understand you read 2 the message out on our behalf. Thank you for that. 3 MR MPOFU: I read it, thank you, 4 Chairperson. Chairperson, may I call Mr Shadrack Zandisile 5 Mtshamba? 6 CHAIRPERSON: Yes, of course. Is he 7 already seated at – 8 MR MPOFU: He's already seated at the 9 place, Chairperson. 10 CHAIRPERSON: Mr Mtshamba, would you 11 please stand? Are you willing to take the oath or do you 12 wish to affirm? 13 MR MTSHAMBA: Prepared to take the oath, 14 Chairperson. 15 CHAIRPERSON: Would you please swear him 16 in, Mr Mahlangu? 17 SHADRACK ZANDISILE MTSHAMBA: [d.s.s. 18 through interpreter] 19 MR MAHLANGU: Sworn in, Chairperson. 20 CHAIRPERSON: Thank you, you may be 21 seated, Mr Mtshamba. Yes, Mr Mpofo. 22 MR MPOFU: Thank you, Chairperson. Just 23 by way of housekeeping, Chairperson, we had forgotten that 24 his statement had been submitted previously, unsigned, 25 Chairperson. You will have in front of you the signed</p>
<p style="text-align: right;">Page 35114</p> <p>1 Mabiya, Andries Motlopula Ntsenyehlo, Janeveke Raphael Liau, 2 Fezile David Saphendu, Anele Mdzizeni, Mzukisi Sompeta, 3 Thabiso Johannes Thelejane, Mphangeli Tukuza, Thobile 4 Mpumza, Mgcineni Noki, Thobisile Zibambeke, Thabiso 5 Mosebetsane, Patric Akhona Jijase, Julius Tokoti Mancotywa, 6 Michael Ngweyi, Jackson Lehupa, Khanare Elias Monesa, 7 Mpunzeni Ngxande, Thembinkosi Gwelani. 8 CHAIRPERSON: Thank you. We'll now start 9 the minute silence. Mr Mpofo. 10 MR MPOFU: Thank you, Chairperson. Thank 11 you for the gesture. I might, Chairperson, before calling 12 the witness maybe place on record that on Saturday there 13 was a public memorial, commemoration service which was 14 attended by about 15 000 people or so where – 15 CHAIRPERSON: This was at the – 16 MR MPOFU: At the site, yes. 17 CHAIRPERSON: In the vicinity of the 18 koppie – 19 MR MPOFU: At the koppie, yes, 20 Chairperson, and that it was in respect of all 44 victims 21 and the names of all 44 victims were read out and a similar 22 observance was made and prayers, and that a short message 23 from the Commissioners, the three Commissioners, was read 24 out and that it was very well received, Chairperson. Thank 25 you very much.</p>	<p style="text-align: right;">Page 35116</p> <p>1 version, which was signed last week, but the statement 2 itself had been submitted as MMM50 some time before. 3 CHAIRPERSON: Yes, thank you very much. 4 MR MPOFU: Then, Chairperson, also if I 5 may just indicate that this witness unfortunately in the 6 intervening period after the incident was diagnosed with a 7 severe case of cancer and he had to undergo chemotherapy 8 for something like six months and therefore at some stages 9 he might indicate needing breaks and I've already told him 10 that he must signal and that I've alerted the 11 Commissioners. 12 CHAIRPERSON: Yes, of course. I 13 understand giving evidence will be a great ordeal for him – 14 will be anyway, but particularly in the light of what 15 you've told us, and obviously if he begins to feel tired or 16 feels the need for a more frequent break than we normally 17 take then he must just indicate that to us and obviously it 18 will be – 19 MR MPOFU: Thank you very much, 20 Chairperson. 21 MR MTSHAMBA: Thank you, Chairperson. 22 EXAMINATION BY MR MPOFU: Good morning, 23 Mr Mtshamba. 24 MR MTSHAMBA: Morning, Sir. 25 MR MPOFU: How frequently are you still</p>

<p style="text-align: right;">Page 35117</p> <p>1 undergoing your treatment?</p> <p>2 MR MTSHAMBA: I was undergoing treatment</p> <p>3 for six months. It was said it was now better but I have</p> <p>4 to come every three months to be checked to see what the</p> <p>5 condition is.</p> <p>6 MR MPOFU: Thank you. When did you start</p> <p>7 to work for Lonmin?</p> <p>8 MR MTSHAMBA: In 2011, Chairperson, after</p> <p>9 the end of the first strike at Lonmin.</p> <p>10 MR MPOFU: Okay, and you worked there as</p> <p>11 a rock drill operator?</p> <p>12 MR MTSHAMBA: Yes, Chairperson, I was</p> <p>13 taken into the service as an RDO.</p> <p>14 MR MPOFU: According to your statement</p> <p>15 you only joined the people who were sitting at the koppie</p> <p>16 on the 15th. Is that right?</p> <p>17 MR MTSHAMBA: It is correct, Sir.</p> <p>18 MR MPOFU: Can you please tell the</p> <p>19 Commissioners why it is that you only joined at that</p> <p>20 relatively late stage of the strike?</p> <p>21 MR MTSHAMBA: I was on leave during July</p> <p>22 of 2012, Chairperson. If I'm not making a mistake about</p> <p>23 the date, it was towards the end of July. I was supposed</p> <p>24 to report back on duty on the 14th of August. I stay in</p> <p>25 Klerksdorp. I came back from home on the 13th. I had</p>	<p style="text-align: right;">Page 35119</p> <p>1 MR MPOFU: Is that a mine?</p> <p>2 MR MTSHAMBA: Ellisrand Gold Mine, yes.</p> <p>3 MR MPOFU: Okay, so you've been in the –</p> <p>4 have you worked in any other industry since 1993 for the</p> <p>5 20-year period or so?</p> <p>6 MR MTSHAMBA: Only in the mines from the</p> <p>7 beginning, Sir. From Ellisrand I went to Klerksdorp at</p> <p>8 Vaal Reefs. From Vaal Reefs I went to Welkom. Coming back</p> <p>9 from Welkom, that's when I was employed by Lonmin.</p> <p>10 MR MPOFU: Yes, and you told me that all</p> <p>11 the mines that you worked at previously were gold mines.</p> <p>12 Lonmin was your first platinum mine. Is that correct?</p> <p>13 MR MTSHAMBA: It was the first time that</p> <p>14 I was employed in a platinum mine, yes Sir.</p> <p>15 MR MPOFU: Right, what kind of work were</p> <p>16 you doing in that 20-year period of your experience in the</p> <p>17 mining industry?</p> <p>18 MR MTSHAMBA: At Ellisrand I was doing</p> <p>19 general work, this means any kind of a job given.</p> <p>20 Thereafter I learned the using of the machine, also at</p> <p>21 Ellisrand.</p> <p>22 MR MPOFU: That's the drilling machine?</p> <p>23 MR MTSHAMBA: The drilling machine.</p> <p>24 MR MPOFU: Okay.</p> <p>25 MR MTSHAMBA: The rock drill machine.</p>
<p style="text-align: right;">Page 35118</p> <p>1 already heard there is a strike taking place over the radio</p> <p>2 and the TV. On the 14th I was still getting my place of</p> <p>3 residence ready. I heard that there was a meeting taking</p> <p>4 place on the mountain on the 15th. I then decided to go to</p> <p>5 the mountain to hear what was being said because all the</p> <p>6 reports were being given on the mountain.</p> <p>7 MR MPOFU: Okay, thank you. So then the</p> <p>8 morning of the 15th was your first time to go to the koppie.</p> <p>9 MR MTSHAMBA: Correct, Chair.</p> <p>10 MR MPOFU: Okay, before we deal with the</p> <p>11 events of what you might have observed there I just want to</p> <p>12 go back to your background in the mining industry. You've</p> <p>13 already said that you started working for Lonmin in 2011.</p> <p>14 How far did you go to school?</p> <p>15 MR MTSHAMBA: I went up to standard 9,</p> <p>16 Sir.</p> <p>17 MR MPOFU: And when was that – well,</p> <p>18 that's not contentious. It was in the early 90s, about '92</p> <p>19 when you left school, correct?</p> <p>20 MR MTSHAMBA: Yes, my last year in school</p> <p>21 was '92, Sir.</p> <p>22 MR MPOFU: Yes, and after that what did</p> <p>23 you do?</p> <p>24 MR MTSHAMBA: The following year, 1993, I</p> <p>25 got a job at Ellisrand in Carletonville.</p>	<p style="text-align: right;">Page 35120</p> <p>1 From then on up to now I'm still doing that job.</p> <p>2 MR MPOFU: Okay. Thank you. Now we've</p> <p>3 now come to know in the Commission that there are three</p> <p>4 major divisions at Lonmin; Eastern, Western Platinum and</p> <p>5 Karee. Which of those were you falling under?</p> <p>6 MR MTSHAMBA: I'm at Karee, 4 Belt.</p> <p>7 MR MPOFU: Alright. Then again just by</p> <p>8 way of this kind of background, which union are you a</p> <p>9 member of?</p> <p>10 MR MTSHAMBA: I'm at AMCU.</p> <p>11 MR MPOFU: And have you been a member of</p> <p>12 another union previously?</p> <p>13 MR MTSHAMBA: When I started working I</p> <p>14 was in the NUM. In all the mines in which I worked I was</p> <p>15 member of the NUM. At one time at Buffels I was a steward</p> <p>16 in the NUM.</p> <p>17 MR MPOFU: Yes, and were you also active</p> <p>18 in any other way in the NUM in those 18 or so years?</p> <p>19 MR MTSHAMBA: Yes. I remember being sent</p> <p>20 to a training course at the place called Elijah Barayi that</p> <p>21 was, it was a course about affirmative action. The person</p> <p>22 training us was Mr Gwede Mantashe.</p> <p>23 MR MPOFU: Yes, thank you. Okay, now</p> <p>24 let's go back to the koppie. On the 15th when you got there</p> <p>25 were you in the company of anyone?</p>

<p style="text-align: right;">Page 35121</p> <p>1 MR MTSHAMBA: I was with a friend of mine 2 who's also my neighbour. He's the person who told me about 3 the meeting taking place there. His name is Jackson. 4 MR MPOFU: Okay, upon your arrival at the 5 koppie, what did you observe? 6 MR MTSHAMBA: There were many people full 7 on the mountain when I arrived, Chairperson. There were 8 also policemen standing in a row in Casspirs and other 9 vehicles. Some of the people there had sticks. 10 [10:07] And others had other kinds of weapons. 11 MR MPOFU: Right and you, what did you 12 have? 13 MR MTSHAMBA: I did not have anything. I 14 was going there for the first time, Chairperson. 15 MR MPOFU: Okay. Did you know the people 16 who were there or let me put it this way, how many of the 17 people were familiar to you? 18 MR MTSHAMBA: Some of the people that I 19 worked with, some of the people that I found working there 20 already. Some of the people were known to me only by 21 sight, seeing them on the shafts with Mr Noki who worked on 22 the same shaft 4 belt. 23 MR MPOFU: Yes thank you, ja. Maybe, 24 Chairperson, yes I think what I should have done is at the 25 beginning just to look at the statement as a whole, Chair.</p>	<p style="text-align: right;">Page 35123</p> <p>1 MR MPOFU: And the statement, nothing has 2 changed except that you have now attached your signature. 3 MR MTSHAMBA: Nothing has been changed, 4 Sir. 5 MR MPOFU: Thank you, thank you, 6 Chairperson. Okay, Mr Mtshamba, can we now go back to the 7 – I am just taking you through the sequence. What did you 8 observe on the 15th about the movement of people, or 9 workers? 10 MR MTSHAMBA: The 15th, Chairperson, I saw 11 workers going up and down, some going to look for water 12 because the place where we were did not have water. I 13 also, in the afternoon, left the place together with a man 14 I worked with known as Booi. We went to the shops in the 15 vicinity to go and look for something to eat. We returned 16 back to the mountain. People were just walking freely and 17 the police were just standing around there. 18 MR MPOFU: Okay. It's common cause that 19 in the late afternoon Mr Sekwano arrived there with the 20 police, were you still there? 21 MR MTSHAMBA: I was still present, Sir. 22 MR MPOFU: Can you then tell the 23 Commission what you observed in respect of that visit? 24 MR MTSHAMBA: He arrived there in a 25 police vehicle, Sir, this Mr Zokwana, they came near in</p>
<p style="text-align: right;">Page 35122</p> <p>1 Mr Mtshamba – 2 CHAIRPERSON: Yes I expected you to, but 3 I thought when you didn't you'd do it at the end. 4 MR MPOFU: Thank you, Chairperson. Mr 5 Mtshamba, you have the statement in front of you MMM50, 6 correct? 7 MR MTSHAMBA: I do have it, Sir. 8 MR MPOFU: Is that your statement which 9 you did previously, I think last year? 10 MR MTSHAMBA: Yes, I made this statement 11 what's here. 12 MR MPOFU: And did you sign the statement 13 last week? 14 MR MTSHAMBA: It is correct, Chair. 15 MR MPOFU: And if you go to page 7 of the 16 statement, at the bottom is that your signature there? 17 MR MTSHAMBA: That's my signature, yes. 18 MR MPOFU: Okay. Oh yes I see it was the 19 27th of January this year, Chairperson, the unsigned copy. 20 CHAIRPERSON: Yes he appears to have 21 signed it in August, but anyway the point is he's now 22 confirmed whatever, so - 23 MR MPOFU: Yes, thank you, Chairperson. 24 CHAIRPERSON: - so it's not relevant to 25 go further into that.</p>	<p style="text-align: right;">Page 35124</p> <p>1 that vehicle and stood in front of us. He spoke through a 2 loud speaking machine wanting to address us. He was saying 3 to us that we need to go back to work. The workers 4 responded by saying they would not be able to go back to 5 work until the employer has given them a response. He did 6 not want to listen and the workers also adopted the same 7 attitude, they didn't want to listen. He was requested by 8 the workers to come out of the Nyala vehicle to come and 9 talk to us personally. He refused that and at the end he 10 left. 11 MR MPOFU: Okay, it's also common cause 12 that shortly thereafter Mr Mathunjwa arrived in a similar 13 manner. Were you still there? 14 MR MTSHAMBA: I was still present, Sir. 15 MR MPOFU: Can you please tell the 16 Commission what happened in respect of that? 17 MR MTSHAMBA: Mr Mathunjwa, Chairperson, 18 arrived in the same manner in which Mr Sekwano came. He 19 was inside the Nyala and he also used the loudspeaker to 20 talk to us. The workers made the same request that why 21 don't you come out of that vehicle to come and talk to us. 22 He explained to the workers that the police had requested 23 him not to come out of that vehicle. He pleaded with us to 24 be patient so that he could tell us for what reason he had 25 come. He also mentioned that we should go back to work,</p>

<p style="text-align: right;">Page 35125</p> <p>1 that he would go and talk to our management in connection 2 with our complaint. The workers then said to him since it 3 is late for him to listen to all our grievances he was 4 asked to come back the following day. He promised that he 5 would come back the following day at 9 o'clock. 6 MR MPOFU: Right, okay after Mr 7 Mathunjwa's visit what then happened on the 15th? 8 MR MTSHAMBA: We then also decided it was 9 late already, we then parted, people went to their 10 different places of residence. A few remained on the 11 mountain. I would estimate about between 10 and 15. The 12 majority of the people left. 13 MR MPOFU: Right, but you yourself, what 14 did you do? 15 MR MTSHAMBA: I left, I went to the - 16 because I stay quite a distance, far from that place. 17 MR MPOFU: Okay. Where do you stay? 18 MR MTSHAMBA: I stay at a place called 19 The Big House. It's near Marikana town. 20 MR MPOFU: Town, yes. Right, okay then 21 the following day what did you do, which was the 16th of 22 August? 23 MR MTSHAMBA: The 16th, Chairperson, about 24 9am I proceeded to the mountain. 25 MR MPOFU: And what did you observe?</p>	<p style="text-align: right;">Page 35127</p> <p>1 day? 2 MR MTSHAMBA: Chairperson, he came to 3 report to us that he tried to meet management, but they 4 would not meet him giving the reasons that it was at short 5 notice. They could not talk to him. He left and said he 6 was still going to try to talk to them. It was after he 7 had left, Mr Mathunjwa, that Bishop Seoka came. He asked 8 us what the problem was, why were we on the mountain. He 9 was speaking to the group that was in front of us, our 10 leaders on the mountain. They explained everything to him, 11 everything that was going on. They said we want the 12 employer to come to us, to talk to us about our wages. He 13 also promised that he would go and try to get them, he 14 left, Chairperson. 15 MR MPOFU: Right and did any of those two 16 gentlemen who had now gone, promising that they were going 17 to try and bring the employer, do so or did they come back? 18 MR MTSHAMBA: Bishop Seoka did not come 19 back, Mr Mathunjwa did. 20 MR MPOFU: Yes and then can you please 21 tell then the Commission, broadly, what happened during Mr 22 Mathunjwa's second visit to the koppie? 23 MR MTSHAMBA: When Mr Mathunjwa came back 24 for the second time he explained to the workers that his 25 endeavours to meet the management had failed. He explained</p>
<p style="text-align: right;">Page 35126</p> <p>1 MR MTSHAMBA: I arrived on the mountain, 2 sat there and waited. The 16th there were more people, it 3 was more full than the days before. This was because, 4 Chairperson, when we left on the 15th at night we told other 5 workers that Mr Mathunjwa would be coming to us the 6 following day. So everybody was interested in what it is 7 that he was coming to tell us. Our hope was that we would 8 be told to go to work and that things would be made better. 9 We were expecting the wages – the raise in the wages. 10 MR MPOFU: Thank you. Okay so for the 11 reasons you've mentioned there were a lot more people. 12 What did you observe about the police presence? 13 MR MTSHAMBA: Leaving from our houses, 14 Chairperson, we saw all the roads were full of police and 15 they were proceeding in the direction of the mountain. 16 There were also on the mountain from the police side much 17 more different kinds of weapons. Some were seeing those 18 for the first time. 19 MR MPOFU: All right. Did Mr Mathunjwa 20 arrive at 9:00? 21 MR MTSHAMBA: He did not arrive at that 22 time, at 9 o'clock, he arrived quite late. I'm not sure of 23 the time of his arrival there. 24 MR MPOFU: Okay, let me put it this way. 25 How many times did Mr Mathunjwa arrive at the mountain that</p>	<p style="text-align: right;">Page 35128</p> <p>1 that on his arrival that the LPD, he found that there were 2 policemen there. He explained to us that the situation was 3 not conducive, it was tense there. He said to us according 4 to him he sees some plan has been made about us. Some plan 5 has been decided on. He made a plea to the workers, he 6 said to us he would us please to go away, to go off the 7 mountain because he believes that we were going to be 8 killed. He pleaded with us, he pleaded with us very much 9 that day. The workers said they did not come there because 10 of him, because of Mathunjwa, they have not gathered there 11 on behalf or on the request of any union, whichever one. 12 They came there as workers, they asked Mr Mathunjwa to 13 leave them. They said they would sit there until such a 14 time that a response has been received from the employer. 15 It was thereafter, Chairperson, that Mr Mathunjwa decided 16 to leave. The workers remained seated there. 17 MR MPOFU: Okay, what then, after 18 Mathunjwa left what did you observe? 19 MR MTSHAMBA: There are two mountains, 20 two koppies there, Chairperson. There's the big one on the 21 one side and on the one side there is a smaller one. I was 22 on top of the bigger koppie. 23 MR MPOFU: Yes, it's known as koppie 1. 24 MR MTSHAMBA: Yes. After the departure 25 of Mr Mathunjwa we saw the police coming together as though</p>

<p style="text-align: right;">Page 35129</p> <p>1 there was some discussion taking place. Thereafter we saw 2 them parting, going to their individual vehicles. Then 3 they started uncoiling the razor wire. 4 MR MPOFU: From which side of the 5 mountain? 6 MR MTSHAMBA: From koppie 1, that is the 7 side of the power station, Chairperson. They started 8 following one another uncoiling the wire. We then realised 9 what Mathunjwa had said might happen. The majority of the 10 workers started moving towards Nkaneng settlement. There's 11 a road that we were using all the time whenever we went to 12 go and get water. That is the road that go past the kraal 13 towards Nkaneng. The majority of the workers moved that 14 way, they wanted to go past there. It was also the nearest 15 short cut to the settlement. 16 [10:27] As I was on the bigger mountain I took some time 17 in climbing down the mountain. There were people already 18 in front of me. I came up to the second koppie, that is a 19 smaller one. I stood there for some time. I was smoking 20 there, because I do smoke. Whites standing there, were 21 looking at the people that were singing and that were 22 moving in front of us. Just before they reached the kraal, 23 the one Nyala had closed up that place where they were to 24 go through. They turned, to the left-hand side of the 25 kraal. Whilst we were standing at that time on the rocks</p>	<p style="text-align: right;">Page 35131</p> <p>1 I was surprised when I was told that no such a person was 2 found. When I was told that nobody had been run over by a 3 Hippo, I then thought I've made a mistake because of the 4 dust that was there at the time. And the whole place was 5 full of tear smoke, teargas smoke. 6 MR MPOFU: What do you say was the 7 blanket which was run over by a Hippo, whereabouts in 8 respect, if you say you were somewhere in the vicinity in 9 front of the koppie, and then there was a kraal that you've 10 already spoken about whereabouts on the veld was this 11 happening? 12 MR MTSHAMBA: If one proceeds from the 13 small hill, from the small mountain, there are some rocks 14 there just in front of that small hill, as one is standing 15 on those rocks looking at the left-hand side of the kraal 16 towards its end, one can see clearly what is happening 17 there. 18 MR MPOFU: Okay, now after those 19 observations, and as you are saying there was a lot of 20 commotion and so on, what did you do or where did you go? 21 MR MTSHAMBA: Many of the people were 22 running back again in the direction of the mountain, I also 23 ran in the direction of Marikana towards where by home is. 24 MR MPOFU: Yes, just about that issue, 25 initially when you moved from the big mountain or down the</p>
<p style="text-align: right;">Page 35130</p> <p>1 in the second mountain, I believe a few of us were standing 2 there between 10 and 15. Just as they turned on the other 3 side of the kraal, we heard gunshots, and there was a lot 4 of dust going up there. That water thing, the water 5 cannon, was also spraying water. The whole place was full 6 of teargas at that time. People were falling there. The 7 Hippos were driving towards the people and people were 8 running in all directions. Some had fallen there, some had 9 fallen next to the Hippos. As I was standing at that place 10 where I was, Chairperson, I was right in front of this 11 mountain I saw one that had fallen in front of a Hippo. I 12 saw the Hippo going over there, whether it was the blanket 13 that he had, but I saw it going over it. It went over the 14 blanket. 15 MR MPOFU: At that stage, what did you 16 think had happened? 17 MR MTSHAMBA: I thought it was a person 18 that it had gone through when it went over the blanket. 19 MR MPOFU: Yes, in your statement, you 20 have indicated that your lawyers subsequently advised you 21 that from the objective evidence, the person that you say 22 you thought had been gone over, had not been found. What 23 is your reaction to that? 24 MR MTSHAMBA: I certainly believe, 25 Chairperson, that it was a person that it had gone through.</p>	<p style="text-align: right;">Page 35132</p> <p>1 big mountain where did you want to go? 2 MR MTSHAMBA: You mean from the first 3 mountain? 4 MR MPOFU: Yes, I am taking you back, I 5 am saying when originally you climbed down that mountain 6 and you say you went towards the koppie towards the 7 direction of the smaller koppie, what, where were you 8 intending to go? 9 MR MTSHAMBA: I was, I wanted to run 10 towards Nkaneng, because Nkaneng was the nearest place. 11 MR MPOFU: Okay, now you were then 12 telling the Commission that after all the things that 13 you've described then you were running towards the opposite 14 direction which is towards the Marikana house were you 15 live. 16 MR MTSHAMBA: Yes, running towards 17 Marikana, some ran towards the shack settlement, that is on 18 other side of the road known as Nkaneng. Some others ran 19 in the direction of a house called a "stom huis." 20 MR MPOFU: Is "stom huis" a house, or a 21 settlement? 22 MR MTSHAMBA: Stom huis is a settlement, 23 Chairperson. It's known as Stom huis settlement. 24 MR MPOFU: How far is that settlement 25 from the – or where is it in relation to the power station?</p>

<p style="text-align: right;">Page 35133</p> <p>1 MR MTSHAMBA: There's the power station, 2 and then there's a road not far away from there, then 3 there's this Stom huis. No, there are two settlements 4 there, Chairperson. The one is also – there are two 5 different Nkanengs. There's a one Nkaneng on the other 6 side of the power station and another one on the other 7 side, and as one proceeds away, points to the right then 8 there's the Stom huis settlement. 9 MR MPOFU: Okay, maybe let me put it like 10 this, in relation to the – 11 CHAIRPERSON: Sorry, Mr Mpofu, sorry to 12 interrupt you, it seems as if this witness is having 13 difficulty, which I can understand, in explaining to us, I 14 should imagine it won't be a controversial matter, as to 15 what the information settlement is he is referring to. I 16 am sure we can get admission. It sounds to me, maybe the 17 informal settlement that Captain Kidd's forces were 18 supposed to – 19 MR MPOFU: That correction. 20 CHAIRPERSON: But I am sure we can 21 establish that - 22 MR MPOFU: Yes. 23 CHAIRPERSON: - on a common cause – 24 because it's difficult sometimes for a person of this kind 25 to explain, this side and that side.</p>	<p style="text-align: right;">Page 35135</p> <p>1 Obviously you will do it at a time that suits your 2 examination. 3 MR MPOFU: Thank you very much, 4 Chairperson. I appreciate it. Right, yes, because of the 5 helicopters you were - 6 MR MTSHAMBA: And the Nyalas were coming 7 behind us sort of chasing towards us, I realised it would 8 be far to reach my destination. I decided to go and hide 9 in the third mountain that is in the vicinity there. 10 MR MPOFU: Yes, now the third vicinity, 11 or rather the third mountain which you've mentioned what is 12 known in the Commission as scene 2, as the Commissioner, or 13 rather the Chairperson has indicated, when you say you 14 wanted to hide yourself there, what do you mean? 15 MR MTSHAMBA: Because I was scared at 16 that time because of a flight, I ran and there are rocks 17 over there, so I hid between the rocks. There were other 18 workers who were also hiding there, quite a number of us, 19 were behind the bushes, some between the bushes, because 20 there was a big rock, we were seated there and from the 21 other side of the rock, they could not see us. And on the 22 one side, there was also another big rock which was – which 23 also served as an enclosure. They could not see us. There 24 is a place, some entrance which one could use to go between 25 these rocks.</p>
<p style="text-align: right;">Page 35134</p> <p>1 MR MPOFU: I appreciate that, thank you 2 very much, Chairperson. Is Stom huis the smaller 3 settlement which is behind the power station closer to the 4 town side of, or the western side of the power station? 5 MR MTSHAMBA: That is the other part of 6 Nkaneng, Stom huis would then be on the other side. 7 MR MPOFU: Is it the smaller settlement, 8 not the big Nkaneng that we know? 9 MR MTSHAMBA: That's right, the smaller 10 one. 11 MR MPOFU: Thank you, in any event you 12 did not, you are actually saying that there were some 13 people who went that side. You yourself where did you go? 14 MR MTSHAMBA: Chairperson, there were 15 flights above us and I became scared that if I ran in the 16 open direction, there's a likelihood of being shot. 17 CHAIRPERSON: I take it you say, you are 18 referring to helicopters flying above, were you? 19 MR MTSHAMBA: Yes, the helicopters as 20 they were flying above. 21 CHAIRPERSON: It sounds as if we are 22 moving to scene 2, at the moment, the last thing what you 23 told me about the witness's fragile condition because of 24 his treatment. When it's appropriate for us to take the 25 adjournment – the first comfort break, please let me know.</p>	<p style="text-align: right;">Page 35136</p> <p>1 MR MPOFU: Okay, alright, thank you. 2 Before we then go over what happened when you were there 3 next to those rocks, and so on, we will – I will ask the 4 Chairperson to take a short comfort break. Then we will go 5 over that, what happened at scene 2. Thank you, 6 Chairperson. 7 CHAIRPERSON: We will take an adjournment 8 now for 15 minutes. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [11:18] CHAIRPERSON: The Commission resumes. Mr 11 Mpofu, is your witness in a position to continue? 12 MR MPOFU: Yes, thank you very much, 13 Chairperson, much appreciated. Mr Mtshamba, just before we 14 go ahead, during the break you indicated to me that you had 15 mixed up the names of the informal settlements. Can you 16 just explain to the Commission which – what you said was 17 that how you described it remains the same, but it was just 18 the name that you had mixed up. 19 MR MTSHAMBA: The shack settlement on the 20 left side of the power station that is facing the koppie 3, 21 it's called Skielik, not Storm huis, or the other one known 22 as Sonder or Nkaneng. 23 CHAIRPERSON: What I want to ask you now 24 isn't necessarily a reflection on the witness, but did you 25 remind him he was still under oath, before continue?</p>

<p style="text-align: right;">Page 35137</p> <p>1 MR MAHLANGU: He's still under oath, 2 Chairperson. 3 SHADRACK ZANDISILE MTSHAMBA: [s.u.o. 4 through interpreter] 5 EXAMINATION BY MR MPOFU (CONTD.): Okay, 6 thank you. As the Chairperson said, that's not 7 contentious. Another witness had confirmed that people 8 were being blocked from, or rather some people were going 9 into that place. So you are saying it's called Skielik? 10 MR MTSHAMBA: That's right. 11 MR MPOFU: Okay, fine. The other thing 12 that I wanted to ask you before we go back to scene 2 was 13 you already testified that on the 15th you were not carrying 14 a weapon. On the 16th, what were you carrying? 15 MR MTSHAMBA: I still did not carry 16 anything. 17 MR MPOFU: Okay, fine. Now let's go back 18 to where we were, which is koppie 2. You had already just 19 described that you were hiding next to some rocks and so 20 on. Later on I will show a video where you describe this, 21 but I just want us to finish with the statement first. At 22 this place that you've just described, were you on your own 23 or were there other workers? 24 MR MTSHAMBA: There was quite a number of 25 us there, other workers there, not me alone, Chairperson.</p>	<p style="text-align: right;">Page 35139</p> <p>1 like a bullet wound. He was bleeding. He asked me to 2 bandage the wound. I did so, using his jersey. The sound 3 of gunfire, Mr Chairperson, at that time had become more 4 from all sides. Some of the bullets sounded as though the 5 people were shooting from quite near and some were shooting 6 from the other side. One of the workers said to us let us 7 get armed – 8 MR MPOFU: No, "setome." 9 MR MAHLANGU: Oh, I am sorry to have used 10 the word. It is ambiguous. In this case "setome" means to 11 let us surrender. 12 MR MTSHAMBA: I think he said it twice, 13 shouting, shouting above the noise that was there. He was 14 the first one to raise up his arms. He was in front of the 15 group that was with me. He raised his hands. As he was 16 raising his hands he was shot at. [He indicates the lower 17 right arm. I'm not quite sure though.] After the shot was 18 fired he then bent down again, again he raised his hands, 19 kept on saying "Let us surrender, gentlemen, let's 20 surrender." Again a shot was fired at him, he was shot in 21 the region of the stomach. He bent down. The third bullet 22 hit him in the leg. He then fell and went on his knees. 23 Another one who was standing next to the one who was shot 24 also raised up his hands and when he came up with his hands 25 raised he was shot in the region of the head. [He</p>
<p style="text-align: right;">Page 35138</p> <p>1 Some others were hiding behind the shrubs, the trees, but 2 the majority of us, between 100 and 200 were hiding between 3 the rocks. There were many. 4 MR MPOFU: Okay, now while you were there 5 next to those rocks, what then happened? 6 MR MTSHAMBA: As we were hiding there, 7 Chairperson, there was a water cannon behind the rocks 8 facing in our direction, which was flushing water from time 9 to time. 10 CHAIRPERSON: What was the colour of the 11 water that it sprayed? 12 MR MTSHAMBA: There were changes. There 13 was one time flushing with some purple-coloured water and 14 then again it would be ordinary water that was colourless. 15 MR MPOFU: Okay, right. What else, 16 except for the water, was happening? 17 MR MTSHAMBA: On the other side of the 18 rocks there were police standing there. We only heard the 19 shooting coming from that side. We could not see the 20 policemen. We heard bullets, shots being fired and the 21 bullets hitting the rocks. We were kneeling down below 22 these rocks. After some time people kept on coming to this 23 place where we were hiding. I remember one who came 24 running and came to kneel next o me. On the upper arm [he 25 indicates the right-hand side] he had a wound which looked</p>	<p style="text-align: right;">Page 35140</p> <p>1 indicates between the neck and the head on the right-hand 2 side.] He fell on his face, Chairperson. We all became 3 then scared of surrendering because we saw the people 4 surrendering were being shot at. 5 After some time I saw the police who came into 6 our sight, they were walking. It was a short distance, 7 between a metre and two metres in front of me. This 8 policemen were shouting to the others, raising their hands, 9 using the words, "Cease fire, cease fire." It was after 10 some time that the shooting became quiet. They then took 11 us out, they told us all to come out then. They said we 12 should put our hands on the heads. They made us lie down 13 on the ground, Chairperson. They kept on telling us to 14 turn around as we were lying there, searching us and 15 loosening the clothing that we had on to see if we did not 16 have any weapons we were hiding. 17 But at the time that we emerged from the place 18 where we were hiding we saw some others who did not come 19 out; we did not know whether they were injured or had died. 20 MR MPOFU: Right, then you say then you 21 were taken, after realising that some of the people could 22 not move out and they might have been dead or injured, 23 where were you taken? 24 MR MTSHAMBA: We were instructed to crawl 25 on all fours towards the Hippos, the armoured vehicles</p>

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1 which were there. I saw some people being it, the kierie
 2 taken from them, they were hit and were being asked, they
 3 were asking where is the sangoma, and such questions. We
 4 were told that we are useless, we're killing police who
 5 have done nothing wrong, that we are killing government
 6 people. They said if it was in some other country they
 7 would pour petrol on us and set us alight. They were
 8 talking, Chairperson, as though they were competing. One
 9 was saying "I shot him from this side," one was saying "I
 10 shot him from this side." Thereafter we were loaded onto
 11 these vehicles known as Hippos, the Nyalas.

12 MR MPOFU: So ja, can you just tell the –
 13 you said they were making those kinds of remarks. Can you
 14 tell the Commission what kind of remarks you overheard from
 15 the policemen?

16 MR MTSHAMBA: As we were lying on the
 17 ground, Chairperson, the police were turning us around,
 18 loosening our clothes and kicking at us. If one was told
 19 what to do and look as though he didn't want to listen he
 20 would be kicked and be pushed down with a gun. They said
 21 to us we are killing government people and also saying that
 22 we had used muti thinking that we would be able to kill the
 23 police. Quite a lot of things were said there,
 24 Chairperson.

25 MR MPOFU: And did they say anything

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1 about the manner in which the people were shot or what they
 2 had done in the process of [inaudible, speaking
 3 simultaneously with interpreter]?

4 MR MTSHAMBA: I heard some. They were
 5 standing next to where I was. They were talking in the
 6 Sesotho language. He was saying "I thought I was taking
 7 him from this side whereas you had already taken him from
 8 the other side. I was taking him with a small gun and
 9 whereas you had taken him with a big one."

10 MR MPOFU: Okay, how much time did you
 11 spend lying down there?

12 MR MTSHAMBA: If I have to estimate,
 13 Chair, it was a long time, about three hours or so, because
 14 when we left there it was dark already. We were lying and
 15 waiting inside the vehicles.

16 MR MPOFU: Yes, you and many other people
 17 were then arrested. If I may mention, Chairperson, that Mr
 18 – Chairperson, I'm trying to catch your attention there.

19 CHAIRPERSON: I was listening, but I
 20 was –

21 MR MPOFU: Yes, thank you, Chairperson.
 22 No, it's fine. I was saying, Chairperson –

23 CHAIRPERSON: [Microphone off, inaudible]

24 MR MPOFU: Thank you, Chairperson. No, I
 25 was only saying Mr Mtshamba is accused number 241 in the

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1 case of the 272. Right, it's also common cause that after
 2 that you were taken to Lonmin premises at number 1 Shaft,
 3 thereabouts.

4 MR MTSHAMBA: It is so, Sir.

5 MR MPOFU: How much longer time – you
 6 said you spent about three hours near the koppie and when
 7 were you then taken to a police station?

8 MR MTSHAMBA: We were standing in those
 9 trucks for quite some time in the, on the Lonmin premises,
 10 not knowing what was happening outside. We made pleas,
 11 some of us wanted to relieve themselves, going to the
 12 toilet. They refused us and some had to use the openings
 13 through which those Hippos to urinate. It was towards the
 14 early hours of the morning. We were then taken in a line
 15 to make statements. It was the morning that we were taken
 16 away. I was taken to the police station at Bethanie. Some
 17 others were taken to different other places.

18 MR MPOFU: Right, okay, it's also not
 19 contested that you were then – the group, when I saw you
 20 now I mean the plural – you were then charged, or rather
 21 you were visited by a group of lawyers in my team.

22 MR MTSHAMBA: It is correct, yes. But
 23 what happened first is the police came.

24 MR MPOFU: Yes.

25 MR MTSHAMBA: I don't know, they were

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1 referred to as investigators or so. They took statements
 2 from us. It was only thereafter that our lawyers came.

3 MR MPOFU: Yes, and before the lawyers
 4 and the investigators you've mentioned arrived.

5 [11:38] What was happening with the group of people you
 6 were with at the Patani police station?

7 MR MTSHAMBA: On arrival at the Patani
 8 police station we were told to put our hands against the
 9 wall and stand there and if one was seen not to be holding
 10 the wall would be slapped and kicked and smashed and our to
 11 take our phones and put them on the ground. We were then
 12 put in police cells. There were no sponges, there were not
 13 sufficient sponges in the police station, it was said that
 14 police station wasn't being used by many people. We were
 15 given blankets and we were sleeping on the floor. The
 16 toilets were also not working, they were not flushing.

17 There was water running around and the place was filthy.
 18 We were kept there for the whole day without any food, we
 19 were told there's no food. We arrived in the morning, we
 20 only had a meal about 7:00 in the evening. They came again
 21 to the cells the following day, again we were made to hold
 22 onto the wall, people were being hit and kicked. If one
 23 would resist the instructions being given we would be hit
 24 much more than the others. Some of the people who were
 25 together with us in the cells had already been injured from

<p style="text-align: right;">Page 35145</p> <p>1 the mountain and that is how they were still. We were 2 locked up together with them in the cells although they 3 were injured. 4 MR MPOFU: Okay, thank you. Chairperson, 5 if I can just enquire if the pictures are ready. 6 CHAIRPERSON: You want to show the 7 section of the Carte Blanche program do you? 8 MR MPOFU: No, Chairperson, not yet. I 9 just wanted to show just what he's saying about that some 10 about that some of the people came with injuries from the 11 koppie. 12 CHAIRPERSON: No well if you have the 13 video that you want to – do you want me to adjourn now to 14 check that all the material you want to show us is 15 available or – 16 MR MPOFU: No, Chairperson. 17 CHAIRPERSON: I was proposing to take the 18 adjournment a little bit later, but I'm in your hands. 19 MR MPOFU: Chairperson, let me just 20 check, Craig. Okay, yes, Chairperson, it looks like photos 21 are not ready. If we can take an adjournment. 22 CHAIRPERSON: I was going to take a tea 23 adjournment at 12 o'clock, but I'll take it now and 24 obviously then we'll then run straight through until 1 25 o'clock.</p>	<p style="text-align: right;">Page 35147</p> <p>1 chambers so we can't do that. Here is Mr Semenya. 2 MR MPOFU: Yes, now okay – 3 CHAIRPERSON: Mr Semenya, I am sorry, we 4 thought you were here which is why we returned. I am 5 sorry, there's been a bit of good-natured banter about your 6 absence, but you can read it on the transcript, if you have 7 got nothing better to do. Yes, Mr Mpofo, you can now 8 proceed. 9 MR MPOFU: Thank you, Chairperson, I was 10 going to say if I was waiting for my learned colleagues, if 11 there's no objection I will just lead him through the next 12 section, because it's the non-contentious period about some 13 of the arrests, Chairperson. Mr Mtshamba, it's now common 14 cause that you and your fellow arrestees were then, had to 15 go through, from the week starting on the 20th onwards, we 16 did bail applications for you, do you remember that? 17 MR MTSHAMBA: I remember that. 18 MR MPOFU: You were taken to the Ga 19 Rankuwa Magistrate's Court in big vans, in big – many 20 groups of – in many vans with groups of people in them, 21 correct? 22 MR MTSHAMBA: That is correct. 23 MR MPOFU: And you spent most of the time 24 in the vans, you were not allowed to get into the court 25 room.</p>
<p style="text-align: right;">Page 35146</p> <p>1 MR MPOFU: Thanks, Chairperson. 2 CHAIRPERSON: If you are not ready in a 3 quarter of an hour, I'm trying to get us back in a quarter 4 of an hour, it's not always easy because there are things 5 to attend to in chambers, but if you're not ready – 6 MR MPOFU: All things being equal what 7 time are we coming back, Chairperson? 8 CHAIRPERSON: Well I was proposing to 9 postpone, to adjourn for a quarter of an hour, but it's not 10 always easy to get that done because there are things that 11 have to be attended to and so on. But if you're not ready 12 after a quarter of an hour please let me know. 13 MR MPOFU: I will do, Chairperson. 14 [COMMISSION ADJOURNES COMMISSION RESUMES] 15 [12:03] CHAIRPERSON: Mr Mpofo has told me that 16 he is now ready to show the video material that he wanted 17 to show. Mr Mpofo? The witness is still under oath. 18 MR MAHLANGU: Witness still under oath. 19 MR MPOFU: Chairperson, well, I see that 20 the SAPS team is not here. I was going to say if there's 21 no objection, I was going to lead him through something, 22 but I will do it when they are here so I don't ambush – 23 CHAIRPERSON: Do you know about the 24 absence of the SAPS team, do we send a posse of policemen 25 to arrest them? There don't appear to be any police in the</p>	<p style="text-align: right;">Page 35148</p> <p>1 MR MTSHAMBA: That is correct. 2 MR MPOFU: Until a few days later. 3 MR MTSHAMBA: That is correct. 4 MR MPOFU: And that the representations 5 were made to the President and the Minister of Justice and 6 the NTPP, after which you were released on bail. Actually, 7 I am sorry, you were released on warning. 8 MR MTSHAMBA: That is correct. 9 MR MPOFU: And you had, in the court it 10 was said that you had been charged for the 34 murders of 11 your fellow strikers. 12 MR MTSHAMBA: That is correct. 13 MR MPOFU: And when you were released on 14 warning, some of those charges, especially the murder 15 charges were provisionally withdrawn. 16 MR MTSHAMBA: That is so. 17 MR MPOFU: And since then you have been 18 to court for the remaining charges several times? 19 MR MTSHAMBA: That is so. 20 MR MPOFU: And when is your next court 21 appearance? 22 MR MTSHAMBA: On the 20th, on Wednesday. 23 MR MPOFU: Your next appearance is this, 24 is this Wednesday, in two days' time? 25 MR MTSHAMBA: On the 20th, Wednesday this</p>

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1 week.

2 MR MPOFU: Right, okay, thank you,
3 Chairperson, thank you, Mr Semanya. Can – alright, about
4 that episode, can you then just tell the Commission how you
5 felt about being arrested and being charged in the manner
6 that we have just discussed now?

7 MR MTSHAMBA: It is bad, I feel bad about
8 it, especially me. I found that I was from leave, telling
9 myself, I am going back to work, and I had to face with
10 this situation that I found, I think Lonmin should have
11 tried to come and talk to the workers. Because the workers
12 on the koppie on numerous occasions indicated that they do
13 not want to be at loggerheads or fight with the police,
14 they only want to talk to the employer, explain what their
15 problems are to the employer because taking it from me,
16 people who work in the mines, there is still segregation in
17 the mines, between white and black people. If you look at
18 the issue of the RDOs right now, there is not a single
19 white person who is an RDO, even on the koppie there was no
20 a single white person who was demonstrating there because
21 there is not a single person who is an RDO who is white.
22 All the white people are given high positions like, chief
23 or mine captain. There are many such white people who
24 found us working there and they go higher positions than us
25 now. Lonmin was supposed to look at that, try and improve

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1 the positions of the black people so that they can be on
2 par with their white colleagues. That is one of the
3 grievances we were going to put forward to management on
4 the koppie. It was not only the issue of the R12 500.
5 Even the 12 500 that we wanted, we did not expect the
6 employer to bring it on that day. We expected talks to be
7 conducted concerning that amount and we would accept a
8 different amount than the 12 500, because after the strike,
9 we went back to work without the R12 500. But we agreed to
10 go back to work. If Lonmin had taken a step or decision
11 that Mr Da Costa did come and talk to the workers instead
12 of calling the police, but Lonmin decided to call the
13 police to come and shoot the people. It's like the people
14 who lost their loved ones there, those widows, Lonmin was
15 supposed to give those women something. They spent two
16 years here in the Commission, and they are not getting
17 anything.

18 MR MPOFU: Thank you, now you've, one of
19 the things that you've mentioned is that, you've emphasised
20 on the fact that they say Lonmin should have been spoken to
21 the workers, in your 20 years' experience in the industry
22 have you been involved in other strikes?

23 MR MTSHAMBA: Yes, I have.

24 MR MPOFU: And what would usually happen
25 in those strikes?

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1 MR MTSHAMBA: In all the companies, when
2 one takes up employment, it is explained to you that if you
3 have a grievance you have to elect certain people who will
4 represent you, and put those grievances forward to the
5 employer. But on the day of this tragedy if Lonmin people
6 were scared to come to us, as they allege that they were
7 scared, people will be killed, management would be killed,
8 or people, they would be at loggerheads with the workers,
9 they would have taken the leaders, take them to a safer
10 place, the police would have been there, go and talk to
11 them at a safer place. It would have been better if they
12 went and spoke, listened to each other instead of calling
13 the police.

14 MR MPOFU: Okay, now, then specifically
15 about the fact that you were – were you, are the only
16 person that we are calling of those people who were
17 arrested and so we would like to know how you felt about,
18 specifically about issue of being arrested, all the things
19 that we discussed, being arrested, staying there for, if I
20 think it was about 18 days and the fact that you continued
21 to be – to face the charges that you face?

22 MR MTSHAMBA: As one of the arrested
23 people, I feel that we were humiliated a lot, from the
24 beginning from when we were arrested at this place where we
25 were arrested, we were assaulted, other people were picked

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1 up, whilst injured without receiving any treatment, they
2 were locked up in prison while they were full of blood,
3 swellings on their bodies. Thereafter we were taken, told
4 that you are being charged for murder, killing the people
5 who were with us there. We had been on the koppie for a
6 long time without killing each other, why would we kill our
7 colleagues? The people who were supposed to have been
8 arrested and charged were having a normal life, having a
9 good time, and we are being arrested for killing our
10 colleagues, we did not kill them. It is clear that, clear
11 even today that if our lawyers did not come and negotiate
12 on our behalf, get us out of prison, we would be sitting
13 there in prison right now as our case is still on, but the
14 police are still walking freely enjoying their lives, I
15 feel that we were mistreated, we don't even know what the
16 outcome of the court case would be, we are still being
17 mistreated. It is a very bad thing or sad thing that
18 people are being shot whilst raising their hands,
19 surrendering just as I was, I did not have any weapons.
20 That is all.

21 MR MPOFU: Thank you, now I am going to
22 show a series of pictures, Chairperson, in relation to your
23 evidence that some of the people were still injured from
24 the koppie. Chairperson, if I may just explain this,
25 there's a number of pictures of the injured people, but

<p style="text-align: right;">Page 35153</p> <p>1 when we get to those, who have visible injuries, then I 2 will stop at some – 3 CHAIRPERSON: As you know, I normally 4 give a warning, but – 5 MR MPOFU: No – 6 CHAIRPERSON: No, I normally give a 7 warning that the pictures are of a particular kind that 8 will cause distress and emotional pain to people. 9 MR MPOFU: No, Chairperson – 10 CHAIRPERSON: If we reach any of those 11 pictures, you will know what's coming, you can in fact give 12 the warning on my behalf, so that people can leave the 13 chamber if they wish before the pictures are shown. 14 MR MPOFU: Thanks, Chairperson. 15 CHAIRPERSON: It's something we've done 16 from early on in this Commission for good reason as you 17 know. 18 MR MPOFU: Yes, thank you, Chairperson. 19 Well, Chairperson, I had intended actually to show many 20 pictures, just so that to give a face to some of the people 21 who were injured, but I am told that they've already pre- 22 selected the ones who were arrested and injured, so we'll 23 just run only those, thanks, Chairperson. Can we do 24 picture 5942, 5957, hard drive photos, it's designated as 25 photos of the arrested. If you can show 5942, 5957, 6086,</p>	<p style="text-align: right;">Page 35155</p> <p>1 fact that the person still has blood on their face. 2 CHAIRPERSON: Yes, yes, I understand. 3 There's an indication of a slight wound on top of his 4 forehead just above his hairline and there's, it looks like 5 blood coming down over his forehead and actually on both 6 sides of his nose. 7 MR MPOFU: Thank you, Chairperson. Next 8 one, 5957, this one looks severely injured. 9 CHAIRPERSON: Facial injuries, blood on 10 his cheeks, bottom part of his nose, below his nose, and of 11 course there's blood on his shirt, it looks like, and he 12 appears to have a swollen cheek, swollen nose, swollen 13 eyes. 14 MR MPOFU: Thank you. Next one, this one 15 is Lebogang Mokone, same case number and it's written 16 "Gathering Act 205/93." It shows blood on his clothing and 17 visible swelling on the face, Chairperson. 18 CHAIRPERSON: And bruises, we think, on 19 his face. 20 MR MPOFU: And bruises, yes. And 21 bloodshot eyes. 22 CHAIRPERSON: Ja. 23 MR MPOFU: Okay, thank you. Next one, 24 this one is Ayabonga Mthimkulu, same case number, written 25 again "Gathering Act 205/93," and bruising and some blood</p>
<p style="text-align: right;">Page 35154</p> <p>1 6102, 6109 and 6115. I will just tell you when to go to 2 the next one. Can you give it an exhibit number, 3 Chairperson? Can you give these series an exhibit number 4 Chairperson? The mike is not on, Chairperson. 5 CHAIRPERSON: Oh, sorry, it is feared 6 that something important might be missed. What I suggest 7 we do is we call this series of photographs MMMM1. 8 [12:23] And I've written down "Series of photographs of 9 injured and arrested persons." Were the pictures taken on 10 the 16th or taken on or shortly after? 11 MR MPOFU: Shortly after, Chairperson. 12 CHAIRPERSON: Taken shortly after 13 16/8/2012, and then how many pictures are there? 14 MR MPOFU: Six, Chairperson. 15 CHAIRPERSON: So it's MMMM1.1, .2, .3, 16 .4, .5 and .6 17 MR MPOFU: Yes. Okay, can we go to the – 18 Chairperson, if I may just give a description. There you 19 see a person, the name of the person is written on the 20 board in front of them. This one is Nxondiseni Geto. It's 21 got a case number Marikana CAS134/08/2012, which is the 22 case of the 270 people, and then the inscription says 23 "Illegal gathering" and these are the pictures that they 24 took at the police station. And this picture, the reason 25 we selected this picture, Chairperson, was merely for the</p>	<p style="text-align: right;">Page 35156</p> <p>1 on the right-hand cheek and in front of the nose. 2 CHAIRPERSON: It looks like the left-hand 3 cheek actually as you look at the photograph – 4 MR MPOFU: Left, yes that's correct. 5 CHAIRPERSON: And then the lower portion 6 of his nose I think, ja, that's around the nostrils. 7 MR MPOFU: Next one. This one on the 8 left-hand cheek, swelling on the left-hand cheek. Mr 9 Pumelele Molefe. Next one – 10 CHAIRPERSON: He appears to have injuries 11 on his face as well I think. 12 MR MPOFU: Yes, Chairperson. This one 13 injuries on the eyes and the tearing eye, the right-hand 14 eye and some swelling on the face. 15 CHAIRPERSON: Yes, swelling on both sides 16 of the face actually. 17 MR MPOFU: That's correct. 18 CHAIRPERSON: And the left forehead it 19 looks like as well. 20 MR MPOFU: Yes. 21 CHAIRPERSON: The label isn't, or the 22 placard or whatever that he's holding isn't very clear but 23 perhaps you could put his name on record as well. 24 MR MPOFU: Yes. 25 CHAIRPERSON: Yes, and the right side of</p>

<p style="text-align: right;">Page 35157</p> <p>1 the face near the ear there's also a mark which indicates, 2 it looks like an open injury. But can you read his name 3 out, please Mr Mpofo? It's not too clear on the 4 photograph. 5 MR MPOFU: Nokolas Lulu and it's also 6 written "Gathering Act." Thank you, Chairperson. Next 7 one. Is that the last one? Yes, thank you – 8 CHAIRPERSON: That I think is MMMM1.6 9 that was – 10 MR MPOFU: That's correct, Chairperson. 11 Thank you, Chairperson. Now when you were saying some 12 people were still injured - you might not recognise those 13 specific persons – were those the kinds of things that you 14 saw? 15 MR MTSHAMBA: That is correct, Sir. 16 MR MPOFU: Thank you. Now before I ask 17 you – I'm just going to ask you a few more questions but I 18 think the last paragraph of your statement refers to a 19 Carte Blanche TV programme which you did in relation to the 20 events at scene 2. Is that correct? 21 MR MTSHAMBA: That is correct. 22 MR MPOFU: And your statement says that 23 you have been advised that it will be shown and you've 24 agreed to that. 25 CHAIRPERSON: I don't think it's an</p>	<p style="text-align: right;">Page 35159</p> <p>1 CHAIRPERSON: I think we should record 2 that the clip that's been shown started at 9:50. 3 MR MPOFU: Yes, until 11 – 4 CHAIRPERSON: We've now stopped it at 5 11:31. 6 MR MPOFU: 11:31, thank you, Chairperson. 7 Okay, can you fast forward the commentary. Yes, okay, you 8 can start there. 9 CHAIRPERSON: Starting at 11:43. 10 [VIDEO IS SHOWN] 11 MR MPOFU: Okay, stop there. 12 CHAIRPERSON: We're now stopping at 13 15:22. We should probably have stopped a few seconds 14 before that. 15 MR MPOFU: Yes, Chairperson. Yes, just 16 avoiding the account of the narrators. Thank you. Yes, Mr 17 Mtshamba, that was you giving the account on the video, 18 correct? 19 MR MTSHAMBA: Yes, Sir. 20 MR MPOFU: When more or less was that, if 21 you can remember? 22 MR MTSHAMBA: I think it was day after we 23 had been released from prison. 24 CHAIRPERSON: Could I ask a question now? 25 MR MPOFU: Yes, Chairperson.</p>
<p style="text-align: right;">Page 35158</p> <p>1 exhibit yet, is it, Mr Mpofo? 2 MR MPOFU: No, it's a new one, 3 Chairperson. 4 CHAIRPERSON: So it will be MMMM2, Carte 5 Blanche programme featuring the witness – interview with 6 the witness. Mr Mpofo, are you going to show the whole 7 interview with the witness? 8 MR MPOFU: Chairperson, it's not long 9 but – 10 CHAIRPERSON: If not – well, you can 11 either show the whole thing, in which case there isn't a 12 further problem. If you're only going to show a portion 13 I'd be grateful if you'd indicate which portions are being 14 shown. But I'm in your hands again. 15 MR MPOFU: Chairperson, we'll play the 16 whole thing. We start at 10:20. The first part is just 17 introductory stuff. 10:20, Craig. Just go to 10:00. Ja, 18 okay. 19 CHAIRPERSON: I take it what we're 20 seeing, we haven't got the sound yet but what we saw 21 initially at 10:00 was a part of scene 2, koppie 3. 22 MR MPOFU: Yes, Chairperson, it starts at 23 scene 2. Thank you, Chairperson. 24 [VIDEO IS SHOWN] 25 Please stop there.</p>	<p style="text-align: right;">Page 35160</p> <p>1 CHAIRPERSON: The interview you gave to 2 the television crew, was the whole interview shown in the 3 clip that we've just seen or were there bits that were left 4 out? 5 MR MTSHAMBA: The whole is in this disc, 6 Mr Chair. 7 MR MPOFU: Now let me just, I just want 8 to ask you this. You've already said a lot about your 9 feelings about the murder charges and so on. The other 10 issue that was raised was about public violence. When you 11 were there on those two days did you experience, was there 12 any public violence? 13 MR MTSHAMBA: As I know it, Mr Chair, 14 violence, public violence involves confrontation but on 15 that day we would move in between the police officers, go 16 into Nkaneng, get water, there was no confrontation and 17 media people would also move in between us without any 18 confrontation. 19 MR MPOFU: Right, and then you've already 20 indicated that you yourself were not carrying anything. 21 Were you even carrying a stick? 22 MR MTSHAMBA: I did not have anything in 23 my hands. 24 MR MPOFU: No, I'm asking that because 25 one of the charges remaining against you is about</p>

<p style="text-align: right;">Page 35161</p> <p>1 possession of firearms – I'm sorry, possession of dangerous 2 weapons. 3 MR MTSHAMBA: I know about those charges 4 but if you can watch the videos depicting what happened 5 there on that day you will see not everybody had weapons 6 there. There are many people who did not carry any weapon. 7 MR MPOFU: Yes, and then again speaking 8 about yourself now, the last charge that you have been 9 allegedly arrested on is the question of illegal gathering. 10 Did you know or did you think that the gathering was legal 11 or illegal? 12 [12:43] MR MTSHAMBA: No, I did not know that. 13 The police were there, I was thinking that because the 14 police are there is nothing wrong with us gathering there. 15 They never told us that our meeting or being there was 16 illegal. 17 MR MPOFU: Right, then, Chairperson, if I 18 can just check something. After you were released – no 19 before I deal with that, you said there was a lot of 20 shooting and there was shooting on the rocks and so on at 21 scene 2, did anyone say why you were being shot at or what 22 you were supposed to do or what you were not supposed to 23 do? 24 MR MTSHAMBA: Just to explain that a bit, 25 I like watching movies and things like that, I would say</p>	<p style="text-align: right;">Page 35163</p> <p>1 you. Can we start with JJJ20? Let's start with number 21. 2 [VIDEO SHOWN] 3 MR MPOFU: Okay, while they are looking 4 for that one I might as well ask you about that. Did you 5 notice the people were using weapons, clicking their 6 weapons on the day, the 16th? 7 MR MTSHAMBA: Yes, Sir, I saw them. 8 MR MPOFU: Can you tell us what you 9 observed, when was that done and for what reason? 10 MR MTSHAMBA: Every time when they were 11 singing people would clap their hands, those who did not 12 have weapons. Those who had weapons would use the weapons, 13 hit the weapons one against the other, others would put 14 their weapons down and clap hands. 15 MR MPOFU: Yes okay because it looks like 16 there's trouble getting the video. I'll ask this question 17 in the following way. We've seen before a person who was 18 saying something like these police if they come here we 19 will finish them here and then there was laughter from the 20 crowd. Do you remember that? 21 MR MTSHAMBA: I remember that. 22 MR MPOFU: What can you tell us about 23 that? 24 MR MTSHAMBA: The gentleman who was 25 speaking there is somebody who likes to joke. If you look</p>
<p style="text-align: right;">Page 35162</p> <p>1 that when police are approaching people or trying to arrest 2 they will tell them to come out, put their weapons down, 3 raise their hands, but on that day I did not hear any such 4 things. Water canons just sprayed water, we would hear 5 bullets, some hitting the rocks, police firing, no one 6 spoke to us and we hid in between the rocks. 7 MR MPOFU: And do you know what happened 8 to the other people who went towards Skielik? 9 MR MTSHAMBA: Most of the people who ran 10 towards Skielik and those who ran in the direction of Storm 11 huis managed to get away. They went into the shacks, they 12 were safe. We who thought were safe whilst hiding there 13 were all arrested and others were shot. 14 MR MPOFU: Yes, then finally I'm going to 15 ask you about – there's been evidence about some of – and 16 I'm sure you remember the after by the irregularities of 17 the police because they've given us a list of the evidence 18 that they're going to use in your cross-examination, but I 19 just want you to deal with – there's been a lot of 20 evidence, I want to put it neutrally regarding two speeches 21 that would have been made in your presence during Mr 22 Mathunjwa's second visit. One is made by Mr Noki and the 23 other one is made by somebody called Protestor Number 6 and 24 just because there's been a lot of heavy weather made about 25 those particular statements I just wanted to play them for</p>	<p style="text-align: right;">Page 35164</p> <p>1 in that video you will notice that many people laughed 2 after that. They know him as someone who likes to joke. 3 MR MPOFU: The other speakers – sorry, 4 Chairperson. 5 CHAIRPERSON: Did you know this person 6 also, you say he likes to joke. Did you know him or do you 7 know him? 8 MR MTSHAMBA: I saw the first day on the 9 15th, he did speak there that afternoon and on the 16th was 10 the second time I see him. 11 CHAIRPERSON: So how do you know that he 12 likes to joke? 13 MR MTSHAMBA: He spoke also on the 15th. 14 CHAIRPERSON: Do you know his name? 15 MR MTSHAMBA: I learned later that his 16 name is Bhele. 17 CHAIRPERSON: His name is? 18 MR MTSHAMBA: I only heard later that his 19 name is Bhele. 20 CHAIRPERSON: I see, thank you. 21 MR MPOFU: Right, now the other similar – 22 or let me put it this way, the other is called Number 6 23 because there were other people who spoke there. Do you 24 remember that? 25 MR MTSHAMBA: Yes I remember the people</p>

<p style="text-align: right;">Page 35165</p> <p>1 who spoke.</p> <p>2 MR MPOFU: And again to save time I won't</p> <p>3 play all the other five people, but can you maybe tell the</p> <p>4 Commission what was the gist of the message from the other</p> <p>5 workers apart from that gentleman?</p> <p>6 MR MTSHAMBA: People who spoke after Mr</p> <p>7 Mathunjwa spoke were the workers, my colleagues. They</p> <p>8 spoke a lot, they said Mr Mathunjwa should go and tell the</p> <p>9 employer or the police should know that we are not going to</p> <p>10 leave the koppie before the employer comes to talk to us.</p> <p>11 Most of them were repeating that we are not fighting since</p> <p>12 we've been here on the koppie, we do not have a problem</p> <p>13 with the police. We only want the employer to come to us.</p> <p>14 Mr Noki also spoke, he said it's either we leave the koppie</p> <p>15 or the police leave the koppie. If no party leaves between</p> <p>16 us and the police means no two bulls can be in one kraal or</p> <p>17 in one place.</p> <p>18 MR MPOFU: Yes, that's the other</p> <p>19 statement I was going to play for you about which also</p> <p>20 heavy weather has been made. In what context did you</p> <p>21 understand that statement about the two bulls?</p> <p>22 MR MTSHAMBA: What they were saying is</p> <p>23 the police found us there, we were waiting for the employer</p> <p>24 there, so they should leave, leave us on the koppie</p> <p>25 waiting for the employer or else we should leave and leave</p>	<p style="text-align: right;">Page 35167</p> <p>1 shot at that you described to the Commission earlier. Is</p> <p>2 there a reason why you did not mention those events?</p> <p>3 MR MTSHAMBA: Yes I can.</p> <p>4 MR MPOFU: Please do.</p> <p>5 MR MTSHAMBA: If you look carefully I</p> <p>6 made the statement whilst I was locked up and I also</p> <p>7 explained earlier on in the Commission that we were being</p> <p>8 assaulted in prison. The police would come anytime saying</p> <p>9 they came to search, we would be told to put our hands on</p> <p>10 the wall and we'd be assaulted. There are, yes, certain</p> <p>11 things that I did not mention out of fear because the</p> <p>12 people who took the statement said they were from the</p> <p>13 police. So I did not have, what I say, confidence in these</p> <p>14 people because if I mention these things I'll be taken away</p> <p>15 separately and be assaulted because of mentioning those</p> <p>16 things in the statement. That is why I did not mention</p> <p>17 them.</p> <p>18 MR MPOFU: Thank you. While you were in</p> <p>19 custody were you allowed visitors or did you know what had</p> <p>20 happened the people who had been shot at the koppie?</p> <p>21 MR MTSHAMBA: Mr Chair, even the people</p> <p>22 who heard about my incarceration heard from other visitors</p> <p>23 who had visited their people there and the people who</p> <p>24 eventually decide to come and see me were stopped. They</p> <p>25 were not allowed in.</p>
<p style="text-align: right;">Page 35166</p> <p>1 the police there. Leave the koppie leaving the police</p> <p>2 behind because we cannot be – we're fighting for one</p> <p>3 territory now.</p> <p>4 MR MPOFU: Sorry, Chairperson.</p> <p>5 CHAIRPERSON: Mr Mpofu, your time is up,</p> <p>6 but it's lunch time in five minutes so I'll let you proceed</p> <p>7 until lunch time, until 1 o'clock.</p> <p>8 MR MPOFU: Yes, Chairperson, I think I'd</p> <p>9 rather finish before lunch, Chairperson, yes. Now you've</p> <p>10 already indicated that there are people that you call</p> <p>11 investigators who took a statement from you while you were</p> <p>12 still in custody, in police custody, correct?</p> <p>13 MR MTSHAMBA: That is correct.</p> <p>14 MR MPOFU: Chairperson, I wanted to enter</p> <p>15 this as an exhibit, it's the handwritten statement that is</p> <p>16 in front of you, Chairperson –</p> <p>17 CHAIRPERSON: It's MMMM3, IPID statement</p> <p>18 by witness dated 19 August 2012,</p> <p>19 MR MPOFU: Yes, now in that statement,</p> <p>20 I'm not going to go through it, in that statement there are</p> <p>21 some of the incidents which you described to the Commission</p> <p>22 or even to the people who took the Carte Blanche or in your</p> <p>23 statement to us are not mentioned. And I'll highlight two</p> <p>24 of those. One being the account of when you said that the</p> <p>25 police ran over a person as well as the people who were</p>	<p style="text-align: right;">Page 35168</p> <p>1 MR MPOFU: And lastly did you or rather</p> <p>2 did you know what had become of the people that you had</p> <p>3 seen being shot at the mountain and how did you feel about</p> <p>4 that?</p> <p>5 MR MTSHAMBA: I only heard late, after we</p> <p>6 had been released, that some of those people had died,</p> <p>7 others were lying in hospital. I felt very bad about that</p> <p>8 because I could have been easily one of the people who were</p> <p>9 shot there or I could have been crippled because some of</p> <p>10 those people are walking with the crutches right now. One</p> <p>11 of them was staying very near my place at Big House. That</p> <p>12 person was also shot and he was now walking with crutches.</p> <p>13 He used to attend the Commission whilst it was sitting in</p> <p>14 Rustenburg. He was stressed because he did not get any</p> <p>15 money.</p> <p>16 [13:03] He had to go to the hospital, he ended up hanging</p> <p>17 himself. Now things like that make you feel very bad.</p> <p>18 MR MPOFU: Thank you very much,</p> <p>19 Chairperson, I have nothing further.</p> <p>20 CHAIRPERSON: Thank you. We will now</p> <p>21 adjourn until a quarter to two when I take it Mr Chaskalson</p> <p>22 will cross-examine on behalf of the evidence leaders. Is</p> <p>23 that correct, Mr Chaskalson?</p> <p>24 MR CHASKALSON: It is, Chairperson.</p> <p>25 CHAIRPERSON: We adjourn until a quarter</p>

<p style="text-align: right;">Page 35169</p> <p>1 to two.</p> <p>2 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>3 [13:54] CHAIRPERSON: The Commission resumes.</p> <p>4 Please remind the witness he's still under oath.</p> <p>5 SHADRACK ZANDISILE MTSHAMBA: [s.u.o.</p> <p>6 through interpreter]</p> <p>7 MR NTJINGILA: Confirmed still under</p> <p>8 oath, Mr Chairperson.</p> <p>9 CHAIRPERSON: Mr Chaskalson.</p> <p>10 MR CHASKALSON SC: Thank you,</p> <p>11 Chairperson. Before I begin if we can just organise the</p> <p>12 exhibits that I will be using. There are three new sets of</p> <p>13 exhibits. The first is a collection of photographs with</p> <p>14 some annotations, which should have been placed on your</p> <p>15 desk, and it –</p> <p>16 CHAIRPERSON: That collection can be</p> <p>17 MMMM4. I don't know how many there are, but we can number</p> <p>18 them all the way down – oh, I see you have numbered them.</p> <p>19 So it's MMMM4.1 to 21. I describe it as evidence leaders'</p> <p>20 photographs for cross-examination of the witness.</p> <p>21 MR CHASKALSON SC: Chairperson, what's a</p> <p>22 bit disturbing is that when I paginated my own copy I got</p> <p>23 to 22. I used one on the front cover –</p> <p>24 CHAIRPERSON: [Microphone off, inaudible]</p> <p>25 MR CHASKALSON SC: Does yours end at 21?</p>	<p style="text-align: right;">Page 35171</p> <p>1 directory Photos\Thursday 16th\after shooting incident.</p> <p>2 CHAIRPERSON: How many photographs are</p> <p>3 there?</p> <p>4 MR CHASKALSON SC: They run from IMG0018</p> <p>5 to IMG0041.</p> <p>6 CHAIRPERSON: So how many is that?</p> <p>7 MR CHASKALSON SC: It is 24.</p> <p>8 CHAIRPERSON: 24. So it's MMMM5.1 to 24.</p> <p>9 MR CHASKALSON SC: Chairperson, can I</p> <p>10 suggest that in keeping with the convention that we've</p> <p>11 adopted they become MMMM5.18 through to MMMM5.41?</p> <p>12 CHAIRPERSON: 5.18 to 41. Alright, so</p> <p>13 this batch of exhibits will be called MMMM5.18-41. I don't</p> <p>14 seem to have a set of those, but presumably –</p> <p>15 MR CHASKALSON SC: We will give them to</p> <p>16 you electronically because we're not going to refer to –</p> <p>17 we're only going to refer to one of them today and that's</p> <p>18 already in your bundle of photographs.</p> <p>19 CHAIRPERSON: I see, alright.</p> <p>20 MR CHASKALSON SC: But for the record of</p> <p>21 the Commission we thought it was important that all of the</p> <p>22 – in fact that all relevant photographs should go in.</p> <p>23 CHAIRPERSON: Yes, I agree with that. I</p> <p>24 see. So the fact that we haven't got it isn't a problem.</p> <p>25 Any other exhibits you want to put in?</p>
<p style="text-align: right;">Page 35170</p> <p>1 CHAIRPERSON: Adv Hemraj has I think</p> <p>2 suggested with brilliance and I'm afraid I don't have the</p> <p>3 answer, that as you evidence leaders' photographs for</p> <p>4 cross-examination Mr Mtshamba, the covering note, covering</p> <p>5 page you marked 1; if you did that you got 22 pages. I am</p> <p>6 disadvantaged; I haven't got that cover numbered. My</p> <p>7 numbers start with the photograph "There's no other way,"</p> <p>8 which is number 1 and that goes through to 21, which is a</p> <p>9 picture of a helicopter and it's exhibit JJJ6.1261. Is Ms</p> <p>10 Hemraj's solution to the problem correct?</p> <p>11 MR CHASKALSON SC: It is, Chairperson.</p> <p>12 CHAIRPERSON: Alright, well that's</p> <p>13 something that she will be duly gratified about. Alright,</p> <p>14 that's your first exhibit.</p> <p>15 MR CHASKALSON SC: We'll stay with your</p> <p>16 pagination then. The second exhibit, which will be a</p> <p>17 series, MMMM5, is a series of photographs that were on the</p> <p>18 SAPS hard drive. It hadn't been made into exhibit yet and</p> <p>19 I've used one of them in this bundle. I thought at the</p> <p>20 same time we should incorporate all of them as exhibits.</p> <p>21 I'm not going to suggest that –</p> <p>22 CHAIRPERSON: So how do I describe them?</p> <p>23 Series of bundle – sorry, series of photographs on police</p> <p>24 hard drive?</p> <p>25 MR CHASKALSON SC: Police hard drive in</p>	<p style="text-align: right;">Page 35172</p> <p>1 MR CHASKALSON SC: Yes, MMMM6 is a</p> <p>2 similar series of photographs which are the photographs</p> <p>3 taken by the SAPS ballistics investigators at scene 2 and</p> <p>4 they are a series on the SAPS hard drive in the directory</p> <p>5 LCRC Forensics Original\201208358 –</p> <p>6 CHAIRPERSON: Sorry, 201208?</p> <p>7 MR CHASKALSON SC: 08358.</p> <p>8 CHAIRPERSON: Hyphen 358 I suppose?</p> <p>9 MR CHASKALSON SC: No hyphen, as it's</p> <p>10 named in the hard drive.</p> <p>11 CHAIRPERSON: 08358.</p> <p>12 MR CHASKALSON SC: Then still all in one</p> <p>13 word, (3)RTB Ballistics 120905.</p> <p>14 CHAIRPERSON: Alright, well I don't have</p> <p>15 to repeat what you've just read out to us, but photos taken</p> <p>16 by SAPS ballistic investigators at scene 2 and then you've</p> <p>17 given the description which is on the hard drive, I take</p> <p>18 it.</p> <p>19 MR CHASKALSON SC: And they will run to</p> <p>20 photograph, from 954, photograph 954 to photograph 1023.</p> <p>21 CHAIRPERSON: Alright, very well. So all</p> <p>22 those photographs will be, together will be exhibit MMMM6.</p> <p>23 Those as well, are those –</p> <p>24 MR CHASKALSON SC: Again we'll get them</p> <p>25 to you electronically, but the one to which I referred</p>

<p style="text-align: right;">Page 35173</p> <p>1 today has been included in your bundle. 2 CHAIRPERSON: Thank you. 3 MR CHASKALSON SC: And those are all of 4 my exhibits, Chairperson. 5 CHAIRPERSON: Well, the witness I take it 6 has been given these photographs, the ones in the first 7 bundle which include one from MMMM5 and one from MMMM6. 8 He's been given what amounts effectively to MMMM4. 9 MR CHASKALSON SC: That's correct, 10 Chairperson, and if I can then start, Chairperson, by 11 referring to some of these photographs in the bundle, and 12 Mr Mtshamba – sorry, before we refer to these photographs 13 in the bundle, Chairperson, there are going to be 14 photographs of deceased strikers at scene 2 in the bundle. 15 There's at least one and I think a warning would be in 16 order. 17 CHAIRPERSON: Well, wouldn't it be 18 appropriate for me to give the warning just before you come 19 to that photograph? 20 MR CHASKALSON SC: I am going to come to 21 it in the next five minutes. I'm going to go through a 22 series – or next two minutes in fact. 23 CHAIRPERSON: Alright. Who is the 24 deceased who's on the photograph? 25 MR CHASKALSON SC: The deceased persons</p>	<p style="text-align: right;">Page 35175</p> <p>1 fact – 2 CHAIRPERSON: Most of the widows. 3 MR NTSEBEZA SC: - that some of them are 4 at a meeting and may start filtering in as soon as that 5 meeting is – but it's okay that – 6 CHAIRPERSON: Well, let's hope they start 7 filtering in after Mr Chaskalson has finished with the 8 photographs. 9 MR NTSEBEZA SC: Yes, that's what we hope 10 will not happen. 11 CHAIRPERSON: Mr Ntsebeza, can we perhaps 12 station you at the door so if you see them coming you can 13 give them a warning? Or perhaps you can send one of your 14 assistants or attorneys to do that. 15 MR NTSEBEZA SC: Ja, Mr Chairman 16 [inaudible]. 17 CROSS-EXAMINATION BY MR CHASKALSON SC: 18 Chair, the slide in question is going to be up for a few 19 seconds at most, so I think we can probably take the risk. 20 Mr Mtshamba, I want to start by showing you a series of 21 photographs that will enable the Commissioners to 22 understand where exactly you were when that interview from 23 the Carte Blanche programme was filmed, your position that 24 you were describing on the Carte Blanche programme, and if 25 I can then ask that the photo presentation be called up and</p>
<p style="text-align: right;">Page 35174</p> <p>1 who are visible on the photograph are Mr Nokamba, Mr 2 Saphendu, Mr Mosebetsane and Mr Mabiya. 3 CHAIRPERSON: Members of the families and 4 loved ones and close friends of the four deceased persons 5 whose names were given by Mr Chaskalson may well experience 6 extreme emotional distress at seeing the photographs which 7 are going to be shown on the screen in the next few minutes 8 and so I ask that Mr Chaskalson not commence his cross- 9 examination until half a minute has expired from now. The 10 half a minute will start now so as to enable relatives and 11 friends and loved ones of the persons mentioned to leave 12 the chamber. So we'll start now. 13 MR NTSEBEZA SC: Mr Chairman, can I just 14 indicate, the Chairman will see that the chamber is half 15 empty, or virtually empty. The families – 16 CHAIRPERSON: Have you looked behind your 17 back, Mr Ntsebeza? 18 MR NTSEBEZA SC: Yes, most – 19 CHAIRPERSON: There are a lot of people 20 behind your back. There's no one on the right side – 21 MR NTSEBEZA SC: Yes, but – 22 CHAIRPERSON: - as I, my right side of 23 the chamber. There are a few people there but not very 24 many. You say that most of the – 25 MR NTSEBEZA SC: Most of – I know for a</p>	<p style="text-align: right;">Page 35176</p> <p>1 we go to slide 2 of the photo presentation electronically, 2 which is page 1, paginated page 1. 3 Mr Mtshamba, if you can look at that screen 4 behind you, which is a better quality screen - you do have 5 these copies in that bundle as well. What I've done there 6 is I've taken a screenshot from the Carte Blanche programme 7 and I was trying to catch the exact time that it appeared 8 on the CD that was shown today and it is in the region of 9 11:30. I don't have that CD, but it is in the region of 10 11:30, and it's a photograph of you where you're saying 11 "There is no other way. I just inserted my head down." 12 I've circled a definitive sort of cleavage in the rock 13 behind you. 14 If we can then go to the next slide and that's 15 where you were saying on the Carte Blanche programme at 16 about 12:45 "managed to stand up again for the third time," 17 when you were talking about one of the men you say you saw 18 being shot, and what I have circled there is the marking on 19 the rock which once had the letter J on it, but has been 20 crossed out in yellow. 21 MR MTSHAMBA: Yes, I've got those slides. 22 MR CHASKALSON SC: On the next slide - 23 and Mr Mtshamba, that is the extra page that you were given 24 a short while ago – I've included a photograph, which is 25 MMMM5.020, which is a photograph of that place on the day</p>

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1 of the 16th of August after the shootings and after people
 2 had been removed to be arrested, and you'll see that that
 3 distinctive cleavage in the rock that I circled on the
 4 first slide has been circled in the top right of that slide
 5 as well. You've only got a black and white copy – well
 6 sorry, it isn't circled on the copy that's being shown. If
 7 I can just point to it. It is now being circled. It's
 8 through the lettering.

9 CHAIRPERSON: It's between entry 16-08-
 10 2012 at the top line and 0020.jpg in the second line.

11 MR CHASKALSON SC: And the cleavage in
 12 fact runs through the dash between 16 and 08 and roughly
 13 through the zero and the J in 20.jpg.

14 MR MTSHAMBA: I can see it, Mr Chair.

15 MR CHASKALSON SC: On the next slide it's
 16 the same scene again. The next slide is slide 5
 17 electronic, slide 4 paginated, and if I can explain the
 18 annotations on this slide to yourself and the
 19 Commissioners; first of all to describe the origin of this
 20 slide, this is MMMM6.978, and if I can now describe what
 21 one sees on the slide, first of all the big red arrow
 22 running from near the bottom of the slide is marking your
 23 position. Your position where you were interviewed and
 24 where you said you were hiding during the events is at the
 25 tip of that arrow and one can mark that by the distinctive

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1 cleavage to the right of the arrow, the cleavage in the
 2 rock.

3 MR MTSHAMBA: Yes, that's the same place.

4 MR CHASKALSON SC: And what we've then
 5 marked on this map is the positions of people who were
 6 killed in the immediate vicinity of where you were and also
 7 positions of bullet marks on the rocks that were identified
 8 by the forensics investigators. So at the end of the
 9 arrows underneath the box that says "Victims G and H, Mr
 10 Mosebetsane, Mr Mabiya," that is the position in which Mr
 11 Mosebetsane – well, let me just get this right. Mr
 12 Mosebetsane was at the bottom of the arrow point closest to
 13 the arrow marking your position. Mr Mabiya was in a
 14 position that wouldn't have been visible in the shot, but
 15 he would – there is a little passage between the two rocks
 16 on either side of this arrow point and he was lying
 17 horizontally in that position. Mr Nokamba was lying in the
 18 position which says victim I, Mr Nokama.
 19 [14:14] Mr Samphendu was lying in the position which says
 20 victim J and Mr Samphendu and in fact in that box that says
 21 victim J, Mr Samphendu one can see the letter J in yellow
 22 entered on the rock. Mr Ngxande was lying just above the
 23 box that says victim K, Mr Ngxande. Mr Mohai who later
 24 died in hospital is seeing leaning, sitting with his back
 25 resting against the rock next to the place where it says Mr

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1 Mohai. And Mr Mangcotywa and Liau were propped or lying
 2 next to this rock, a little bit further away at the end of
 3 the arrow point on the right-hand side of the screen. The
 4 bullet marks on the rocks that are visible and that were
 5 marked by the forensic investigators have been circled in
 6 yellow. So there's one on the left on the rock behind
 7 which Mr Mabiya was lying, there's on the right of the
 8 photograph on the rock against which Mr Mohai was leaning.
 9 There's one just below the box that says victims D and E,
 10 Mr Mangcotywa and Mr Liau. And there's one that isn't
 11 actually visible in this photograph because it would be
 12 occluded by the rock. It's the one that I've marked as F1,
 13 if one goes to the next slide that slide F1. I think that
 14 the slide is incorrectly labelled, it won't be 972 because
 15 the last one was 972. I'll come back with the correction
 16 in due course. It's from the MMM6 series. I'll give the
 17 correct reference later. The F1 bullet marks are marked
 18 there in the yellow circle. Your position is hiding just
 19 where the red arrow is pointing and Mr Mosebetsane and Mr
 20 Mabiya are where – or their bodies are where their names
 21 appear with Mr Mabiya deeper into that passage and Mr
 22 Mosebetsane straddling that passage and also the wider
 23 passage at right angles to it. If we go to the next slide,
 24 this is a close up of the bullet mark F1 which is taken
 25 from MMMM6 977. Now, Mr Mtshamba, I'm going to come back

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1 to these photographs at a later stage, but for present
 2 purposes I just want to ask you do you agree with
 3 everything that I have said in relation to your position on
 4 these photographs?

5 MR MTSHAMBA: Yes.

6 MR CHASKALSON SC: Then what I'd like to
 7 do is I'd like us to look at a series of other photographs
 8 and follow your movements through that day of the 16th from
 9 when – well from a period shortly before the first
 10 shootings. Just so that we can have clarity on where
 11 exactly you were. And if we can start on slide 8 which is
 12 paginated slide 7, this is a photograph just when the
 13 barbed wire starts rolling out. And just to indicate that
 14 the barbed wire has started rolling out I'm marking the
 15 first Nyala that has reached the second Nyala with the
 16 barbed wire behind it. So the first barbed wire Nyala has
 17 rolled out its barbed wire, the second Nyala has not. And
 18 you'll see that there is a section of this photograph that
 19 is sectioned off in a red rectangle. On the following
 20 slide which is paginated slide 8, slide 9 on the electronic
 21 version we've magnified that rectangle and if I can just
 22 mark out some features for you. I'm marking the big koppie
 23 which is in the top left corner of the magnified slide.
 24 I'm now moving to mark or identify the small koppie which
 25 is roughly below the left-hand corner of the title which

<p style="text-align: right;">Page 35181</p> <p>1 say JJJ10, 4540. And now I'm marking the kraal which is 2 where the shootings took place which is in the bottom 3 right-hand corner of the magnified slide. 4 MR MTSHAMBA: Yes I can see that. 5 MR CHASKALSON SC: I'd like you tell the 6 Commission where you were at various stages as things 7 developed in relation to the events that eventually led to 8 the shooting. I'm going to ask you specific questions, 9 that's what the purpose is so that the Commissioners can 10 understand with reference to this photograph where you were 11 when. So if you can tell me before the barbed wire started 12 rolling out where were you? 13 MR MTSHAMBA: Mr Chair, if I could be 14 afforded with a pointer. As the first Nyala started 15 rolling the barbed wire I was on that place that is 16 pointing. 17 MR CHASKALSON SC: So that was the place 18 towards the right-hand side of the big koppie. 19 MR MTSHAMBA: Yes. 20 MR CHASKALSON SC: And at what point did 21 you move from that place? 22 MR MTSHAMBA: By that moment when the 23 first Nyala was about to meet with the second Nyala I moved 24 from that area and moved towards the right to the other 25 koppie, the smaller koppie as the people were starting to</p>	<p style="text-align: right;">Page 35183</p> <p>1 Nkaneng. 2 MR CHASKALSON SC: Now you described in 3 your pointer an arc that started out, I don't know how to 4 describe it, but it was – 5 CHAIRPERSON: If one looks at this 6 closely bunched group who are the group that the witness 7 has just referred to, who are just above the road which 8 runs, so that you can describe the road, which runs from 9 left to right in the photograph, more or less in the middle 10 of the photograph. Just at the right end of that there's a 11 road or a path which crosses the road I've just been 12 talking about diagonally and that road goes down towards 13 the right-hand corner of the photograph. About a third of 14 the way down there is one of the Nyalas with a wire trailer 15 behind it on the road and then that road as I say continues 16 close to the bottom right-hand corner. In fact it's just 17 to the left of the kraal when it reaches the bottom of the 18 photograph. Would that description – 19 MR CHASKALSON SC: No, I agree with the 20 description of the road, but the actual movement taken by 21 the group is what I – 22 CHAIRPERSON: Yes I know, but the reason 23 I said that because you talked about the arc and you talked 24 about the and I was trying to identify the road and you can 25 then take it further and explain the position of the arc in</p>
<p style="text-align: right;">Page 35182</p> <p>1 move down. 2 MR CHASKALSON SC: And you say the people 3 were starting to move down which people were starting to 4 move down? 5 MR MTSHAMBA: The people who were there 6 on the big koppie started to move down and even those who 7 were – as the people who were on the big koppie were moving 8 downwards and those who were a bit in front of the koppie 9 were moving also downwards. The ones from small koppie 10 they were moving towards the road that is leading to 11 Nkaneng. That's when I moved from that area to the smaller 12 koppie. 13 MR CHASKALSON SC: Can you identify for 14 us on this photo where the Makarapa were on this photo? 15 MR MTSHAMBA: Mr Chairperson, I don't 16 know the people who are called the Makarapa. 17 MR CHASKALSON SC: Well then let me ask 18 you, this group of people over here that I'm circling now, 19 it's a group that are sitting on the ground between the two 20 koppies. 21 MR MTSHAMBA: Yes I can see those people 22 you are pointing. 23 MR CHASKALSON SC: Can you tell us where 24 they moved? 25 MR MTSHAMBA: They moved towards the</p>	<p style="text-align: right;">Page 35184</p> <p>1 relation to that road which I described. 2 MR CHASKALSON SC: Well I understood the 3 witness to say that the group moved in an arc that would 4 have gone outside the road going towards Nkaneng and would 5 have come back towards that road possibly just what we know 6 as – just to the west of the kraal. 7 CHAIRPERSON: May I make a suggestion 8 which Advocate Hemraj has just made to me? And that is you 9 take my copy of this photograph and ask the interpreter 10 with the assistance of the witness to mark the arc on this 11 photograph that can indicate – 12 MR CHASKALSON SC: That's an excellent 13 suggestion, Chairperson. 14 CHAIRPERSON: We'll call it MMMM6 and 15 will then or something else but I mean – no but this is a 16 particular one which is being separately marked. So this 17 will be MMMM6 and the – 18 MR CHASKALSON SC: Seven, Chairperson 19 because 6 was the LPRC photograph. 20 CHAIRPERSON: Oh I beg your pardon. So 21 MMMM7, how do we describe it? 22 MR CHASKALSON SC: Mr Mtshamba's 23 description of the movement of the group of strikers who 24 were sitting between the two koppies when the barbed wire 25 roll out began.</p>

<p style="text-align: right;">Page 35185</p> <p>1 CHAIRPERSON: No we can't say that. We 2 could call it the front group I suppose because they are, 3 according to the photograph, as you look at the photograph 4 they are to the front of the others. So witness's 5 description of the movement of strikers sitting in front, 6 between the two koppies and how does that end then? 7 Witness's description of movement of strikers sitting in 8 the front between the two koppies – 9 MR CHASKALSON SC: What we're proposing 10 to do is to get it scanned so that everybody can see it 11 simultaneously. 12 CHAIRPERSON: Sorry, Mr Chaskalson, you 13 were talking about the arc and they moved away from the 14 road and went back to the road. Now am I correct in 15 thinking that the movement away from – 16 MR CHASKALSON SC: Chair, I'm sorry to 17 interrupt you, but it's about to be scanned and I think we 18 might ask Mr Mtshamba if it's going to be scanned to do it 19 in a different colour because I'm not sure it's going to be 20 visible on a scanner in the form that it's being done. 21 CHAIRPERSON: All right, well while 22 that's being done let me ask my question. Am I correct in 23 assuming that this arc to which you refer involved the arc 24 going to the right as one looks at the photograph of that 25 Nyala with the wire trailer behind it which is about a</p>	<p style="text-align: right;">Page 35187</p> <p>1 when the shooting took place? 2 MR MTSHAMBA: When they started shooting 3 I was still there on top of those rocks, some other 4 gentlemen I am not sure, I think they were five were 5 standing there on top of the rocks, still smoking there at 6 the lower end of the rocks. 7 MR CHASKALSON SC: So you were still on 8 the rocks at the small koppie when the shooting happened. 9 MR MTSHAMBA: Yes, Sir. 10 MR CHASKALSON SC: And what did you do 11 after the shooting? 12 MR MTSHAMBA: Our intention as we were 13 standing there, smoking, we wanted to go down, (he is 14 pointing towards the kraal) but when we were about starting 15 to move we had not gone far, then they started shooting. 16 CHAIRPERSON: The shooting you refer to 17 is the shooting in the vicinity of the kraal, is that 18 correct? 19 MR MTSHAMBA: Yes, as we were still 20 standing there, we saw people when they were coming to this 21 other side of the kraal, as he's pointing, to where that 22 last Nyala was, we find out the Nyala has already closed 23 the way. Then they turn around the kraal. Others have 24 already passed. 25 COMMISSIONER HEMRAJ: And you were seeing</p>
<p style="text-align: right;">Page 35186</p> <p>1 third of the way down that diagonal path which goes past 2 the kraal? 3 MR CHASKALSON SC: The arc as marked does 4 go to the right of that Nyala. I think the scanner didn't 5 get the message about the different colour, so we'll have 6 to take our chances on it. Now, Mr Mtshamba, you talked 7 about moving off the big koppie and moving to the right. I 8 must confess that in the diversion in relation to the 9 movement of the other group I don't recall exactly where 10 you said you ended when you moved off the big koppie. Can 11 you just mark that again? I must apologise for that. 12 [14:34] MR MTSHAMBA: As I said, I was sitting, I 13 was staying there. When that group started going this way 14 because all the Nyalas they have already closed there with 15 their barbed wire, I proceeded downwards until I ended 16 there on top of the stones, those rocks that are there. 17 MR CHASKALSON SC: And when did you move 18 – 19 CHAIRPERSON: Those rocks that are there 20 are really koppie 2, and what he indicated, as far as I 21 could see was the lower end, as one looks at the 22 photographs, of koppie 2, and then he was going to say he 23 went on from there somewhere else. We haven't got that on 24 record. 25 MR CHASKALSON SC: And where were you</p>	<p style="text-align: right;">Page 35188</p> <p>1 all this from koppie 2? 2 MR MTSHAMBA: Yes, we were on top of the 3 rocks there, (where he is pointing). If we were standing 4 there on top of those rocks there, you can see clearly 5 there next to the kraal. 6 MR CHASKALSON SC: Why had you waited at 7 koppie 2? 8 MR MTSHAMBA: As so many people were 9 moving to this direction and we were there from the big 10 koppie, as we were moving, one had to stay there and find 11 out or see what is going on firstly, before we started 12 moving, while we were still smoking. 13 MR CHASKALSON SC: And then, when you 14 heard the shooting, what did you do? 15 MR MTSHAMBA: As we hear that started 16 shooting, we get surprised and went back on top of the 17 rocks, to see what is going on. 18 MR CHASKALSON SC: And how long did you 19 stay on top of the rocks? Sorry, are the rocks you are 20 talking about the rocks at koppie 2? 21 MR MTSHAMBA: Yes, Chairperson. 22 MR CHASKALSON SC: And how long did you 23 stay there? 24 MR MTSHAMBA: As we were still standing 25 there on top of the rock, looking this side, we saw those</p>

<p style="text-align: right;">Page 35189</p> <p>1 people who were there, then everything started to be 2 confused, you see smoke, teargas, and some dust and people 3 falling down, as I have already mentioned I saw the Nyala 4 running on top of a blanket of someone. The workers were 5 starting to run away coming towards the second koppie. And 6 we also started running away turning backwards. 7 MR CHASKALSON SC: So when you say 8 turning backwards, in which direction do you mean? Let me 9 ask, are you saying in the direction of Karee? 10 MR NTSINGILA: He is pointing towards 11 Marikana. 12 MR CHASKALSON SC: So it's a westerly 13 direction, it's the other side of koppie 2? 14 MR MTSHAMBA: Yes, Mr Chairperson. 15 MR CHASKALSON SC: I want to show you 16 another photograph, it's paginated slide 9. It's 10 on the 17 – ja, we've got it up it's JJJ6 1195, that's at 16:00 and 18 48 seconds. That's roughly seven minutes after the 19 shooting, so it's seven minutes after the shootings. Now, 20 I am now marking koppie 2 which is the rocky outcrop just 21 below and to the left of the lettering 16:00:48. Do you 22 recognise the scene that you see in this photograph? 23 MR MTSHAMBA: Yes, I know it. 24 MR CHASKALSON SC: We can see a large 25 group of strikers in a line behind koppie 2, that's on the</p>	<p style="text-align: right;">Page 35191</p> <p>1 away, you would have run out of this photograph. So why 2 did you stop running away? 3 MR MTSHAMBA: As I am elaborating through 4 this photo, if you see that road that I am pointing there, 5 that is, that direction is towards Marikana. Outside of 6 the photo after that road ends, we saw there was a line of 7 police that when we started running, we saw there's a line 8 of police, so we couldn't go straight to them, we were 9 supposed to take a detour and run this direction, away from 10 them. 11 CHAIRPERSON: Do I understand correctly 12 that you are indicating a position to the right of the 13 photograph about halfway up, is that correct? You 14 indicated a movement in a diagonal direction from higher up 15 the photograph to the left, down towards the right, and 16 exiting from the photograph about halfway up the photograph 17 on the right-hand side, is that correct? 18 MR MTSHAMBA: Yes, to that area that I am 19 pointing there were police that were standing there. 20 MR CHASKALSON SC: But in fact this line 21 of strikers that we see is visible in the same position 22 for, let me just be a bit more accurate, for probably about 23 eight minutes, maybe even longer, so the strikers were in 24 this position and more or less sort of not moving from this 25 position for about eight minutes. Can you say why that is</p>
<p style="text-align: right;">Page 35190</p> <p>1 western side on koppie 2, and in fact if one zooms in, one 2 sees that there are still some strikers actually standing 3 on koppie 2 itself. Were you part of this group? 4 MR MTSHAMBA: Yes, Mr Chair. Yes, I can 5 remember even with that vehicle, or that viewpoint that I 6 see there, that when we were running to the second koppie, 7 I saw it standing there, stationery, I don't know if it was 8 broken or what but I remember seeing it. 9 MR CHASKALSON SC: And the vehicle you 10 are describing is the vehicle on the right-hand side of 11 this photograph. 12 MR MTSHAMBA: Yes. 13 CHAIRPERSON: Call it in the top right- 14 hand corner. 15 MR CHASKALSON SC: It is a camouflage 16 vehicle. 17 MR MTSHAMBA: Yes, that's a camouflage 18 vehicle. 19 MR CHASKALSON SC: Now can you explain to 20 the Commission, you said earlier that after the shootings 21 you started running away to the west, to the direction of 22 Marikana, to the direction of Karee. How did this scene 23 that we see now, how did it form up, if you are running 24 away to the west you would have run further away from this 25 photograph, you'd have run – or if you continued running</p>	<p style="text-align: right;">Page 35192</p> <p>1 so? 2 CHAIRPERSON: Is the suggestion that they 3 were stationary more or less in that position for about 4 eight minutes? Isn't it there was always a group of 5 strikers there, but it was – 6 MR CHASKALSON SC: Yes. 7 CHAIRPERSON: - strikers? 8 MR CHASKALSON SC: Ja. 9 CHAIRPERSON: It was the same striker 10 more or less stationary, that's the question. 11 MR CHASKALSON SC: Well, it's a fair 12 question, there was a line of strikers behind this koppie, 13 I am not saying it was the same people all the time, but 14 there was a line of this length of strikers behind the 15 koppie for about eight minutes, from about four minutes to 16 four, to about four minutes after four. 17 MR MTSHAMBA: Yes, I tried to run towards 18 the direction of Marikana and some other people were also 19 in this line, they were not running, they just walked, 20 maybe they were thinking that the police are still far 21 away, I don't know, but I ran towards the direction of 22 Marikana. 23 MR CHASKALSON SC: Were you still in this 24 line when it was sprayed by a water cannon? 25 MR MTSHAMBA: I was nearer to the second</p>

<p style="text-align: right;">Page 35193</p> <p>1 mountain, the water cannon was a bit far from where I was.</p> <p>2 MR CHASKALSON SC: Sorry, the second</p> <p>3 mountain is which mountain that you are referring?</p> <p>4 MR MTSHAMBA: Koppie 3.</p> <p>5 MR CHASKALSON SC: Koppie 3?</p> <p>6 MR MTSHAMBA: The second mountain is</p> <p>7 koppie 3.</p> <p>8 MR CHASKALSON SC: So you saw the water</p> <p>9 cannon spraying this line of people?</p> <p>10 MR MTSHAMBA: Yes, I could see it,</p> <p>11 because I was running but sometimes looking behind me to</p> <p>12 see how are they behind me.</p> <p>13 MR CHASKALSON SC: And where did you end</p> <p>14 up running to?</p> <p>15 MR MTSHAMBA: As I was running, I</p> <p>16 realised that the shack settlement that was on that other</p> <p>17 side of the power station, I realised it is far away from</p> <p>18 me, and the other side also Skielik was also far away, then</p> <p>19 I ran towards the bushes to that place where I ended up</p> <p>20 being arrested at.</p> <p>21 CHAIRPERSON: Are you saying you changed</p> <p>22 direction? You were going towards Marikana, you then</p> <p>23 realised it wasn't a sensible idea, and you changed</p> <p>24 direction and went to koppie 3, is that what you are</p> <p>25 telling us, scene 2?</p>	<p style="text-align: right;">Page 35195</p> <p>1 the slide there is a water cannon spraying white water and</p> <p>2 then there is a small clearing from the end of that white</p> <p>3 water. The point at which you were at, that you've</p> <p>4 identified as your hiding place is just into the bushes at</p> <p>5 the end of that clearing.</p> <p>6 MR MTSHAMBA: Okay.</p> <p>7 CHAIRPERSON: As one looks at the</p> <p>8 photograph the end of the white water there appears to be,</p> <p>9 what you call a clearing or a passage, and if one moves to</p> <p>10 the right, more or less in the middle of the photograph is</p> <p>11 the spot that is pointed out where you say, Mr Chaskalson,</p> <p>12 that he ended up. Do you agree with that, Mr Mtshamba?</p> <p>13 MR MTSHAMBA: Yes, I agree [as he's</p> <p>14 pointing] that the place where I ended up is [where he is</p> <p>15 pointing at the moment]. I was there in that vicinity.</p> <p>16 MR GOIRANA: As he's pointing from the</p> <p>17 bottom left corner, from that direction, that vicinity,</p> <p>18 that's where he's pointing koppie 2, and he's coming in in</p> <p>19 a straight line, pointing straight towards the middle of</p> <p>20 the koppie and he's pointing the direction where he ended</p> <p>21 up.</p> <p>22 MR CHASKALSON SC: So you came straight</p> <p>23 from the direction of koppie 2. You didn't go around the</p> <p>24 koppie and come in from the back side or any other side?</p> <p>25 MR MTSHAMBA: I went through between the</p>
<p style="text-align: right;">Page 35194</p> <p>1 MR MTSHAMBA: Yes, Mr Chairperson.</p> <p>2 MR CHASKALSON SC: And if we go to the</p> <p>3 next slide –</p> <p>4 CHAIRPERSON: May I suggest that perhaps</p> <p>5 during the tea adjournment, even perhaps overnight, the</p> <p>6 witness can be given the photograph which shows scene –</p> <p>7 koppie 1, koppie 2, koppie 3, and asked to indicate on that</p> <p>8 where he started and his direction or directions ending up</p> <p>9 in koppie 3. It's rather difficult, I must confess to</p> <p>10 follow and I imagine it's going to be even more difficult</p> <p>11 to follow it on the transcript later. But if he does that,</p> <p>12 then that problem will disappear.</p> <p>13 MR CHASKALSON SC: Do you remember from</p> <p>14 which point you entered koppie 3?</p> <p>15 MR MTSHAMBA: Yes.</p> <p>16 MR MTSHAMBA: Can you mark it on this</p> <p>17 slide which is paginated slide 10? Sorry, if I can orient</p> <p>18 you, the koppie 2 would be to the bottom left-hand corner</p> <p>19 of the slide.</p> <p>20 [14:54] Koppie 1 would be diagonally up to the left of</p> <p>21 koppie 2. Marikana would be I suppose a bit left of centre</p> <p>22 at the top of the slide. That would be the direction of</p> <p>23 Marikana, and I can mark on the slide, if that would help,</p> <p>24 the point at which you ended up, which is roughly where I'm</p> <p>25 marking now, which is, if you see on the left-hand side of</p>	<p style="text-align: right;">Page 35196</p> <p>1 bushes and I jumped some rocks that are there. There's a</p> <p>2 place that I can jump and there are no trees there. Then I</p> <p>3 carried on until –</p> <p>4 MR GOIRANA: As he's pointing that when</p> <p>5 he was in that direction he wanted to go towards the right-</p> <p>6 hand side but he find out there is that water cannot that</p> <p>7 is there spraying with that water.</p> <p>8 MR MTSHAMBA: Then now I turned back, I</p> <p>9 went, there's some sort of a tunnel that I passed through,</p> <p>10 then I jumped on top of the rocks, then I went there to</p> <p>11 hide myself there.</p> <p>12 MR CHASKALSON SC: I just want to show</p> <p>13 you a few more slides of the water cannon spraying, just so</p> <p>14 that we can mark your position for the Commissioners.</p> <p>15 CHAIRPERSON: Can I just say, he</p> <p>16 indicates the position which can perhaps be described as</p> <p>17 follows. If one looks at the photograph one sees a</p> <p>18 helicopter in the air and if one moves diagonally to the</p> <p>19 right, upwards to the right from the helicopter there's a</p> <p>20 clearing and above it are bushes. If you go along the line</p> <p>21 of bushes and that clearing you come to a point more or</p> <p>22 less where the bushes end and some rocks start. He then</p> <p>23 indicates, as I understand him, that he then went through</p> <p>24 those bushes close to those rocks, up on the photograph,</p> <p>25 and when he came to the area where the white water spray</p>

<p style="text-align: right;">Page 35197</p> <p>1 was he avoided it and hid at the point he'd previously 2 indicated. Am I accurately summarising what he said? 3 MR CHASKALSON SC: Chairperson, I'm not 4 sure that the witness was referring to this white water 5 spray. I think he was referring to a white water spray at 6 a later stage from the opposite side because he said he 7 wanted to try to get out – I forget what his exact words 8 were, but to the right and then there was water – 9 CHAIRPERSON: But anyway, if he can 10 respond to what I put to him and say where I was wrong we 11 will then understand what the correct position is. 12 MR MTSHAMBA: I'll have to show you 13 again, Mr Chairperson. 14 COMMISSIONER HEMRAJ: Perhaps Mr 15 Chaskalson, he can mark the spot on the map you're going to 16 do, it will be so much easier. 17 MR CHASKALSON SC: He can – 18 CHAIRPERSON: Well, the first part seems 19 to be correct of what I said. If you start at the 20 helicopter and you move slightly upwards diagonally to the 21 right you come to the bushes. He said he went along those, 22 the line of bushes, more or less until the bushes end and 23 you find the rocks. That's the point that I understand he 24 indicated, that's the spot where he entered this bushy 25 area. Am I right so far? If you can translate that to him</p>	<p style="text-align: right;">Page 35199</p> <p>1 take a tea adjournment now for quarter of an hour. 2 [COMMISSION ADJOURNS COMMISSION RESUMES] 3 [15:19] CHAIRPERSON: The Commission resumes. 4 Please remind the witness – I hope the interpreter when he 5 comes will remind the witness that he's still under oath. 6 Mr Interpreter, would you please remind the witness that 7 he's still under oath? Mr Chaskalson, thereafter, once the 8 witness has been so reminded you may continue with your 9 cross-examination. 10 SHADRACK ZANDISILE MTSHAMBA: [s.u.o. 11 through interpreter] 12 MR NTJINGILA: Confirmed, Mr Chairperson. 13 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 14 Chairperson, Mr Mtshamba has indicated his movements on a 15 couple of slides. We're in the process of having them 16 produced. They will be submitted when they arrive. 17 CHAIRPERSON: Thank you. 18 MR CHASKALSON SC: Mr Mtshamba, I now 19 want to take you to a series of slides of what I want to 20 put to you are photographs of a water cannon spraying the 21 group of which you were a part, and maybe if we can see 22 them all sequentially and then you can comment on that. 23 They start at slide paginated 11, it's slide number 12 on 24 the electronic version. That's JJJ6.1238 at 16:13:18, the 25 slide after this one, and here one sees a water cannon</p>
<p style="text-align: right;">Page 35198</p> <p>1 and get his answer. 2 MR MTSHAMBA: Yes, Mr Chairperson. 3 CHAIRPERSON: And then you proceeded 4 upwards on the photograph. Is that correct? Upwards, 5 straight upwards or slightly angled diagonally to the 6 right? 7 MR MTSHAMBA: I went slightly skew to the 8 right, thinking that I'll get out away from that direction 9 rightwards. 10 CHAIRPERSON: And then is that where you 11 were sprayed? 12 MR MTSHAMBA: Yes. 13 CHAIRPERSON: So you then changed 14 direction and went to the place where you hid. Is that 15 correct? 16 MR MTSHAMBA: Yes, I turned back and 17 passed through those rocks and then hid, hide myself – 18 CHAIRPERSON: Moving now to the left on 19 the photograph. 20 MR MTSHAMBA: Yes. 21 CHAIRPERSON: Alright. Perhaps this is a 22 time when we can take tea. Perhaps if the witness could be 23 given some photograph which indicates the salient points 24 and asked to mark on that. If he can't do it during the 25 tea adjournment perhaps he can do it overnight. We will</p>	<p style="text-align: right;">Page 35200</p> <p>1 spraying into koppie 3 and inside the rectangle we have 2 blown up an image which is on the next slide, if we can 3 proceed to the next slide, and one sees in the next slide a 4 group of people huddled in the area which is immediately 5 adjacent to where Mr Saphendu and Mr Nokamba were later 6 found killed. If we can go to the next slide, which is 10 7 seconds later, again there's first a long-range shot and 8 then we zoom in on the following slide, and one can see a 9 group of people bent over near to those rocks where we 10 identified, well the position of Mr Saphendu and Mr Nokamba 11 at the start of this presentation, and 14 seconds later we 12 see another shot and again when we zoom in to the same 13 position we see a group of people huddled with their backs 14 to the rocks. Is that the group of people of which you 15 were a part? 16 MR MTSHAMBA: Yes, Mr Chair. 17 MR CHASKALSON SC: And finally in this 18 sequence – 19 CHAIRPERSON: I'm sorry, before you do 20 that, can you remember what colour top you had on that day? 21 MR MTSHAMBA: Yes, I can still remember. 22 CHAIRPERSON: What was it? 23 MR MTSHAMBA: I was wearing a lumber 24 jacket that was greyish blue in colour. 25 CHAIRPERSON: Can you see yourself on</p>

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1 this picture we now have on the screen, which is number –
 2 MR MTSHAMBA: It's not clear in this
 3 photo.
 4 CHAIRPERSON: The picture on the screen
 5 is number 16 – no, 16 is the one we have on the screen at
 6 the moment. Can you see yourself there? You say you
 7 can't? Look very carefully. Can you see yourself?
 8 MR MTSHAMBA: Ja, what I can remember, if
 9 you look there towards those rocks, I was –
 10 MR NTJINGILA: As he was pointing towards
 11 the corner there, towards the top, there is someone who is
 12 standing there where he was pointing.
 13 MR MTSHAMBA: I was just next to that
 14 person, but kneeling down, or bending over.
 15 CHAIRPERSON: If one looks at the
 16 photograph on the screen, which is better than the copies
 17 we have, round about the middle of the photograph, if one
 18 draws a line up the middle of the photograph, about a third
 19 of the way down there appears to be someone kneeling. Is
 20 that right? You say you were in that vicinity. Is that
 21 correct?
 22 MR MTSHAMBA: Yes, I can see that person
 23 kneeling there.
 24 CHAIRPERSON: And you were near him?
 25 MR MTSHAMBA: Yes, I was in that

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1 vicinity, but I can't see clearly in this picture what this
 2 person is wearing.
 3 CHAIRPERSON: Yes, no I understand, but
 4 that's the vicinity, that's more or less where you were?
 5 MR MTSHAMBA: Yes, that's the vicinity.
 6 CHAIRPERSON: Thank you.
 7 MR CHASKALSON SC: There's one last set
 8 of pictures of this group. They're poorer quality than the
 9 ones we've been looking at and I'm running short of time,
 10 so I'm not going to take you to them. They are slides 17,
 11 18 and 19 of the presentation, for the purposes of the
 12 Commission. But I now want to start asking you some
 13 questions about your experiences there, and for this
 14 purpose if we can go to paginated slide 4, which is
 15 electronic slide 5 –
 16 CHAIRPERSON: Before we go there, Mr
 17 Chaskalson, it occurs to us that you've lost quite a lot of
 18 your time because of difficulty on the part of the witness
 19 – and I don't blame the witness, because it is difficult
 20 anyway – describing where precisely he was and indicating
 21 with what I could describe with a rather unsteadily pointed
 22 pointer where precisely he was. I don't criticise him for
 23 that, but I think to be fair to you I should give you a bit
 24 of extra time apart from the time you asked for. We'll
 25 take stock when we adjourn at 4 and see how much more time

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1 you need, but I think you've obviously got what you would
 2 regard as an important cross-examination to deliver and I
 3 think it behoves us to listen to it before we decide
 4 whether it isn't as important as you think it is, or where
 5 [microphone off, inaudible].
 6 MR CHASKALSON SC: Thanks, Chairperson.
 7 Now if we can then go back to electronic slide 5, paginated
 8 slide 4, which is the scene of where you were hiding, with
 9 all of the victims and bullet holes marked on it. Now this
 10 experience must have been a particularly terrifying
 11 experience for you.
 12 MR MTSHAMBA: Yes, it is.
 13 MR CHASKALSON SC: And would it be
 14 correct that for a large part of it you had your head down;
 15 you weren't looking at what was happening, you were trying
 16 to hide and you weren't seeing much?
 17 MR MTSHAMBA: Yes, there were some times
 18 that there was heavy shooting, then we'll bow our heads
 19 down, hiding, and sometimes it went quiet, then we would
 20 raise our head to try to find out what was happening, is
 21 the shooting still carrying on. When they start again to
 22 shoot we'll bow our heads down to hide.
 23 MR CHASKALSON SC: Have you had
 24 nightmares about this event?
 25 MR MTSHAMBA: Yes, especially to me

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1 because for me it was the first time to see people being
 2 shot at live, see that with naked eyes. I usually see
 3 these things in the movies. It was the first time to see
 4 something like this.
 5 MR MPOFU: He also said something about
 6 bullets hitting rocks.
 7 MR MTSHAMBA: Ja, the bullets hitting
 8 rocks, not knowing when one bullet will shoot, or will
 9 catch me.
 10 MR CHASKALSON SC: You see I want to put
 11 to you that it seems to me that the particularly terrifying
 12 nature of this experience may have affected your memory a
 13 bit, and I'll develop this proposition. Let me put it
 14 generally first. Do you accept that that's a possibility?
 15 MR MTSHAMBA: Yes, I can agree with that.
 16 MR CHASKALSON SC: And in fairness to
 17 you, in your evidence you've already reflected on the fact
 18 that you thought you saw someone being run over by a Hippo.
 19 Your legal representative said that didn't happen and you
 20 accept that what you remember seeing having happened didn't
 21 happen.
 22 MR MTSHAMBA: Yes, according to the way
 23 you put it I can agree because even to myself I thought and
 24 I believed that I saw somebody being run over by a Hippo,
 25 but it may happen that I saw somebody falling next to the

<p style="text-align: right;">Page 35205</p> <p>1 Hippo, then I thought that the Hippo ran on top of him. 2 MR MPOFU: That was not fully translated. 3 The witness also said something about a blanket. 4 MR NTJINGILA: Yes, the witness said he 5 thinks he saw somebody falling next to a Hippo and he knows 6 that he saw also a Hippo running over a blanket. 7 MR MTSHAMBA: I agreed with the 8 correction after this was pointed out to me by my legal 9 representatives that the Hippo did not run over a person 10 and I admitted to that. 11 MR CHASKALSON SC: I want to raise what 12 may be a similar example. You mention both in your 13 evidence and in the Carte Blanche video clip that shots 14 were being fired from a helicopter. 15 MR MTSHAMBA: Yes, I've said that. 16 MR CHASKALSON SC: And in paragraph 22 of 17 your statement you say, "I then ran back and hid myself at 18 koppie 3. At that time shots were being fired from the 19 helicopter as well. Most people in that vicinity were 20 trying to take cover by hiding either among the rocks or 21 the trees. It was very chaotic and the koppie was 22 surrounded by policemen and police vehicles in all 23 directions." 24 Now we as evidence leaders are not aware of any 25 forensic evidence that would support the proposition that</p>	<p style="text-align: right;">Page 35207</p> <p>1 all directions. It was hovering there for a long time. I 2 ended up believing that there were some shots that were 3 being shot from the helicopter. 4 CHAIRPERSON: Is it possible that no 5 shots were in fact being fired from a helicopter, it was 6 just an impression that you had based on two facts; 1, 7 there was a helicopter above, and secondly there were 8 bullets coming from various directions? 9 [15:39] MR MTSHAMBA: It may happen that there 10 were no shots fired from the helicopter, but I believed 11 that there were some shots coming from the helicopter 12 because shots were coming from all directions. 13 MR CHASKALSON SC: And if I can just show 14 you a photograph, which is slide 20 and 21, which are 15 paginated 19 – sorry, which are electronic 21 and 22. It's 16 a photograph of a helicopter and again we've zoomed in on 17 the other slide, on the following slide, if we can go to 18 the following slide, and what you see on the following 19 slide is that there were people in, they were actually NIU 20 members in uniform with their legs dangling over the side 21 of the helicopter as it circled over the koppie. 22 MR MTSHAMBA: That's the helicopter that 23 was hovering on top of us. 24 MR CHASKALSON SC: And I think you 25 rightly conceded to the Chairperson that it may be possible</p>
<p style="text-align: right;">Page 35206</p> <p>1 shots were fired from a helicopter. We haven't, there are 2 not bullet marks in the rocks of which we are aware that 3 would suggest that angle of shooting and we're not aware of 4 any ballistics – well, any evidence that people in the 5 helicopters were shooting. I'm not saying it didn't 6 happen. We're just not aware of any evidence to support it 7 happening. 8 But I want to show you another slide now, which 9 is – 10 CHAIRPERSON: Before you get there can I 11 ask a question. You say shots were fired from the 12 helicopter. "Shots were being fired" is the phrase 13 appearing in your statement, from a helicopter. About how 14 many shots were there being fired as far as you can 15 remember from the helicopter? 16 MR MTSHAMBA: I couldn't manage to 17 estimate because shots were coming from all directions. I 18 couldn't say that these are coming from this direction or 19 these are coming from the helicopter. 20 CHAIRPERSON: Are you sure that some were 21 coming from a helicopter? Or was it just a helicopter 22 flying over while shots were being fired from various 23 directions? 24 MR MTSHAMBA: The helicopter was hovering 25 there on top of us when the bullets were being shot from</p>	<p style="text-align: right;">Page 35208</p> <p>1 that there wasn't shooting from this helicopter. I want to 2 suggest to you that it may be possible that you saw this 3 helicopter circling, you saw people in paramilitary uniform 4 sitting in the helicopter, you heard gunshots, you may have 5 thought that you were being shot at from the helicopter but 6 that in fact did not take place. 7 MR MTSHAMBA: Yes, it is so. 8 MR CHASKALSON SC: I want to move to 9 what's possibly the most important part of your evidence, 10 which is the evidence of people being shot while they tried 11 to surrender, and I just need to get clarity on what you 12 remember seeing, and if we can start with the first man who 13 you say tried to surrender with his hands up and then ended 14 up being shot three times; did you see who shot this man? 15 MR MTSHAMBA: No, I didn't see who shot 16 him. Only what I saw is that he is being shot at. 17 MR CHASKALSON SC: So you can't say 18 whether he was shot from very close range or from a 19 distance? 20 MR MTSHAMBA: Yes, I can't elaborate how 21 far was the distance from which he was shot at and from 22 which angle he was shot from. 23 MR CHASKALSON SC: And if I understand 24 your evidence correctly you say he was shot three times. 25 MR MTSHAMBA: Yes, Mr Chair.</p>

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1 MR CHASKALSON SC: First in his hand.
 2 MR MTSHAMBA: Yes.
 3 MR CHASKALSON SC: Then in his stomach.
 4 MR MTSHAMBA: Yes.
 5 MR CHASKALSON SC: And lastly in his leg.
 6 MR MTSHAMBA: Yes, on the hip.
 7 MR MPOFU: Sorry –
 8 MR NTJINGILA: In the thigh.
 9 CHAIRPERSON: You say in the hip –
 10 MR NTJINGILA: No, it was the
 11 interpreter's mistake. In the thigh.
 12 CHAIRPERSON: In the thigh?
 13 MR NTJINGILA: Yes, Mr Chair.
 14 MR MPOFU: Chairperson, if I may also –
 15 the first shot Mr Chaskalson said hand and the interpreter
 16 said arm, yes.
 17 MR CHASKALSON SC: In fairness to the
 18 witness, your statement and your testimony I think said
 19 hand or arms, so it wasn't precise as to hand or arms.
 20 MR MTSHAMBA: Ja, it is near the hand, I
 21 can say between the hand and the arm.
 22 MR CHASKALSON SC: And you're sure that
 23 you saw him shot in either, between the hand and arm?
 24 MR MTSHAMBA: Yes, he was very close to
 25 me. I was not far away from the place where he was when he

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1 was shot at.
 2 MR CHASKALSON SC: And the second man you
 3 say was shot in the head.
 4 MR MTSHAMBA: Yes.
 5 MR CHASKALSON SC: Can we go back to
 6 slide 4? Sorry, before we go back to slide 4 let me just
 7 check whether it's paginated or electronic, because we
 8 don't want – it's electronic 5 and paginated 4. Mr
 9 Mtshamba, you recall this slide. We've looked at it a few
 10 times. It seems to me that from the scene that you
 11 describe these two victims who you describe as being shot
 12 while trying to surrender could only be – well, let me
 13 start.
 14 Assuming that the police did not move bodies
 15 large distances after the shootings at scene 3 there could
 16 only be five candidates for these two victims, and they
 17 would be Mr Mosebetsane, Mr Mabiya, Mr Nokamba, Mr Saphendu
 18 or Mr Ngxande. They're the only people who were actually
 19 killed in the vicinity of, the immediate vicinity of the
 20 scene that you describe. Mr Mancotywa and Mr Liau are
 21 quite, are in a different position and although Mr Mohai
 22 ultimately died from the shooting he wasn't killed at the
 23 time. He was still alive, sitting up against the rock. So
 24 he wouldn't have been one of the two people you describe.
 25 COMMISSIONER HEMRAJ: Mr Chaskalson, has

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1 the witness said that the gentlemen that were shot died at
 2 the scene? I don't remember that.
 3 MR CHASKALSON SC: No, you're absolutely
 4 correct, Commissioner. He hasn't, but Mr Liau was – well,
 5 it appears that Mr Liau was able to sit upright. Were
 6 either of the two, were the two victims who you saw shot
 7 able to sit up after they were shot?
 8 MR MTSHAMBA: Are you referring to these
 9 guys that I saw surrendering?
 10 MR CHASKALSON SC: That's correct, yes.
 11 MR MTSHAMBA: The first one I said he was
 12 shot in his hand and they shot him near or next to the
 13 stomach and they shot him in his thigh. He knelt down on
 14 his knees in the same place. The second one was raising
 15 the hands also did like the first one, that's the one that
 16 they shot him in the head and he fell down on his face.
 17 The one that they shot in the hand and near the stomach,
 18 that's the one that I last saw him kneeling on his knees.
 19 I didn't see if he managed to wake up or he ended up that
 20 way.
 21 MR CHASKALSON SC: Then let's include Mr
 22 Mohai notionally as a possible candidate.
 23 MR MTSHAMBA: Yes, Sir.
 24 MR CHASKALSON SC: You see we've looked
 25 at the post mortem evidence of – before I get to the post

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1 mortem evidence, you're absolutely certain that you saw
 2 someone shot either in the – that the first victim who had
 3 his hands up was shot either in the hand or the arm?
 4 MR MTSHAMBA: Yes, I remember seeing him
 5 being shot at.
 6 MR CHASKALSON SC: But in the hand or the
 7 arm, is what I'm interested in.
 8 MR MPOFU: I'm sorry, Chairperson, I
 9 think there's a linguistic problem. Mr Chaskalson is
 10 saying that the person was either shot in the arm or the
 11 hand and I think the question is translated as if the
 12 witness must choose the two, whereas Mr Chaskalson was –
 13 what, the proposition he's putting is that it's either the
 14 hand or the arm.
 15 MR MTSHAMBA: Yes, as he was raising his
 16 hand it may happen that it was in the hand or the arm, or
 17 in between the hand and the arm.
 18 MR CHASKALSON SC: You see my problem is
 19 that of these six victims who we now have, including Mr
 20 Mohai, none of them had gunshot wounds in the hand or the
 21 arm. There were no people with gunshot wounds in the hand
 22 or the arm.
 23 MR MTSHAMBA: Yes, but I saw somebody
 24 being shot in the hand or in the arm in the same place
 25 where we were.

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1 MR CHASKALSON SC: You're sure that that
 2 is the same person who you then saw being shot twice
 3 afterwards?
 4 MR MTSHAMBA: The person that was shot
 5 first is the one that was raising his hand. He was shot in
 6 the vicinity of the hand or the arm, I'm not sure of
 7 exactly the spot. What was happening here, when shots were
 8 fired we would bow down our heads, not wanting to be hit by
 9 bullets. The one that I saw falling was being hit in the
 10 thigh and the stomach. It may happen that one who was shot
 11 in the vicinity of a hand and arm, was not the one that
 12 fell down, but I saw somebody being shot. Maybe he managed
 13 to escape.
 14 MR MPOFU: No, no, no, that's not what
 15 the witness said, Chairperson. [African language]-
 16 CHAIRPERSON: Sorry, Mr Mpofo, I think Mr
 17 Mahlangu wants to say something.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: He's agreeing with you.
 20 MR MAHLANGU: "I just want to say it may
 21 happen that the one that I saw being shot in the hand
 22 possibly got away or is the person that fell."
 23 MR MPOFU: Yes [microphone off,
 24 inaudible] not die.
 25 MR MAHLANGU: Yes, and that he got away,

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1 did not die.
 2 MR CHASKALSON SC: So you accept that
 3 it's possible that you didn't see the same person being
 4 shot three times. You may have seen one person shot in the
 5 arm and then another person shot in the leg and the
 6 stomach?
 7 MR MTSHAMBA: Yes, Sir.
 8 COMMISSIONER HEMRAJ: So then you would
 9 have seen three people being shot at the scene if that's
 10 so.
 11 MR MTSHAMBA: Yes, it may happen, or it
 12 is possible.
 13 CHAIRPERSON: Mr Chaskalson, it's just
 14 before 4 o'clock. If you want to move on to the next
 15 point, unless I give you another half an hour tomorrow
 16 morning? Because you haven't obviously finished the points
 17 you're making and they may or may not, depending on what
 18 happen, be of importance to us. So I think I should give
 19 you an opportunity to round off this cross-examination
 20 tomorrow. You did lose quite a lot of time with the
 21 difficulty in finding out the exact movements of the
 22 witness. So if that proposal is acceptable to you we'll
 23 adjourn at this stage.
 24 MR CHASKALSON SC: Thank you,
 25 Chairperson.

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1 CHAIRPERSON: We'll adjourn till tomorrow
 2 morning – we're going to have an argument first. Is that
 3 correct, Mr Budlender? In respect of – what is the
 4 position?
 5 MR BUDLENDER SC: That's correct, Chair.
 6 The argument will be on the [microphone off, inaudible].
 7 CHAIRPERSON: And how long is it going to
 8 be? I understood initially it was going to be an hour and
 9 a half, but I understand there are others who wish to
 10 participate. What is the position at the moment?
 11 MR BUDLENDER SC: I'm afraid I just don't
 12 know, Chair, how long it's going to be.
 13 [15:59] But I would guess, I just don't know –
 14 CHAIRPERSON: I wonder if it wouldn't be
 15 sensible for us then to allow Mr Chaskalson to finish his
 16 cross-examination of the witness at 9:00 for half an hour
 17 and then cross-examination by other cross-examiners can
 18 stand over. It's a question of which would work better,
 19 but I just thought to myself that would be the best way,
 20 but I'm happy to be overruled if I'm wrong.
 21 MR BUDLENDER SC: Chair, I wouldn't
 22 presume, that sounds absolutely fine, Chair.
 23 CHAIRPERSON: There's another point that
 24 arises. I understand that some other parties may wish to
 25 take part in that debate in which case they may well feel

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1 that they will be in a better position to do so later in
 2 the day. And so it may be desirable, that's something we
 3 can decide tomorrow morning whether the next cross-examiner
 4 – who's the next cross-examiner going to be, Mr Semenya?
 5 And how long are you going to be, Mr Semenya? You've asked
 6 for an hour. We'll decide tomorrow, maybe we'll take Mr
 7 Semenya's hour after Mr Chaskalson has finished and we'll
 8 debate about phase 2 thereafter. In any event these are
 9 matters to which we'll only know the answers tomorrow and
 10 so we'll adjourn now until tomorrow morning 9 o'clock.
 11 [COMMISSION ADJOURNED]
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